

State of New Jersey
New Jersey Department of
Management and Administration (4210)

P.O. Date: 6/22/2023

Release Purchase Order
M4002 - Insight Public Sector Inc. - NASPO ValuePoint
Cloud Solutions

Blanket Order Number

18-COMP-00284:109

SHOW THIS NUMBER ON ALL
PACKAGES, INVOICES AND
SHIPPING PAPERS.

Agency Ref. # RT 129424

V
E
N
D
O
R

Vendor Number: [REDACTED]
Insight Public Sector Inc

2701 E Insight Way
Chandler , AZ 85286
teamnj@insight.com
[REDACTED]

Vendor Alternate ID: [REDACTED]

Remit Address:
Jim Trevino
PO Box 731072
DALLAS, TX 75373-1072
US

Email: ach@insight.com
Phone Number: (480)333-3102

S
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T
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[REDACTED]t
TRENTON , NJ 08608
US
Email: [REDACTED]
Phone: [REDACTED]

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[REDACTED]
DOH M&A Accounting & Procurement Unit
H & A Building, 7th Fl, PO BOX 360
Trenton, NJ 08625-0360
US
Email: [REDACTED]
Phone: [REDACTED]

INVOICES: Direct invoices in DUPLICATE to the address shown above. TERMS AND CONDITIONS set forth in our Bid or Quotation, on the reverse side hereof or incorporated herein by reference become a part of this

ATTN: [REDACTED] -

Solicitation (Bid) No.:	Payment Terms: Shipping Terms: Freight Terms: Delivery Calendar Day(s) A.R.O.: 0																		
Item # 1 Class-Item 920-00 NJ Health Billing Schedule for Enhanced Lifecycle Management. NASPO Cloud Solutions # AR2485/M4002. ELM 1 of 3 - estimated completion 6/30/2023. Material: NJDHELM12. Quote #: 0226234777																			
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Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost											
1.00	\$ 145,869.00	NET	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 145,869.00											

Item # 3
Class-Item 920-00

NJ Health Billing Schedule for Enhanced Lifecycle Management. NASPO Cloud Solutions # AR2485/M4002. ELM 3 of 3 - estimated completion 8/31/2023. Material: NJDHELM12. Quote #: 0226234777.

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
1.00	\$ 145,869.00	NET	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 145,869.00

Item # 4
Class-Item 920-00

Domain Solution Architect. NASPO Cloud Solutions # AR2485/M4002. Material: MCSDSA-NJ. Quote #: 0226234777

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
32.00	\$ 363.55	Each	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 11,633.60

Item # 5
Class-Item 920-00

Senior Project Manager NASPO Cloud Solutions # AR2485/M4002. Material: MCSSPM-NJ. Quote #: 0226234777

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
16.00	\$ 336.82	Each	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 5,389.12

Item # 6
Class-Item 920-00

Delivery Management Executive NASPO Cloud Solutions # AR2485/M4002. Material: MCSDME-NJ. Quote #: 0226234777

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
2.00	\$ 336.82	Each	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 673.64

Item # 7
Class-Item 920-00

GD On-Shore Consultant. NASPO Cloud Solutions # AR2485/M4002. Material: MGDOSC-NJ. Quote #: 0226234777

Quantity	Unit Price	UOM	Discount %	Total Discount	Tax Rate	Tax Amount	Freight	Total Cost
64.00	\$ 245.93	Each	0.00 %	\$ 0.00		\$ 0.00	\$ 0.00	\$ 15,739.52

TAX: \$ 0.00
FREIGHT: \$ 0.00
TOTAL: \$ 471,042.88

APPROVED

By: _____

Phone#: _____

BUYER

ATTACHMENT B – MINI-BID FORM

**M4002 NASPO Cloud Solutions Contract
Agency Mini-Bid Form**

Project Title	Enhanced Lifecycle Management for COVID Vaccination Registration and Administration Solution (VRAS/VSS)
Department	Department of Health
Contact Name	[REDACTED]
Email Address	[REDACTED]
Telephone	[REDACTED]

Provide a narrative description of the project:

The Department of Health (DOH) has the immediate and required need for seven (7) months Enhanced Application Support services required to support and decommission the production-deployed NJ Registration and Administration Solution (VRAS/VSS) for the Department of Health’s (DOH) COVID-immunization program utilized by residents and providers to schedule and track COVID-19 vaccine. These services are pursuant to the Statement of Work with Microsoft Services pursuant to Work Order T0012011-320314-388488. The NJVSS system is deployed within the existing State of New Jersey Microsoft Cloud accounts, structure and controls.

