



Washington State
**DEPARTMENT OF
ENTERPRISE SERVICES**

AMENDED & RESTATED PARTICIPATING ADDENDUM

WASHINGTON CONTRACT No.: 20622

FOR THE
STATE OF WASHINGTON
TO JOIN THE

NASPO VALUEPOINT
COOPERATIVE PURCHASING CONTRACT NO. OK-SW-818-500

Competitively solicited, awarded, and administered by the
State of Oklahoma "Lead State"

FOR
PROFESSIONAL GRADE TOOLS AND DIAGNOSTIC EQUIPMENT

AWARDED TO

HILTI, INC.

This Participating Addendum for the above referenced NASPO ValuePoint Cooperative Purchasing Contract 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 Hilti, Inc., an Oklahoma corporation ("Contractor") and is dated and effective as of November 15, 2024.

RECITALS

- A. The Washington State Legislature created Enterprise Services to function, in part, as Washington State's central procurement authority for goods and/or services and authorized Enterprise Services to enter into contracts on behalf of the State to provide goods and/or services for state agencies and other designated entities. See RCW 43.19.005 and 43.19.011; *see also*, RCW 39.26.050.
- B. The Washington State Legislature further authorized Enterprise Services, on behalf of the State of Washington, to participate in cooperative purchasing agreements with designated entities (e.g., other states engaged in public procurement for goods and/or services) to utilize their competitively solicited and awarded contracts to procure goods and/or services and to make such contracts available to Washington state agencies and designated eligible purchasers, to function as enterprise procurement solutions, consistent with terms and conditions set forth by Enterprise Services. See RCW 39.26.060.
- C. The above-referenced Cooperative Purchasing Contract is the result of a competitive solicitation process undertaken by the above-referenced Lead State, in collaboration with

NASPO ValuePoint, which is a division of the National Association of State Procurement Officials (NASPO), a non-profit public procurement association.

- D. Enterprise Services timely provided public notice of the Lead State's competitive solicitation process through Washington's Electronic Business Solutions system which functions, in part, as Washington's bid notification system. See RCW 39.26.150.
- E. The 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 Cooperative Purchasing Contract to Contractor. Accordingly, Contractor is authorized, pursuant to such Cooperative Purchasing Contract, to enter into a Participating Addendum with interested Participating States.
- F. Enterprise Services, on behalf of the State of Washington, has determined that, as conditioned by this Participating Addendum, participating in the Cooperative Purchasing Contract, as a Participating State, is in the best interest of the State of Washington.
- G. Enterprise Services and Contractor entered into a Participating Addendum dated July 1, 2024. Such Participating Addendum did not include a pay equality provision, as required by the Washington State Legislature. Accordingly, as of November 15, 2024, Enterprise Services and Contractor desire to amend and restate the Participating Addendum and agree that this Amended and Restated Participating Addendum supersedes and replaces, in full, the prior Participating Addendum.
- H. Accordingly, this Participating Addendum enables Purchasing Entities, as defined herein, to utilize the Cooperative Purchasing Contract, as conditioned by this Participating Addendum, to purchase goods and/or services as set forth in the Cooperative Purchasing Contract.

A G R E E M E N T

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

1. DEFINITIONS.

- 1.1. *Contract Usage Agreement*: An agreement between *Enterprise Services* and specified entities that enables such entities to utilize *Enterprise Procurement Solutions* developed and/or identified by Enterprise Services.
- 1.2. *Contractor*: The entity identified above who, pursuant to a competitive solicitation conducted by the *Lead State*, was awarded a *Cooperative Purchasing Contract* and, as such, is authorized to enter into a *Participating Addendum* with a *Participating State*.
- 1.3. *Cooperative Purchasing Contract (or NASPO ValuePoint Cooperative Purchasing Contract)*: The above-referenced contract for goods and/or services that was competitively solicited and awarded by the *Lead State* to *Contractor* and which, pursuant to a *Participating Addendum* between *Contractor* and *Participating State*, may be utilized by *Purchasing Entities* identified by the *Participating State* to purchase specified goods and/or services.
- 1.4. *Enterprise Procurement Solution(s)*: A procurement solution for goods and/or

services developed or identified by *Enterprise Services*, on behalf of the State of Washington, that may be utilized by Washington state agencies and other specified purchasing entities to purchase specified goods and/or services. Pursuant to this *Participating Addendum*, the *Cooperative Purchasing Contract* is an *Enterprise Procurement Solution*.

- 1.5. *Enterprise Services*: The Washington State Department of Enterprise Services, a Washington state governmental agency.
 - 1.6. *Lead State*: The state identified above that conducted the competitive solicitation and awarded the *Cooperative Purchasing Contract* to *Contractor*.
 - 1.7. *Participating Addendum*: This agreement between *Contractor* and *Participating State*.
 - 1.8. *Participating State*: The State of Washington.
 - 1.9. *Purchase Order*: Any document used by *Purchasing Entities* to purchase goods and/or services under an *Enterprise Procurement Solution* from a *Contractor*.
 - 1.10. *Purchasing Entity(ies)*: Any purchaser authorized by *Enterprise Services* to utilize the *Cooperative Purchasing Contract* through this *Participating Addendum*. Such purchasers are limited to (i) Washington state agencies and Washington state institutions of higher education; and (ii) entities who have executed a *Contract Usage Agreement* with *Enterprise Services*. See § 4 – Participation.
 - 1.11. *WEBS*: The Washington Electronic Business Solutions system administered by *Enterprise Services*. See RCW 39.26.150.
- 2. TERM.** This Participating Addendum shall terminate upon: (a) expiration of the term set forth in the Cooperative Purchasing Contract; (b) Contractor’s breach of any representation and warranty set forth in this Participating Addendum; or (c) written notice of termination for convenience by Enterprise Services, whichever first occurs. Termination of this Participating Addendum, however, shall not relieve any Purchasing Entity of its responsibility to pay for goods and/or services timely ordered by such Purchasing Entity and provided to Purchasing Entity by Contractor.
- 3. SCOPE.** This Participating Addendum covers the Cooperative Purchasing Contract awarded to Contractor.
- 4. PARTICIPATION.** Pursuant to this Participating Addendum, the Cooperative Purchasing Contract may be utilized by the following Purchasing Entities:
- 4.1. WASHINGTON STATE AGENCIES. All Washington state agencies, departments, offices, divisions, boards, and commissions.
 - 4.2. WASHINGTON STATE INSTITUTIONS OF HIGHER EDUCATION. Any the following specific institutions of higher education (colleges) in Washington:
 - (a) State universities – i.e., University of Washington & Washington State University;
 - (b) Regional universities – i.e., Central Washington University, Eastern Washington University, & Western Washington University

- (c) Evergreen State College;
- (d) Community colleges; and
- (e) Technical colleges.

4.3. **CONTRACT USAGE AGREEMENT PARTIES.** Any of the following types of entities who have executed a Contract Usage Agreement 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;
- Certain public benefit nonprofit corporations (i.e., public benefit nonprofit corporations as defined in RCW 24.03A.245) who receive federal, state, or local funding; and
- Federally recognized Indian Tribes located in the State of Washington.

By placing Purchase Order under this Participating Addendum, each Purchasing Entity agrees to be bound by the terms and conditions of this Participating Addendum, including the Cooperative Purchasing Contract. Each Purchasing Entity shall be responsible for its compliance with such terms and conditions.

5. PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO THE COOPERATIVE PURCHASING CONTRACT.

5.1 **CONTRACTOR REGISTRATION.** Contractor promptly shall complete the following within seven (7) days of execution of this Participating Addendum:

- (a) **WEBS REGISTRATION:** Contractor shall register in Washington’s WEBS System at [WEBS](#). Contractor further shall ensure that all of its information therein is current and accurate and that, throughout the term of this Participating Addendum, Contractor shall maintain an accurate profile in WEBS.
- (b) **STATEWIDE PAYEE DESK REGISTRATION:** Contractor shall register with Washington’s Statewide Payee Desk and receive a statewide vendor registration number. Washington state agencies cannot make payments to Contractor until Contractor is registered. Registration materials are available here: [Receiving Payment from the State](#).

5.2 **CONTRACT SALES REPORTING.** Contractor shall report quarterly to Enterprise Services total Cooperative Purchasing Contract sales made to Purchasing Entities authorized by this Participating Addendum, as set forth below.

- (a) **REPORTING.** Contractor shall report quarterly sales in Enterprise Services’ [Contract Sales Reporting System](#). Enterprise Services will provide Contractor with a login password and a vendor number.
- (b) **PURCHASING ENTITY USAGE DATA.** Each sales report also 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. If there are no sales during the reporting period, Contractor must report zero sales. Refer sales reporting questions to the Primary Contact set forth below.

- (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:

QUARTER	FOR SALES MADE IN CALENDAR QUARTER	CONTRACT SALES REPORT	
		DUE BY	PAST DUE
1	January 1 – March 31	April 30	May 1
2	April 1 – June 30	July 31	August 1
3	July 1 – September 30	October 31	November 1
4	October 1 – December 31	January 31	February 1

- 5.3 VENDOR MANAGEMENT FEE. Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 1.25 percent on the purchase price for all Cooperative Purchasing Contract sales authorized by this Participating Addendum. The purchase price is the total invoice price less applicable sales tax.

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

$$\text{Amount owed to Enterprise Services} = \text{Total contract sales invoiced (not including sales tax)} \times .01250.$$

- (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 to Enterprise Services by Contractor. Contractor shall not remit VMF payment until it receives an invoice from Enterprise Services. Payment must be received within thirty (30) calendar days of the invoice issue date from Enterprise Services. Contractor’s VMF payment to Enterprise Services must reference the invoice number.
- (d) Contractor’s failure accurately and timely to report contract sales Purchasing Entity usage data, or to remit timely payment of the VMF to Enterprise Services, may be cause for Enterprise Services to suspend or terminate this Participating Addendum or exercise 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.

5.4 NONDISCRIMINATION.

- (a) NONDISCRIMINATION REQUIREMENT. During the term of this Participating Addendum, 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 Participating Addendum 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 Participating Addendum, 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 Participating Addendum 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 termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for damages as authorized by law. Enterprise Services and/or Purchasing Entities 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 Purchasing Entities for default under this provision.

5.5 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 Purchase Order is placed by a Participating Entity pursuant to this Participating Addendum. If, at the time of any such Purchase Order, Contractor cannot make such representations and warranties, Contractor shall not process any Purchase Orders and shall notify

Enterprise Services, in writing, within three (3) business days of such breach.

- (a) **QUALIFIED TO DO BUSINESS.** Contractor represents and warrants that Contractor is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State.
- (b) **TAXES.** Contractor represents and warrants that Contractor is current, in full compliance, and has paid all applicable taxes owed to the State of Washington.
- (c) **LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS.** Contractor represents and warrants that Contractor possesses and shall keep current during the term of this Contract all required licenses, certifications, permits, authorizations, and approvals necessary for Contractor's proper performance of this Contract.
- (d) **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Participating Addendum and the three (3) year period immediately preceding the effective date of this Participating Addendum, 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 49.46, 49.48, or 49.52.
- (e) **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.
- (f) **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 Participating Addendum, 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.
- (g) **WASHINGTON STATE PAY EQUALITY FOR 'SIMILARLY EMPLOYED' INDIVIDUALS.** Contractor represents and warrants that, as required by Washington state law ([Laws of 2023, ch. 475, § 919](#)), during the term of this Participating Addendum, 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 its 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 Participating Addendum and any Purchasing Entity hereunder similarly may suspend or terminate its use of the Cooperative Purchasing Contract and/or any agreement entered into pursuant to this Participating Addendum.

- 5.6 Green/SUSTAINABLE. Contractor represents and warrants that Contractor shall endeavor to supply and delivery goods in alignment with the State of Washington's green/sustainability strategy which, at a minimum is designed to minimize the use of unnecessary product packaging, reduce the use of toxic chemicals, and offer Purchasers, where practicable, 'green products' that provide equivalent performance. Accordingly, Contractor should review the below list of applicable state policies and standards and use commercially reasonable efforts to meet these requirements when supplying goods and services under this Participating Addendum: (a) [Nonmercury-Added Products Purchasing Preference Policy](#), (b) [Purchasing Preference for Products and Product Packaging That Do Not Contain Polychlorinated Biphenyls \(PCBs\)](#), (c) [Purchasing Preference for Products not Containing Hydrofluorocarbons \(HFCs\)](#), and (d) [Recycled Content Purchasing Preference](#).
- 5.7 LEASE AGREEMENTS. This Participating Addendum does not authorize Contractor to lease or rent equipment to any Purchaser.
- 5.8 CONTRACTOR'S SALES AUTHORITY; PURCHASE ORDERS; & INVOICES.
- (a) CONTRACTOR'S SALES AUTHORITY. Pursuant to this Participating Addendum, Contractor is authorized to provide only those goods/services set forth in the Cooperative Purchasing Contract as conditioned by this Participating Addendum. *See, e.g., § 3 – Scope.* Contractor shall not represent to any Purchasing Entity that it has any authority to sell any other materials, supplies, services and/or equipment.
- (b) PURCHASE ORDERS. To utilize the Cooperative Purchasing Contract, each Purchase Order must include the following information and be

submitted to Contractor or its authorized dealer:

1. Each of following contract identification numbers, which are set forth on the first page of this Participating Addendum:
 - Washington Statewide Contract No.: 20622; and
 - NASPO ValuePoint Cooperative Purchasing Contract No.: OK-SW-818-500;
2. The Purchase Order amount; and
3. Purchaser's contact information (i.e., name, address, telephone number, email).