These COVID-19 services are in response to the Emergency Health Powers Act (NJS 26:13-1, et seq) for public health pandemic and public safety efforts, and pursuant to the Statewide Immunization Registry Act (NJS 26:4-131, et seq.) and Rules (NJAC 8:57-3.1, et seq).

Identify whether the Department is seeking the following:

IaaS <input type="checkbox"/>	PaaS <input type="checkbox"/>	SaaS <input type="checkbox"/>
Contractor Managed XaaS <input type="checkbox"/>	Access/Entitlement only <input type="checkbox"/>	
Cloud-Related Services (Migration, architecture, consulting, training etc) <input checked="" type="checkbox"/>	Consulting, design, deployment, build	

Explain the Department’s needs or other technical considerations that the solution must address:

NJVSS application enhancement services include, but not limited to:

1. The COVID19 vaccine registration system (NJVSS)
2. The public portal provides resident/public ability to register and schedule vaccine.
3. The public portal, provides providers to register, log in and maintain their vaccination schedule.
4. Report capabilities
5. System decommissioning

Integration with: The DOH Immunization Registry / Immunization Information System (IIS), DOH Data Lake, DOH SMS gateway services and DOH email services.

Data Classification		Solution Availability	
Low	<input type="checkbox"/>	Business	<input type="checkbox"/>
Medium	<input type="checkbox"/>	Essential	<input checked="" type="checkbox"/>
High	<input checked="" type="checkbox"/>	Critical	<input type="checkbox"/>
Special data considerations (e.g. HIPAA, CJIS, PCI, Pub. 1075):		PII however, over time, could include PHI and other type of classified or regulated data	
Data Storage will be in United States (must complete for Oracle purchase) <input type="checkbox"/>			

Additional information or explanation:

If applicable, the solution shall accommodate the following:				
O/S or Environment	# of CPU's	Amount of RAM	Minimum Storage	Maximum Storage

List the technologies to be used in this solution (include version numbers if relevant):	MS Dynamics and MS Azure
List the frameworks to be used in this solution (version numbers if relevant)	
List the programming languages to be used in this solution (version numbers if relevant)	
Identify specific reporting needs:	
Identify specific database technology needs:	

In response to this Mini-bid, the Department requests a mini-bid response/proposal that addresses the following:	
<input checked="" type="checkbox"/>	Scope of Work or Service Level Agreement addressing the guidelines in Exhibit 1, as applicable
<input checked="" type="checkbox"/>	Pricing proposal

Additional response requirements or details:
Please apply firm fixed price.

Will the Department offer Contractors a conference call to discuss the project?	Yes	<input checked="" type="checkbox"/>
	No	<input type="checkbox"/>

Exhibit 1
Agency Mini-Bid Form - SOW/SLA Guidelines

- I. Basic Information:
 1. The name, phone number, and address of the Using Agency representative;
 2. A billing address;
 3. The place and requested time of delivery;
 4. The Participating Addendum number and Master Agreement number.
 - II. Services Description and Pricing Information:
 1. The data classification level assigned to the data to be hosted;
 2. The services being delivered along with a description of any deliverables;
 3. Acceptance criteria for any deliverables;
 4. The price per unit or other pricing elements consistent with the Participating Addendum, Master Agreement, and the Vendor's proposal including the hourly rate(s) for services;
 5. May not include travel expenses or other additional expenses such as meals and lodging;
 6. A ceiling amount of the order (not to exceed amount);
 7. The term (not to exceed 7 years, including all available extensions).
 - III. Using Agency and Cloud Solution Provider Roles and Responsibilities
 1. Service Level Agreement Criteria:
 - a. Technical service level performance promises (i.e. metrics for performance and intervals for measure);
 - b. Description of service quality;
 - c. Remedies, such as credits, for failure to meet service level performance requirements or service quality promises;
 - d. An explanation of how the remedies or credits are calculated and issued to the Using Agency;
 - e. The recovery point objective (RPO) and recovery time objective (RTO);
 2. Must define roles and responsibilities of Provider and Using Agency regarding:
 - a. Using Agency day-to-day contact for service, performance, and data breach issues;
 - b. Encryption of Personal Data and level of encryption;
 - c. Encryption of Non-Public Data and level of encryption;
 - d. Special procedures for discussing a Security Incident or Data Breach (person/method/timing/procedures if compromise of data is suspected etc.)
 3. Must not contain Provider terms that conflict with the State of New Jersey Participating Addendum or the Master Agreement
 - a. No indemnification language
 - b. No choice of law
 - c. No mandatory arbitration
 - d. No automatic renewals
 4. Must describe a change control procedure.
 - IV. Form Requirements
 1. May not be labeled confidential or proprietary in whole.
 2. Must contain a signature block for the following individuals:
 - a. Using Agency's Chief Information Officer (CIO);
 - b. Using Agency's Chief Financial Officer (CFO);
 - c. The SCM;
 - d. The Technology Licensing Officer from DPP - if required due to a negotiate change in the Limitation of Liability (LoL). See Special Considerations, p.10 of the Method of Operation.
- e. Identification of other responsibilities for service including, for example, infrastructure, operating system, firewalls, logging
 - f. End of term considerations:
 - i. Format for return of data (CSV etc.);
 - ii. Time frame for Vendor's retention of and deletion of data;
 - iii. Special post-termination assistance to be provided by the Vendor, if any;
 - iv. Special secure destruction techniques to be applied to data held by Vendor and certificate of destruction requirements, if any;
 - g. Schedule for providing reports, access logs, etc., and form/format of the reports;
 - h. Schedule or requirements for providing Using Agency with data center audit reports and annual certifications (e.g. annual SOC certifications, PCI, FISMA, ISO, etc.)
 - i. Special requirements for notice to Using Agency of upgrades or changes to solution (major upgrades, minor upgrades, system changes) that may impact service availability and performance;

SOLD-TO PARTY 10210216

NJ DEPT OF HEALTH
 55 N WILLOW ST
 TRENTON NJ 08608-1203

SHIP-TO

NJ DEPT OF HEALTH
 55 N WILLOW ST
 TRENTON NJ 08608-1203

Quotation	
Quotation Number :	0226234777
Document Date :	02-MAY-2023
PO Number :	
PO release:	
Sales Rep :	Dennis Westerfield
Email :	[REDACTED]
Telephone :	[REDACTED]

We deliver according to the following terms:

Payment Terms : Net 60 days
 Ship Via : Insight Assigned Carrier/Ground
 Terms of Delivery: : FOB DESTINATION
 Currency : USD

Material	Material Description	Quantity	Unit Price	Extended Price
NJDHELM12	NJ HEALTH BILLING SCHEDULE FOR ENHANCED LIFECYCLE MANAGEMENT STATE OF NEW JERSEY NASPO CLOUD SOLUTIONS(# AR2485/M4002/18-COMP-00284) ELM 1 of 3 - estimated completion 6/30/2023	1	145,869.00	145,869.00
NJDHELM12	NJ HEALTH BILLING SCHEDULE FOR ENHANCED LIFECYCLE MANAGEMENT STATE OF NEW JERSEY NASPO CLOUD SOLUTIONS(# AR2485/M4002/18-COMP-00284) ELM 2 of 3 - estimated completion 7/31/2023	1	145,869.00	145,869.00
NJDHELM12	NJ HEALTH BILLING SCHEDULE FOR ENHANCED LIFECYCLE MANAGEMENT STATE OF NEW JERSEY NASPO CLOUD SOLUTIONS(# AR2485/M4002/18-COMP-00284) ELM 3 of 3 - estimated completion 8/31/2023	1	145,869.00	145,869.00
MCSDSA-NJ	DOMAIN SOLUTION ARCHITECT STATE OF NEW JERSEY NASPO CLOUD SOLUTIONS(# AR2485/M4002/18-COMP-00284)	32	363.55	11,633.60
MCSSPM-NJ	SENIOR PROJECT MANAGER STATE OF NEW JERSEY NASPO CLOUD SOLUTIONS(# AR2485/M4002/18-COMP-00284)	16	336.82	5,389.12
MCSDMI-NJ	DELIVERY MANAGEMENT EXECUTIVE STATE OF NEW JERSEY NASPO CLOUD SOLUTIONS(# AR2485/M4002/18-COMP-00284)	2	336.82	673.64
MGDOSC-NJ	GD ON-SHORE CONSULTANT STATE OF NEW JERSEY NASPO CLOUD SOLUTIONS(# AR2485/M4002/18-COMP-00284)	64	245.93	15,739.52

Services Subtotal	471,042.88
TAX	0.00
Total	471,042.88

Thank you for choosing Insight. Please contact us with any questions or for additional information about Insight's complete IT solution offering.