(c) INVOICES. Contractor must provide a properly completed invoice to Purchasing Entities. All invoices are to be delivered to the address indicated in the applicable Purchase Order. Each invoice must include the following:

1. Each of following contract identification numbers, which are set forth on the first page of this Participating Addendum:
 - Washington Statewide Contract No.: 20622; and
 - NASPO ValuePoint Cooperative Purchasing Contract No.:OK-SW-818-500;
2. Contractor's statewide vendor registration number assigned by the Washington State Office of Financial Management through Washington's Statewide Payee Desk; and
3. The Purchasing Entity's applicable Purchase Order number.

Invoices must be prominently annotated by Contractor with any applicable volume discounts.

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

Participating State

Attn: Shapoor Naveed
State of Washington
Washington Dep't. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: 360-407-2212
Email: DESContractsTeamMaple@des.wa.gov

Contractor

Attn: Bruce Mitchel
Hilti, Inc.
5400 S 122nd E Ave,
Tulsa, OK 74146
Tel: (918) 804-5376
Email: Bruce.Mitchell@hilti.com

7. **INSURANCE.** No later than ten days following the Effective Date, Contractor must provide insurance as set forth on Exhibit 1, Insurance Requirements, of this Participating Addendum. No Purchase Orders may be placed or accepted until proof is provided that these requirements have been met. A Purchasing Entity may require additional amounts or types of insurance under a Purchase Order.
8. **SUBCONTRACTORS.** All contractor's Authorized Distributors in the State of Washington, as shown on the dedicated Contractor NASPO ValuePoint website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's Authorized Distributor's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
9. **ORDERS:** Unless the parties to the applicable Purchase Order agree in writing that another contract or agreement applies to such Purchase Order, any Purchase Order placed by a Purchasing Entity for goods and/or services available from the Cooperative Purchasing Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Cooperative Purchasing Agreement as conditioned by this Participating Addendum.

10. GENERAL.

- 9.1. **ENTIRE AGREEMENT; MODIFICATION.** This Participating Addendum and the Cooperative Purchasing Contract, together, 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.
- 9.2. **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.
- 9.3. **ELECTRONIC SIGNATURES.** An electronic signature or electronic record of this Participating Addendum or any other ancillary agreement 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.
- 9.4. **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 AND EFFECTIVE as of the date and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: *Elena McGrew*
Elena McGrew

Its: Statewide Enterprise Procurement
Manager

Date: 11/18/2024

HILTI, INC.,
AN OKLAHOMA CORPORATION

By: Bruce E. Mitchell Digitally signed by Bruce E. Mitchell
Date: 2024.10.31 10:53:29 -05'00'
Type Name

Its: Assistant Secretary Hilti Inc. / Contract Manager

Date: 10/31/2024

INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the term of this Participating Addendum Contractor shall possess and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability insurance covering bodily injury, property damage, products/completed operations, personal injury, and advertising injury liability on an 'occurrence form' that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) under the most recent version of form CG 00 01 in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.
 - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
 - c. **EMPLOYER'S LIABILITY (STOP GAP) INSURANCE.** Employer's liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.
 - d. **COMMERCIAL AUTO LIABILITY INSURANCE.** Commercial automobile liability insurance covering the ownership, maintenance, and/or use of all owned/leased, non-owned, and hired vehicles used in the performance of the Contract, with limits of not less than \$1,000,000 per accident, with a combined single limit for bodily injury and property damage liability. Coverage shall be provided on Insurance Services Office (ISO) form number CA 0001 or an equivalent. The required limits can be satisfied by any combination of primary, umbrella, or excess policy.

The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** When specified as a required insurance coverage (see § 1 – Insurance Obligation, above) Commercial General Liability, and Commercial Automobile Liability, shall include the State of Washington and all authorized Purchasers (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.

4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Participating Addendum, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Participating Addendum, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall furnish to Enterprise Services an updated or renewed certificate of insurance, satisfactory to Enterprise Services, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in Contractor suspensions and/or contract termination. **All policies and certificates of insurance shall include the Participating Addendum number stated on the cover of this Participating Addendum.** All certificates of Insurance and any related insurance documents shall be sent via email to Enterprise Services at the email address set forth below:

Email: DESContractsTeamMaple@des.wa.gov

Note: For Email notice, the Email Subject line must state:

Participating Addendum Insurance Certificate – Participating Addendum No.20622–Professional Grade Tools and Diagnostic Equipment

5. **PRIMARY COVERAGE.** Contractor’s insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchaser. All insurance or self-insurance of the State of Washington and/or Purchasers shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor to Enterprise Services. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor’s liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Purchaser for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Participating Addendum number stated on the cover of this Participating Addendum.
9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Participating Addendum.



**OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT
PROFESSIONAL GRADE TOOLS AND DIAGNOSTIC
EQUIPMENT**

Office of Management and Enterprise Services

Central Purchasing Division

2401 North Lincoln Boulevard

Oklahoma City, OK 73105

And

Hilti, Inc.

5400 South 122nd East Avenue

Tulsa, OK 74146-6007

Master Agreement Number: OK-SW-818-500

The Contractor identified below is hereby notified that a contract is being awarded to the Contractor in connection with Solicitation No. OK-MA-818, issued March 24, 2023.

NOW, THEREFORE, in consideration of the foregoing and mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties have caused this Master Agreement to be duly executed and agree to terms contained herein.

STATE OF OKLAHOMA
by and through the
OFFICE OF MANAGEMENT AND
ENTERPRISE SERVICES

Hilti, Inc.