Sincerely,

Dennis Westerfield

[Redacted]

Fax [Redacted]

Any purchase and use of Citrix Cloud Platform and Citrix Enterprise Software-As-A-Service ("SaaS") Subscriptions is subject to the following Citrix terms of use: <https://www.insight.com/CitrixNaspoTerms>

Insight Global Finance has a wide variety of flexible financing options and technology refresh solutions. Contact your Insight representative for an innovative approach to maximizing your technology and developing a strategy to manage your financial options.

This purchase is subject to Insight's online Terms of Sale unless you have a separate purchase agreement signed by you and Insight, in which case, that separate agreement will govern. Insight's online Terms of Sale can be found at the "terms-and-policies" link below.

SOFTWARE AND CLOUD SERVICES PURCHASES: If your purchase contains any software or cloud computing offerings ("Software and Cloud Offerings"), each offering will be subject to the applicable supplier's end user license and use terms ("Supplier Terms") made available by the supplier or which can be found at the "terms-and-policies" link below. By ordering, paying for, receiving or using Software and Cloud Offerings, you agree to be bound by and accept the Supplier Terms unless you and the applicable supplier have a separate agreement which governs.
<https://www.insight.com/terms-and-policies>

STATE OF NEW JERSEY

PARTICIPATING ADDENDUM AND STANDARD TERMS AND CONDITIONS

Under

NASPO ValuePoint Contract for Cloud Solutions [State of Utah Master Contract Number AR2485]

This Participating Addendum is made as of the last date of signature below (the "Effective Date"), by and between, Insight Public Sector, Inc., whose address is 6820 S. Harl Avenue, Tempe, AZ 85283 ("Contractor"), and the State of New Jersey, Department of the Treasury, Division of Purchase and Property ("Participating State" or "State") whose address is 33 West State Street, 8th Floor, P.O. Box 039, Trenton, New Jersey 08625, on behalf of the State of New Jersey and all "Authorized Purchasers" (as defined below). For clarification of references throughout this document, the term "State," in any form, refers to the State and any Authorized Purchaser, unless otherwise indicated. Capitalized terms used but not defined shall have the meaning ascribed to them in the Original Master Agreement (as defined below).

WHEREAS, pursuant to N.J.S.A. 52:34-6.2, the Director of the Division of Purchase and Property (the "Director"), within the Department of the Treasury (the "Division") "may enter into cooperative purchasing agreements with one or more states for the purchase of goods and services;" and

WHEREAS, the State of Utah ("Lead State") and Contractor have entered into Master Agreement #AR2485 (the "Master Agreement"), which may be found at the following URL: <http://www.naspovaluepoint.org/#/contract-details/71/overview/general>, awarded in accordance with the State of Utah Solicitation CH16012 for Cloud Solutions; and

WHEREAS, the State of New Jersey participated in the publicly advertised, competitive bidding process with fifteen other states and evaluated the proposals; and

WHEREAS, the Director has determined that entering into a Participating Addendum with Contractor under the Master Agreement to provide cloud solutions is the most cost effective method of procuring these Products and Services, and that it is in the best interest of the State to enter into a Participating Addendum with Contractor; and

WHEREAS, the parties seek to enter into this Participating Addendum to memorialize the terms of their contractual relationship;

NOW THEREFORE, for good and valuable consideration, receipt of which hereby acknowledged, the parties to this Participating Addendum hereby agree as follows:

1.0 Term and Extension Option; Order of Precedence; Entire Agreement

1. The term of this Participating Addendum shall be effective from the Effective Date and shall continue for a period ending on the Termination Date of the Master Agreement or when this Participating Addendum is terminated in accordance with the Master Agreement or this Participating Addendum, whichever shall occur first. Notwithstanding anything to the contrary contained in the Master Agreement, the State reserves the right, in its sole discretion, to extend this Participating Addendum upon an extension of the Master Agreement under the same terms and conditions as stated in this Participating Addendum. There shall be no automatic renewals of the Participating Addendum.
2. The entire agreement, and all rights and obligations between the parties, shall consist of the following documents (which shall be collectively referred to as the "Agreement"):
 - a. This Participating Addendum and the State of New Jersey Compliance Terms and Conditions, attached to the State of Utah Bid Solicitation CH16012 ("Solicitation") within Attachment E and attached hereto as Exhibit A;