By: *Amanda L. Otis*
Amanda Otis (Nov 30, 2023 10:11 CST)

By: *Bruce E. Mitchell*
Bruce E. Mitchell (Nov 30, 2023 09:28 CST)

Name: Amanda Otis

Name: Bruce E. Mitchell

Title: State Purchasing Director

Title: Assistant Secretary

Date: 11/30/2023

Date: 11/30/2023

**The person signing for Contractor hereby swears and affirms that he or she is authorized to act on Contractor's behalf and acknowledges that the Lead State is relying on his or her representations to that effect.*

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

SUMMARY

1. **Scope of Work Defined.** The purpose of this Master Agreement is to memorialize terms of the contract under which catalog discount options are provided for professional grade tools and diagnostic equipment for all Participating Entities in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The objective is to obtain best value, and in some cases achieve more favorable pricing, than is obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities.

2. **Categories of Products Offered.** This Master Agreement will offer the following categories of products: Professional Grade Tools and Diagnostic Equipment.

3. **Contract Documents and Master Agreement Order of Precedence.** Any Order placed under this Master Agreement is governed by and subject to the following contract documents, the terms of which are hereby incorporated:
 - A. Participating Entity's Participating Addendum ("PA");
 - B. Oklahoma NASPO ValuePoint Master Agreement;
 - i. Summary;
 - ii. General Terms, Conditions, and Instructions;
 - iii. Exhibit A, NASPO ValuePoint Master Agreement Terms and Conditions;
 - iv. Exhibit B, Scope of Work; and
 - v. Response, Cost Proposal, Discount Percentage Offered
 - C. A Purchase Order issued against the Master Agreement;
 - D. Request for Proposal; and
 - E. Attachment J, Contractor's Terms and Conditions Contained in Contractor's Response as Revised and Accepted by The Lead State.

These documents shall be read to be consistent and complementary. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and attached to this Master Agreement at Exhibit D; however, any conflict among contract documents shall be resolved by giving priority to documents in the order listed above.

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

GENERAL TERMS AND CONDITIONS

1. **Period of Performance.** The initial term of this Master Agreement shall be from the date of award for two (2) years with the option to renew for up to three (3) additional one-year periods.
2. **Renewals.** Prior to any renewal, the Lead State shall subjectively consider the value of the Contract, the Supplier's performance and review of current pricing and discounts offered by Supplier. If it is determined changes to the Master Agreement are required as a condition precedent to renewal, the Lead State and Supplier will cooperate to evidence such required changes in an Addendum.
3. **Extensions.** The Lead State may extend the Master Agreement for ninety (90) days beyond a final renewal term. If exercised, the Lead State shall notify Supplier in writing prior to expiration date. The Lead State, and to the extent allowable by law, may choose to exercise subsequent ninety (90) day extensions at the Agreement pricing rate, to facilitate the finalization of terms and conditions of a new award or as needed for transition to a new Supplier.
4. **Contract Administrator.** The Lead State Contract Administrator identified below is the single point of contact in connection with this Master Agreement and all questions concerning the procurement process, contractual requirements, changes, and any other questions that may arise related to this Master Agreement. The Lead State Contract Administrator designated by the State of Oklahoma, OMES Central Purchasing is:

Lisa Bradley, Statewide Initiatives
Contracting Officer State of Oklahoma,
OMES Central Purchasing
2401 N. Lincoln Blvd.,
Oklahoma City, OK 73105
Lisa.Bradley@omes.ok.gov
Phone: 405-522-4480

5. **Governing Laws and Regulations.** The construction and effect of this Master Agreement is governed by the laws of the state of Oklahoma and venue for any claims or administrative or judicial action relating to such construction and effect including, but not limited to, the procurement process, evaluation and award shall be in Oklahoma County, Oklahoma.

The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in section 35 of the NASPO ValuePoint Terms and Conditions of this Exhibit.

6. **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.

EXHIBIT A

NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

I. Definitions

- 1.1 Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.
- 1.2 Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.3 Embedded Software** means one or more software applications which permanently reside on a computing device.
- 1.4 Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- 1.5 Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.6 Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
- 1.7 NASPO ValuePoint** is a division of the National Association of State Procurement Officials (“NASPO”), a 501(c)(3) corporation. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.
- 1.8 Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
- 1.9 Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).
- 1.10 Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

- 1.11 **Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.
- 1.12 **Product or Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.
- 1.13 **Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

II. Term of Master Agreement

- 2.1 **Initial Term.** The initial term of this Master Agreement is for two years. The term of this Master Agreement may be amended beyond the initial term for 3 additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.
- 2.2 **Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.3 **Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

III. Order of Precedence

- 3.1 **Order.** Any Order placed under this Master Agreement will consist of the following documents:
 - 3.1.1 A Participating Entity's Participating Addendum ("PA");
 - 3.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto;
 - 3.1.3 A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
 - 3.1.4 The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;

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

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

3.3 Participating Addenda. Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. 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. 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 by Contractor directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method, and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

5.3 NASPO ValuePoint Summary and Detailed Usage Reports

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

5.3.2 Summary Sales Data. "Summary Sales Data" is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days

following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.

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

5.3.4 Sales Data Crosswalks. Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data (“Crosswalks”). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor’s part number or SKU for each Product in Offeror’s catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor’s customer lists and product catalog change.

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

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

5.4.1 Staff Education. Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor’s contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.

- 5.4.2 Onboarding Plan.** Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.
- 5.4.3 Annual Contract Performance Review.** Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.
- 5.4.4 Use of NASPO ValuePoint Logo.** The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.
- 5.4.5 Most Favored Customer.** Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.
- 5.5 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 years] after execution of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Master Agreement under applicable laws.
- 5.6 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 prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.

6.1.1 All prices must be guaranteed for the initial year of the Master Agreement.

6.1.2 Following the initial year of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least ninety (90) days prior to the effective date.

6.1.3 Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.

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

6.1.5 Contractor's offered discount percentage (%) off list must be guaranteed for the full contract term (5 years).

6.2 Payment. Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card for the original Point of sales purchase transaction (through Customer Service, Store, or on-line) with no additional charge.

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

VII. Ordering

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

- 7.2 Quotes.** Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an “as needed” basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.
- 7.3 Applicable Rules.** Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities’ rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- 7.4 Required Documentation.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- 7.5 Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.
- 7.5.1** Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.
- 7.5.2** Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.
- 7.5.3** Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- 7.5.4** Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement’s terms.
- 7.5.5** Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.
- 7.6 Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:

- 7.6.1 The services or supplies being delivered;
- 7.6.2 A shipping address and other delivery requirements, if any;
- 7.6.3 A billing address;
- 7.6.4 Purchasing Entity contact information;
- 7.6.5 Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
- 7.6.6 A not-to-exceed total for the products or services being ordered; and
- 7.6.7 The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

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

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

VIII. Shipping and Delivery

8.1 Shipping Terms. All deliveries 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 substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use.

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

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

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

9.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or,

if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

- 9.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.
- 9.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.
- 9.5.4 Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.
- 9.5.5 No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

X. Warranty

- 10.1 **Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.
- 10.2 **Warranty.** The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used as described and explained in Contractor's product literature, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.
- 10.3 **Breach of Warranty.** Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.
- 10.4 **Rights Reserved.** The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

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

XI. Product Title

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

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

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

XII. Indemnification

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

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

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

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

- 12.2.1.2 specified by the Contractor to work with the Product;
 - 12.2.1.3 reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
 - 12.2.1.4 reasonably expected to be used in combination with the Product.
- 12.2.2 The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.
- 12.2.3 The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.
- 12.2.4 Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XIII. Insurance

- 13.1 **Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in their Participating Addendum.
- 13.2 **Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- 13.3 **Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:

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

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

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

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

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

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

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

XIV. General Provisions

14.1 Records Administration and Audit

14.1.1 The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and

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

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

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

14.2 Confidentiality, Non-Disclosure, and Injunctive Relief

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

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

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

14.2.1.3 Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to

others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

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

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

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

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

14.2.2.4 Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality

assurance, audits, and evidence of the performance of this Master Agreement.

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

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

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

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

14.3 Assignment/Subcontracts

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

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

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

experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

- 14.5 Independent Contractor.** Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not to hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.
- 14.6 Cancellation.** Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.
- 14.7 Force Majeure.** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.
- 14.8 Defaults and Remedies**
- 14.8.1** The occurrence of any of the following events will be an event of default under this Master Agreement:
- 14.8.1.1** Nonperformance of contractual requirements;
 - 14.8.1.2** A material breach of any term or condition of this Master Agreement;
 - 14.8.1.3** Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;
 - 14.8.1.4** Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or

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

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

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

14.8.3.1 Any remedy provided by law;

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

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

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

14.8.3.5 Suspension of Contractor's performance; and

14.8.3.6 Withholding of payment until the default is remedied.

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

14.9 Waiver of Breach. Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not

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

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

14.11 No Waiver of Sovereign Immunity

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

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

14.12 Governing Law and Venue

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

14.12.2 Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the state serving as Lead State. Venue for any claim,

dispute or action concerning the terms of the Master Agreement will be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum will be in the Purchasing Entity's state.

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

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

14.14 Survivability. Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

EXHIBIT B SCOPE OF WORK

This Scope of Work describes the Deliverables being sought through this RFP and the scope of what Suppliers will be expected to offer through a Master Agreement resulting from this RFP. The Scope of Work is intended to provide interested Offerors with sufficient basic information to submit a proposal. It is not intended to limit a proposal's content or exclude any relevant or essential data.

I. Master Agreement Objectives

The State of Oklahoma, (Office of Management & Enterprise Services (OMES), Central Purchasing (Lead State) is requesting proposals for Professional Grade Tools, Diagnostic Equipment and accessories in furtherance of the NASPO ValuePoint Cooperative Purchasing Program.

The objective of this RFP is to obtain best value, competitive proposal requirements, and to receive collective volume purchasing by all government entities through the NASPO ValuePoint Cooperative Purchasing Program, which creates more favorable pricing than is obtainable by an individual state or local government entities.

II. Master Agreement Deliverables

1. Product Categories

For the purpose of this RFP, there will be two product categories defined below which may be awarded. It is the intent to establish multiple awards throughout the categories, and all offerors are encouraged to compete in as many levels as possible. The State of Oklahoma reserves the right to eliminate any category not meeting full expectations from the final award.

A: Professional Grade Tools – used here as a term to distinguish from general use or consumer grade products. It is intended to communicate a more durable product with the expectation that it will work both better and longer in an environment where it is used more regularly. Built for extended heavy and repeated use, more rugged and tends to not malfunction as quickly. Also associated with better features and options which result in a high-end result. Excellent and extended warranties for product repairs are usually in place versus throw away and replace options.

B: Diagnostic Equipment – used for discovering what is wrong with things that do not work properly. Non-medical equipment. Can include automotive, electrical, plumbing, and other specialized areas which require unique diagnostic analysis for evaluation and repair.

2. Value Added Features

The purpose of the Value-Added plan is to provide Offerors with an opportunity to identify any value-added options or ideas that may benefit the State(s) which may result in a change in either cost or scope. These options or ideas may also be referred to as additional or optional services. This area allows the Offeror to differentiate their products and services from other similar companies. Where applicable, the Offeror should identify:

- A.** What the State may have excluded or omitted from its original scope.
- B.** How these options or ideas have been successful through verifiable performance information and/or best value practices?

The Offeror should list any costs deviations and possible time impacts of its options or ideas. Any items which reflect additional costs should be listed separately and clearly defined. The ideas identified in this Value-Added Plan must NOT be included in the Offeror's original Cost Proposal. The Offeror should identify and briefly describe any options, ideas, alternatives, or suggestions to add value to this contract offering, and indicate how the items will increase or decrease cost and customer satisfaction. All Value-Added Plans must be submitted on Attachment L - Value Added Plan Template. There is a two (2) page limit for this section. This attachment will be included in the evaluation. No identifiable company information is to be included within the plan. These plans will be labeled Offeror A, B or C, or Offeror 1, 2, or 3 and rated blindly by the evaluation team.

III. Supplier Responsibilities and Tasks

1. Service Level Requirements and Expectations

A. Reporting

Periodic Reports identifying the Supplier's fill rate and performance against other metrics will be required at least annually.

B. Service Fees

The Supplier will not invoice service fees or additional costs to the Participating Entity during the term of the contract. For instance, there will be no small order, minimum order, special order, shipping (except as Rush delivery as specified in the Cost Proposal), hazardous materials, pallet, fuel charges or surcharges.

C. Delivery

Standard orders must be delivered to end users within 5 business days after receipt of order unless product is a special-order item. Rush orders to end users must be delivered next day after receipt of order.

Acceptable hours for deliveries vary by location, and some facilities do not accept palletized deliveries. It is the Supplier's responsibility to determine the acceptable delivery times and packing requirements for each customer at the time the order is placed.

D. Response Time

The supplier should respond to all communications no later than one business day.

E. Fill Rate

The Supplier should maintain a Fill Rate of at least 98%. The fill rate will be calculated by each Facility, by dividing the number of line items delivered on time by the number of line items ordered for delivery during that month and multiplying the result by 100 to arrive at the percent (%) fill rate. Approved and accepted substitutions shipped and delivered on first fill will not count against fill rate; disapproved or denied substitutions or substitutions not delivered on first fill will count against fill rate. Supplier's failure to maintain a Fill Rate of 98% may result in further review.