- b. The original Master Agreement Attachment A package, together with its exhibits, as applicable (“Original Master Agreement”), attached hereto as Exhibit B;
 - c. The Master Agreement, incorporated herein as Exhibit C;
 - d. The Solicitation;
 - e. The Contractor’s response to the Solicitation, as revised (if permitted) and accepted by the Lead State; and
 - f. A Service Level Agreement and/or Statement of Work issued against the Participating Addendum.
3. These documents shall be read to be consistent and complimentary. In the event of any conflict between the terms of the documents comprising the Agreement, the conflict shall be resolved by giving priority to these documents in the order listed above.
4. The Agreement sets forth the entire agreement between the parties and supersedes all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. No Contractor terms and conditions shall apply to this Participating Addendum except those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment as of the Effective Date of this Participating Addendum.
5. In the event the Lead State approves Contractor to offer new or additional Products and Services under the Master Agreement after the Effective Date of this Participating Addendum and such Products or Services incorporate any different, inconsistent, or additional terms into the Master Agreement, including, but not limited to any software license agreement or service level agreement, such terms are subject to this Agreement as set forth below.
6. References to external documentation; Software License Agreements and Service Level Agreements -
 - a. Any external information incorporated by reference within any of the documents comprising the Agreement, including, without limitation, software license agreements or service level agreements, are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.
 - b. Any changes in the information incorporated by reference by any of the documents that comprise the Agreement, including, without limitation, software license agreements or service level agreements, are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.
 - c. Any reference in Contractor’s documents to website URLs that contain additional terms and conditions are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.
7. Amendments – This Participating Addendum may not be amended except in a writing signed by both parties.

2.0 Scope of Participating Addendum

1. The scope of Products and Services that may be procured by Authorized Purchasers defined in Section 6.0(1) of this Participating Addendum (State Agencies) shall be those Products and Services established in the Scope Addendum attached to this Participating Addendum as Attachment 1 as may be amended by the parties in writing from time to time. For all other Authorized Purchasers, the full suite of Product and Service offerings available under the Master Agreement may be procured under this Participating Addendum.

2. Contractor shall demonstrate to the State that each Product or Service included in an order is within the scope of the Master Agreement as approved by the Lead State.

3.0 Reporting Requirements

The Contractor shall deliver a copy of the detailed sales data reports described in Section 42 of the Original Master Agreement (“Reports”) to the Procurement Specialist and State Contract Manager within ten (10) days of providing the Reports to the Lead State and NASPO ValuePoint Cooperative Development Team. The Reports may be limited to Sales made to Authorized Purchasers under this Participating Addendum.

4.0 Restrictions

1. Any restrictions or limitations regarding the State’s use of this Agreement will be set forth in the State’s Method of Operation, as may be amended from time to time and posted on the State’s website.
2. Financing, leasing, and renting is not permitted under this Participating Addendum for State agencies. Authorized Purchasers, as defined in Section 6.0(2)-(5) may finance their purchase, if permitted under law. If financing is through a lease agreement, that agreement is separate from this Participating Addendum and is between the Contractor and the respective Authorized Purchaser only.

5.0 Termination of Contract

1. For Convenience-
 - A. Notwithstanding any provision or language in the Agreement to the contrary, the Director may terminate at any time, in whole or in part, this Participating Addendum or any contract entered into pursuant to this Participating Addendum, for the convenience of the State, upon no less than forty-five (45) days written notice to the Contractor.
 - B. Contractor shall not have the right to terminate this Participating Addendum for convenience.
2. For cause-
 - A. Where the Contractor fails to perform or comply with the Agreement or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17: 12-4.2 et seq., the Director may terminate this Participating Addendum, in whole or in part, upon thirty (30) days’ notice to the Contractor with an opportunity to respond and cure within the thirty day period.
 - B. Where in the reasonable opinion of the Director, the Contractor continues to perform poorly under the Agreement as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the Contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint the Director may terminate this Participating Addendum, in whole or in part, upon thirty (30) days’ notice to the Contractor with an opportunity to respond prior to termination.
3. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
4. In the event of termination under this section, the Contractor will be compensated for work performed or goods supplied in accordance with the Agreement, up to the date of termination. Such compensation may be subject to adjustments. In the event of a termination for convenience under Section 5.0(1), there shall be no refund of pre-paid fees. In the event of a termination for

cause under Section 5.0(2), Contractor shall issue Authorized Purchaser(s) a pro-rata refund of unused pre-paid fees.