F. Invoice Accuracy

The Supplier should strive to achieve invoice accuracy of 100% as measured by SKUs ordered.

G. Non-Delivery

After notification of impending short or out-of-stock items, Purchasing Entity may cancel balance of incomplete deliveries without penalty. Purchasing Entity may purchase shorted items that cannot be supplied by the Supplier by date required to the next awarded Supplier if this solicitation results in a multi-award situation.

H. Overall Customer Satisfaction

Supplier should develop a plan to conduct a quarterly survey of end-users to determine the level of customer service satisfaction experienced by Purchasing Entity and should conduct such a survey upon request from the Lead State. Both the raw and analyzed survey results should be provided to the Lead State. The following includes some of the areas to be measured on the survey: Responsiveness, Communication, Courtesy, Competence, Effectiveness, and Overall Satisfaction.

I. Payment Options

Purchasing Entity will pay the Supplier by check, electronic funds transfer, or with the State(s) authorized P-card.

J. Freight Policy

All shipments should be F.O.B. Destination to the specified location, with inside delivery. Supplier is responsible for filing and expediting all freight claims with the carrier. The Supplier will pay title and risk of loss or damage charges.

K. Return of Product

Any materials delivered in poor condition, or in excess of the amount authorized by the purchase order may, at the discretion of the Purchasing Entity, be returned to the Supplier at the Supplier's expense within 5 days. Credit for returned goods shall be made immediately once the Supplier receives the returned goods. If any product is returned to a Supplier for failure of performance, the Supplier will, at the State's discretion, refund all amounts paid to the Supplier for such product or replace the product, and the following shall apply:

1. Within five (5) days of written notification by the Purchasing Entity, the Supplier will make arrangements for the return of the product.
2. The Supplier shall bear all shipping and insurance costs.
3. Supplier shall be liable for damages to the product, unless caused by fault or negligence of the Purchasing Entity that occur during the return process.

L. Returns Due to User Error

Supplier shall provide for return of unopened items ordered in error for up to 30 calendar days from delivery. For all returns of unopened items or returns due to user error, returns should be provided free-of-charge as long as they occur at a regularly scheduled delivery time. Otherwise, Purchasing Entity may be responsible for all costs associated with the preparation of the product for shipping, and all shipping costs to the Supplier's nearest service location for such returns; no additional charges are allowed, including restocking fees.

Supplier shall issue a credit to Purchasing Entity's account as soon as items have been received by the Supplier.

M. Price Verification

The Supplier should be able to provide manufacturer price lists and its own price lists at the State's request in order for the State to verify pricing. The Supplier should have its own auditing system to verify that correct pricing is being offered to the State. In addition, the State reserves the right to audit Supplier records in order to identify discrepancies. If discrepancies are found, at a minimum, the Supplier will refund the State the difference and may be subject to other legal remedies.

N. Rebates

Offerors should offer all rebates and special offers (including commercial and consumer offers) made available by the manufacturer, in addition to contracted pricing.

O. Receiving Procedures and Order Inspection

Purchasing Entity shall inspect and verify deliveries, upon receipt of order. Products shall be matched against the packing slip and order specifications. Any cases damaged during loading or delivery will be rejected. Supplier shall replace with like or acceptable product at no charge within two business days of notice.

P. Disaster Recovery

The State(s) expects the Supplier to have robust disaster recovery capabilities and procedures, to continue service in all aspects of its operations. Supplier shall provide a copy of such a plan in the response. A more detailed disaster/emergency plan must be completed and approved by the State within thirty (30) days of Contract award.

Q. Catalogs

Supplier shall have web-based catalog(s) and may deliver hard copies, CD-ROM, or electronic media copies of the most current catalog to each Purchasing Entity

upon request. Supplier should provide Lead State with an electronic copy of its most recent catalog within five (5) business days of publication.

R. Supplier Outsourcing

All suppliers outsourcing of products which are not currently listed in the supplier's catalog or on-line ordering system must be direct line extension products. "A product which has a similar item in an established and awarded product category, and supplier has a publicly recognized business partnership with the brand and/or manufacturer.

2. Insurance

Supplier shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Supplier 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.

A. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent Suppliers, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$5 million per occurrence.

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

B. Supplier shall pay premiums on all insurance policies. Supplier shall provide notice to a Participating Entity who is a state within five (5) business days after Supplier 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.

C. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

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

3. Ordering

A. No minimum orders will be considered under this Contract. Please see the pricing attachment for value-added incentive volume discount request.

B. Options/Accessories/Attachments on ordered equipment shall include all standard items normally furnished by the Supplier's manufacturer/dealer for the basic equipment being purchased.

Suppliers shall identify any websites that can be of assistance in determining needs and calculating total cost of items purchased.

C. Any trade-in allowances determined by the Supplier shall be deducted from the established current price before the discount is applied. The formula will be to deduct the discount from the established current price and then take off the trade-in allowance. (Only for those Purchasing Entities allowed to trade-in equipment for new equipment).

4. Changes in Supplier Contact

The Supplier shall notify the Contracting Officer of any changes in the company status, such as mergers, sell offs, discontinuation of equipment, addition of equipment lines and changes in the contact information of the Contract. The Contracting Officer shall be able to contact the Supplier at all times during business hours.

5. 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.

6. Warranty-Equipment/Options/Accessories/Attachments

A. The Supplier agrees the products furnished under this Contract shall be covered by all commercial warranties the Supplier provides for such products, and rights and remedies provided herein are in addition to and do not limit any rights afforded by any other clause of this Contract.

B. The Supplier warrants that at the time of delivery, all equipment purchased under this Contract will be free from defects in material or workmanship and will conform to the specifications and all other requirements of this Contract.

C. All warranty work performed, and parts/materials supplied shall meet original equipment manufacturer (OEM) warranty requirements. Equivalent substitutions must be approved by the Purchasing Entity contact person prior to installation.

D. Warranty work performed not meeting specifications or found to be defective, shall not be accepted. The Supplier shall be required to make repairs or corrections at no

additional cost to the Purchasing Entity.

E. Supplier shall furnish a copy of their warranty applicable for the equipment. All equipment warranties shall start on the date of delivery and shall be for the full term of said warranty.

F. Before actual warranty work begins, ownership of the equipment shall be established to ensure the equipment in need of repair belongs to the Purchasing Entity requesting the service. The following information shall be provided in order to determine ownership of the equipment:

(1) Name of Purchasing Entity and division, if applicable. Make, Model, and VIN of equipment Control number of Purchasing Entity (Inventory number)

G. Repairs made that are covered by a warranty shall not be paid for by the Purchasing Entity.

H. The Supplier shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work.

I. All persons utilized in the performance of this contract shall be authorized by the supplier and be fully qualified to perform the warranty work required. Warranty work shall be performed by certified or trained or authorized service technicians.

J. Equipment that will remain in the supplier's possession overnight and for extended periods shall be stored in a safe and secure location for protection from theft and environmental dangers. The Supplier shall be responsible for the proper care and custody of any state-owned equipment in the Supplier's possession.

8. Quality of Parts

A. Parts under these specifications should be name brand, nationally advertised merchandise.

Equivalent substitutions must be approved by the Purchasing Entity contact person.

B. After Market Repair parts must be equal to or exceed Suppliers original equipment manufacturer's specifications. Repair parts must be packaged and distributed under their respective nationally known name brands.

C. All rebuilt or remanufactured parts must meet the same requirements as listed above.

D. Some repair parts may be required to be original equipment manufactured repair parts. Supplier's dealers' network must carry a complete line of OEM parts for all models of equipment they carry.

E. Preservation, packaging, and packing and marking will be in accordance with best commercial practice to provide adequate protection against shipping damage.

9. Warranty/Buy Back

Suppliers are required to provide any buy-back, trade-in, or exchange policy concerning repair parts sold to Purchasing Entities.

Supplier shall correct ordering errors without further cost to the ordering entity. A copy of the Warranty shall be included for replacement parts purchased.

10. Repair Facilities

Repair facilities that will perform the warranty work of items under this Contract shall be identified as listed on the Supplier's dealer network. As the manufacturer, the Supplier is responsible for ensuring that the facilities are able to adhere to the contract requirements for warranty work performance.

11. Freight/Shipping/Set-up Fees

A. Freight from the factory to the distributor is the responsibility of the Supplier. Freight from the distributor to the customer is an allowable charge.

B. Delivery is to be FOB Destination (of ordering entity) freight collect

C. Any Freight, shipping and handling costs and set-up fees paid by the ordering entity are to be annotated on the quote/invoice as a separate line item.

12. Delivery

A. All equipment shall be delivered new, unused, assembled, serviced, oiled and ready for immediate use, unless otherwise requested by the Purchasing Entity. Liability for product delivery remains with the Supplier until delivered and accepted.

B. Delivery shall be made in accordance with instructions on the purchase order from each Purchasing Entity. If there is a discrepancy between the purchase order and what is listed on the contract, the Supplier shall seek clarification from the ordering party and/or the Contracting Officer.

C. One operating manual, an illustrated parts manual or List, and the warranty shall be furnished for each new item purchased, as well as any proprietary tools necessary to perform routine service or adjustments, all at no additional cost.

D. All ordering entities will have the option to pick up their equipment from the dealer.

13. Price Adjustments

The Contract price shall be the most current Suppliers Manufacturer's Suggested Retail Price (MSRP) in effect at the time the order is placed less the discount percentage offered. This allows for market fluctuations to the provided catalog to take place annually with supporting documentation provided, while the discount percentage must remain stable throughout the contract term.

The Supplier will be required to notify the Contracting Officer (Lead State) for review and approval when new pricing updates occur and an explanation of what has prompted

the change as well as documentation to support the price increase. Documentation may include: the manufacturer's national price increase announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, index data and other information to support and justify the increase.

The price increase must not produce a higher profit margin than the original contract and must be accompanied by sufficient documentation and nationwide notice of price adjustment to the published commercial price list.

Price Established at Time of Order. Pricing is established at the time an order is placed by a public entity with the Supplier. No retroactive price increases will be allowed, nor will price increases be allowed at time of delivery.

Price Reductions. In the event of a price decrease in any category of product at any time during the contract in an OEM's published commercial price list, including renewal options, the Lead State shall be notified immediately. All published commercial price list price reductions shall be effective upon the notification provided to the Lead State.

14. New Products

New Products may be added to the awarded categories as they are introduced as long as the products remain within the scope of that category. The quoted discount cannot be lowered throughout the Contract period.

15. Discontinued Products

Suppliers are to notify the Contracting Officer of any changes in their schedule of equipment such as discontinued products or replacement models to continue proper presentation on contract award posting.

16. Price

Offeror shall provide detailed costs for all costs associated with the responsibilities of managing this contract.

Offeror must submit cost, prices and rates as required by Attachment I, Cost Proposal. Prices and rates shall include all anticipated charges, including but not limited to, freight and delivery, cost of materials and product, travel expenses, transaction fees, overhead, profits, and other costs or expenses incidental to the Offeror's performance.

All pricing information shall be submitted on Attachment I, Cost Proposal. There are four tabs to be completed, along with one brief instruction sheet. The Percentage Discount tab is required and will be included in the cost evaluation score.

17. Value Added Contract Items

The Offeror should identify and briefly describe any options, ideas, alternatives, or suggestions to add value to this contract offering, and indicate how the items will increase or decrease cost and customer satisfactions.

As a value-added option, vendor may specify contract items which will qualify as priority, best-selling, higher usage items, or a special “hot” list or “contract offering” based on a deeper discount.

Due to the large variance of tool available, and as the subject expert, the vendor may choose the items to offer.

This product listing will allow the vendor to represent the type, style, quality, and breadth of tool and/or diagnostic equipment options available if awarded.

This list will remain firm for the initial base year, with the option to refresh or revise the listing of contract special items on an annual basis at contract renewal periods, per lead state approval.

Submission of items will be included in the total value-added scoring evaluation.

18. Participating State Terms and Conditions.

As a courtesy to Offerors, some Participating States’ specific Terms and Conditions are provided as Attachments to this solicitation. These are for informational purposes only and will be negotiated with other Participating States after award of the Master Agreement. Each State reserves the right to negotiate additional terms and conditions in its Participating Addendums. Offerors shall submit a statement that they understand they may be required to negotiate these additional terms and conditions when executing a Participating Addendum.

Attachment I
Cost Proposal - Discount % Off
Professional Grade Tools and Diagnostic Equipment
Offeror Name: Hilti, Inc.