5. The Contractor shall not have the right to terminate this Participating Addendum. Any provisions in the Agreement regarding the Contractor's right to terminate or cancel this Participating Addendum are superseded by and replaced in their entirety by this Section 5.0 of this Participating Addendum. However, in the event that an Authorized Purchaser violates its obligations under the Agreement, Contractor may refuse to accept or process orders from such Authorized Purchaser immediately upon written notice to the State and such Authorized Purchaser, until such time as Authorized Purchaser submits a plan to correct such violations satisfactory to Contractor, which approval will not be unreasonably withheld. Notwithstanding anything to the contrary, Contractor shall continue to process orders submitted by other Authorized Purchasers. Section 7, Termination and Suspension of Service, in the applicable Exhibit to the Original Master Agreement shall apply in the event of a termination or cancellation pursuant to this section.
6. Any termination under this provision shall not affect the rights and obligations attending Orders outstanding at the time of termination, including but not limited to any right of any Authorized Purchaser to indemnification by the Contractor, rights of payment for Services delivered and accepted, data ownership, Contractor obligations regarding Purchasing Entity Data, rights attending default in performance in an applicable Service Level of Agreement or Statement of Work, Contractor obligations under Section 7, Termination and Suspension of Service, in the applicable Exhibit to the Original Master Agreement, and any responsibilities arising out of a Security Incident or Data Breach.
7. The State may, for valid reason, issue a stop order directing the Contractor to suspend Products, work, and/or Services for a specific time. The Contractor shall be paid for Products ordered, Products delivered, and Services requested and performed until the effective date of the stop order. The Contractor shall resume Products, work, and/or Services upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the Contractor's approved schedule of performance. The Director may make an equitable adjustment, if any is required, to the Statement of Work price. The Contractor shall provide whatever information that Director may require related to the equitable adjustment. In the event Contractor disagrees with the final adjusted contract price, Section 12.0 (Miscellaneous – Alternative Dispute Resolution) shall apply. Section 7, Termination and Suspension of Service, in the applicable Exhibit to the Original Master Agreement shall apply in the event of a suspension made pursuant to this section.
8. Notwithstanding anything to the contrary in any of the documents comprising the Agreement, Orders shall not automatically renew. Following the expiration of an Order's term, Contractor shall treat such period as a suspension under Section 7, Termination and Suspension of Service, of the applicable Exhibit to the Original Master Agreement, unless the Authorized Purchaser notifies Contractor in writing of an intent not to renew in which case the remaining provisions of Section 7, Termination and Suspension of Service, shall apply.

6.0 Authorized Purchasers

“Authorized Purchasers” under this Participating Addendum shall mean the State and the following:

1. State agencies.
2. Quasi-State Agencies - A “Quasi-State Agency” is any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member, as defined in N.J.S.A. 52:27B-56.1, provided that any sale to any such bi-state governmental entity is for use solely within the State of New Jersey.

3. Political Subdivisions, Volunteer Fire Departments And First Aid Squads, And Independent Institutions Of Higher Education - Counties, municipalities and school districts as defined in N.J.S.A. 52:25-16.1., volunteer fire departments, volunteer first aid squads and rescue squads as defined in N.J.S.A. 52:25-16.2, independent institutions of higher education as defined in N.J.S.A. 52:25-16.5, provided that each purchase by the independent institution of higher education shall have a minimum cost of \$500. The extension to counties, municipalities, school districts, volunteer fire departments, first aid squads and independent institutions of higher education must be under the same terms and conditions, including price, applicable to the State.
4. State Colleges –in accordance with N.J.S.A. 18A:64-60.
5. County Colleges - in accordance with N.J.S.A. 18A:64A- 25.9.

Authorized Purchasers as defined in Section 6.0(2)-(5) are responsible for the full cost of their purchases. The State and Authorized Purchasers as defined in Section 6.0(1) are responsible for the full cost of their purchases.

7.0 Modified Original Master Agreement Terms

1. **Section 8 Confidentiality, Non-Disclosure, and Injunctive Relief**, in the Original Master Agreement is amended to add the following:
 - e. The State’s obligation to maintain the confidentiality of Contractor Confidential Information (as defined below) provided to the State under the Agreement is conditioned upon and subject to the State’s obligations under the New Jersey Public Records Act, N.J.S.A. 47:1A-1 et seq., (“OPRA”), the New Jersey common law right to know, and any other lawful document request or subpoena.
 - f. Contractor’s confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure (“Contractor Confidential Information”). Notwithstanding the previous sentence, the Contractor acknowledges the terms and pricing of the contract are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.
 - g. In the event that the State receives a request for Contractor Confidential Information related to the Agreement pursuant to a court order, subpoena, lawful document request or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State’s intended response to such request. Contractor shall take any action it deems appropriate to protect its documents and/or information.
 - h. In addition, in the event Contractor receives a request for Confidential Information (as defined in the Original Master Agreement and amended by this Participating Agreement) pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor’s intended response to such request. The State shall take any action it deems appropriate to protect its documents and/or information. Notice to the State shall not relieve the Contractor of its obligation to take action to protect such information if the Contractor is aware of a legal reason to do so.
 - i. Notwithstanding the requirements of nondisclosure described in this Section either party may release the other party’s Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (a) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in subsection (g) above, or if Contractor is unsuccessful in defending its rights as described in subsection (g), or (b) in the case of Contractor, if Contractor determines

the documents or information are subject to disclosure and the State does not exercise its rights as described in subsection (h) above, or if the State is unsuccessful in defending its rights as described in subsection (h).

- j. Except as permitted above and for confidentiality obligations related to information about a party's intellectual property, which shall never expire, neither party will use or disclose the other's Confidential Information for seven (7) years after the termination of the Agreement or such longer time period as required by applicable law.
2. **Section 13 Indemnification**, in the Original Master Agreement is amended to delete paragraph (a) and replace with the following:
- a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising directly or indirectly from the negligent or willful act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.
3. **Section 13 Indemnification**, in the Original Master Agreement is amended to add the following:
- c. Neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of New Jersey or any Authorized Purchaser, nor purport to act as legal representative of the State of New Jersey or any Authorized Purchaser, without having provided notice to the Director of the Division of Law in the Department of Law and Public Safety and to the Director of DPP.
 - d. Notwithstanding anything to the contrary contained in the Agreement, the State shall not be responsible for the Contractor's attorney fees and/or expenses.
 - e. The Contractor's indemnification and liability is not limited by, but is in addition to the insurance obligations contained in the Agreement.
 - f. Notwithstanding anything to the contrary in the Agreement or any contract document, under no circumstances will the State indemnify, defend or hold harmless Contractor and any such provision in the Agreement or any contract document shall be of no force and effect. The State will not pay or reimburse for claims absent compliance with the terms of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the Contractual Liability Act, N.J.S.A. 59:13-1 et seq. and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.
4. **Section 16 Insurance**, in the Original Master Agreement is amended as follows:
- a. Subsection 16(b)(3) is amended to state the following:
 - i. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

\$1,000,000 BODILY INJURY, EACH OCCURRENCE
\$1,000,000 DISEASE EACH EMPLOYEE
\$1,000,000 DISEASE AGGREGATE LIMIT
 - b. The following section is added as subparagraph (g):
 - g. New Jersey Requirements:

- i. The Provider shall provide the State with current certificates of insurance for all coverages and renewals thereof. If the Provider receives a notice of cancellation, the Provider will promptly replace such coverage so that no lapse in insurance occurs.
- ii. The Provider shall not begin to provide services or goods to the State until evidence of the required insurance is provided.
- iii. The certificates of insurance shall indicate the contract number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, PO Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates shall be emailed to the State at cca.certificate@treas.state.nj.us.

5. **Section 34 Assignment of Antitrust Rights**, in the Original Master Agreement is amended to add the following:

In connection with this assignment, the following are the express obligations of the Contractor:

1. It will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
2. It will advise the Attorney General of New Jersey:
 - a. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
 - b. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
3. It shall notify the defendants in any antitrust suit of the fact of the within assignment at the earliest practicable opportunity after the Contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice will be sent to the Attorney General of New Jersey.

Furthermore, it is understood and agreed that in the event any payment under any such claim or cause of action is made to the Contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

8.0 Contractor Business Models; Roles and Responsibilities

1. Contractor may use one of three models, or a combination thereof, to provide Products and Services to Authorized Purchasers under this Agreement: (A) direct provision of Contractor's Products and Services, with or without Subcontractors (as that term is defined below), (B) offering of Fulfillment Partner Products and Services or (C) pass through of cloud service provider solutions.
 - a. Where Contractor provides Contractor's Products and Services directly to Authorized Purchasers, Contractor may, with the prior written consent of the Director, utilize Subcontractors. As used in this Participating Addendum, Subcontractor shall mean an entity having an arrangement with Contractor, whereby Contractor uses the Products and/or Services of that entity to fulfill some of its obligations under this Agreement. Authorized Purchasers do not pay Subcontractors directly. Where Contractor utilizes a Subcontractor, Contractor shall provide to the State items 1 and 9, as enumerated in Section 14.0, The State of New Jersey Mandatory Certification Requirements, of this Participating Addendum ("Subcontractor Certifications") for each proposed Subcontractor along with Contractor's written request for approval thereof.