INSTRUCTION:
1. This Cost Proposal form consists of multiple sections (tabs at the bottom of this spreadsheet): ---Section 1: Discount % Off Evaluation (Green Tab) ---Section 2: Market Basket Evaluation (Orange Tab) ---Section 3: Value Add Tools Evaluation (Blue Tab) ---Section 4: Value Add Diagnostic Evaluation (Purple Tab)
2. Offeror must complete all required fields (fields in a brown highlight) in both tabs. The format and structure of the Cost Proposal is intended to allow for both a minimum discount % off and fair market basket-type evaluation of like costs among Offerors. Deviation from the format or structure of this form may result in Offeror's proposal being deemed non-responsive.
3. Offeror is wholly responsible for ensuring figures and calculations submitted in Offeror's completed Cost Proposal are accurate, even if formulas have been provided by the Lead State as a courtesy.
4. Inclusion of cost or pricing information in any document other than this Cost Proposal may result in Offeror's proposal being deemed non-responsive.
5. Offeror's Cost must be inclusive of all fees and charges, including but not limited to fees or charges for shipping, delivery, credit card payments, or personnel.
6. In addition to the Cost Proposal evaluation described in this RFP, Cost Proposals may also be subject to an independent review for reasonableness and best value by the Lead State. Costs determined not to be reasonable or best-value by the Lead State may result in all or part of Offeror's proposal being rejected, notwithstanding the results of the Cost Proposal
7. It is Offerors responsibility to ensure it has completed all tabs and required inputs based on its proposed products & services.
8. Offeror must propose for each item in this Market Basket in order to be considered for an award. Failure to propose each item may result in disqualification of Offeror's proposal from that Category.

Minimum Discount % Off

1. Offeror must propose a minimum discount % greater than 0% for each Category it is seeking an award in in order to be considered for an award in that category.

Category	Products / Items	Proposed Percentage Discount from List
1	Professional Grade Tools (insert products below)	
	% discount off all Products in this Category <u>OR</u> complete fields below for individual sub-categories.	
	Hilti brand commercial power tools (including cordless tools, batteries, and chargers) - A minimum of 40% off Hilti list	40.0%
	Hilti brand tool accessories and direct consumables (including drill bits, cores bits, saw blades, chisels) - A minimum of 40% off Hilti list	40.0%
	Hilti brand firestop - A minimum of 40% off Hilti list	40.0%
2	Diagnostic Equipment (insert products below)	
	% discount off all Products in this Category <u>OR</u> complete fields below for individual sub-categories.	
	Hilti Diagnostic tools used in the construction and building maintenance industries - A minimum of 40% off Hilti list	40.0%
3	Value Added Features (Offeror's may not propose only Category 3. Offered Value Added Features must be tied to Category 1 or 2 offerings)	
	% discount off all Value Added Features in this Category <u>OR</u> complete fields below for individual sub-categories.	
	Average Discount % Off --->	40.0%

**REQUEST FOR PROPOSALS FOR
PROFESSIONAL GRADE TOOLS & DIAGNOSTIC EQUIPMENT**



OKLAHOMA
Office of Management
& Enterprise Services

Issued by the **State of Oklahoma**
Solicitation Number OK-MA-818-23

**ATTACHMENT L
VALUE ADDED PLAN**

This template must be used. The Value-Added Plan should identify any value-added options or ideas that may benefit the States. The value-added claims should be prioritized (identify the most important claims first). The Offeror may add or delete Value Added Claim table templates, but do not exceed the 2-page limit for this section. Do NOT include any identifying information in the Plan. The information listed under the “Documented Performance” line may describe where the Respondent has used the approach or solution previously and what the results were in terms of verifiable metrics.

The example instructional language provided below can be deleted to accommodate more claims

Example (Instructional Language):

Item Claim:	<i>This would be the place to offer services / packages / optional remittance methods, etc. not specifically requested in the solicitation. Based on the requested scope what additional related, value add options / services would you like to offer?</i>		
How will this add value?:	<i>How would the item / service described above add value to the State’s awarded contract?</i>		
Documented Performance:	<i>State in general terms (performance metrics) the historical results of other public entities utilizing this value add.</i>		
Cost Impact (%):	<i>What % impact on cost will this time / service have?</i>	Schedule Impact (%):	<i>What % impact on the schedule (rollout, implementation, maintenance, etc.) will this time / service have?</i>

Item Claim #1:

Item Claim:	Powder Actuated Tool (PAT)/Direct Fastening OSHA Safety Training at no charge to government customers.		
How will this add value?:	This provides OSHA required training conducted by a local Hilti Account Manager at no cost to the government end-user receiving the training. A PAT training session is typically charged \$133.00 per session.		
Documented Performance:	Scheduled at the convenience of the government customer.		
Cost Impact (%):	Savings of \$133.00/training session	Schedule Impact (%):	

Item Claim #2:

Item Claim:	Health & Safety training for Li-ion battery safety		
How will this add value?:	This provides training for Li-ion tool battery safety training for all new Hilti Li-ion batteries for Hilti tools at no extra costs for government end-users. A battery training session is typically charged \$150/session.		
Documented Performance:	Scheduled at the convenience of the government customer.		
Cost Impact (%):	Savings of \$150/training session	Schedule Impact (%):	

Item Claim #3:

Item Claim:	Hilti youtube channel (https://www.youtube.com/user/hiltinorthamerica) available 24/7, 7 days a week.		
How will this add value?:	Allows Tool users to view new product, see tool use, watch minor repairs - and more.		
Documented Performance:	Available whenever needed by government end user - 24/7, 7 days a week.		
Cost Impact	No cost.	Schedule	



**REQUEST FOR PROPOSALS FOR
PROFESSIONAL GRADE TOOLS & DIAGNOSTIC EQUIPMENT**



OKLAHOMA
Office of Management
& Enterprise Services

Issued by the **State of Oklahoma**
Solicitation Number OK-MA-818-23

(%):		Impact (%):	
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Item Claim #4:

Item Claim:	One day turnaround on 90% of tool repairs		
How will this add value?:	Two (2) year wear & tear coverage with part, shipping, and labor paid by Hilti when the tool is under warranty. Unproductive tool downtime is limited because of the fast tool repair turnaround.		
Documented Performance:	1 day tool repair turnaround starts when the day the tool arrives at the repair center.		
Cost Impact (%):	less tool downtime and worker downtime because the tool is not available.	Schedule Impact (%):	

Item Claim #5:

Item Claim:	Hilti tool safety technology that benefits tool users		
How will this add value?:	Select Hilti tools have different patented technologies that provide greater tool user safety, including: Active Vibration Reduction (AVR), Active Torque Control (ATC), dust Removal Systems (DRS), and SensTech touch activ.		
Documented Performance:	These features, on select tools, improves the tool users safety.		
Cost Impact (%):	Improved worker safety	Schedule Impact (%):	

[Removable instruction – add additional tables as needed to address more claims, not to exceed 2 pages]