- i. Where a Subcontractor is approved, Contractor may not substitute another Subcontractor without the prior written consent of the Director and until Contractor provides to the State Subcontractor Certifications for the new proposed Subcontractor along with Contractor's written request for approval thereof.
 - ii. If at the time of the execution of the Agreement, Contractor is generally utilizing a subcontractor to provide technical support and/or other non-contract related Services to its customers, such subcontractor need not be disclosed, and Contractor may substitute a different subcontractor without the Director's prior approval.

- b. In the event Contractor offers Fulfillment Partner Products and Services to Authorized Purchasers, each Fulfillment Partner must be approved by the State. Such approved Fulfillment Partner may, to the extent authorized by Contractor, fulfill any of the requirements of this Master Agreement including but not limited to providing Products and Services under the Agreement and directly invoicing and receiving payment from Authorized Purchasers. A Fulfillment Partner has no authority to amend this Agreement or to bind Contractor, State, or Authorized Purchasers to any additional terms and conditions.
 - i. Contractor may add Fulfillment Partners to its Participating Addendum at any time during the contract term, upon the written consent of the Director. To add a Fulfillment Partner, Contractor shall submit to the State a written request with:
 - 1. Evidence that all Products and Services were approved by the Lead State under the Master Agreement; and
 - 2. Items 1 through 9, as enumerated in Section 14.0, The State of New Jersey Mandatory Certification Requirements, of this Participating Addendum for each Fulfillment Partner.
 - ii. In the event Contractor submits a written request to delete a Fulfillment Partner's Products and Services from the scope of Contractor's Participating Addendum, Contractor shall provide State and Authorized Purchaser(s) at least thirty (30) days' advance written notice of the request and shall, upon State or Authorized Purchaser request, provide State and Authorized Purchaser(s) assistance and advice regarding the exit and/or transition strategy for all digital content and Data (as that term is defined in the Original Master Agreement) affected by the requested deletion at no cost to the State or Authorized Purchaser. If the State approves the request to delete a Fulfillment Partner:
 - 1. The deletion shall not terminate the Participating Addendum or other Products and Services unaffected by the deletion, however, such Fulfillment Partner deletion shall be deemed a termination for cause for purposes of digital content and Data retention and destruction discussed in Section 7, Termination and Suspension of Service, in the applicable Exhibit to the Original Master Agreement; and
 - 2. In the event of any pre-paid fees for Products or Services to Contractor or Fulfillment Partner affected by the deletion, such Fulfillment Partner deletion shall be deemed a termination for cause as to those pre-paid fees for purposes of Section 5.0(4) of this Participating Addendum.

- c. With the prior written consent of the Director, Contractor may pass through or resell third party cloud service provider Products and Services to Authorized Purchasers. Where Contractor is passing through third party cloud service provider Products and Services, the cloud service provider shall only provide web-based computing capabilities and related remote technical support. Authorized Purchasers shall not pay cloud service providers directly and cloud service providers shall not be deemed Subcontractors.
 - i. Where a third party cloud service provider is approved, Contractor may not substitute another cloud service provider without the prior written consent of the Director.

money shall arise unless and until funds are appropriated each fiscal year to the using agency which is an Authorized Purchaser by the New Jersey State Legislature and made available through receipt of revenues. Notwithstanding the foregoing, the parties agree that performance under this contract is contingent upon the appropriation of funds.

6. Contractors or Fulfillment Partners may be paid by the State through the Procurement card (p-card) at the time the original order is placed. P-card transactions do not require the submission of either a contractor invoice or a State payment voucher. Purchasing transactions utilizing the p-card will usually result in payment to the Contractor or the Fulfillment Partners in three (3) days. The Contractor and the Fulfillment Partner should take note that there will be a transaction processing fee for each p-card transaction. To participate, the Contractor or Fulfillment Partner must be capable of accepting the applicable credit card.
7. Payments shall be made to the Contractor or Fulfillment Partners pursuant to the provisions of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq. The Act requires state agencies to pay for goods and services within sixty (60) days of the state agency's receipt of a properly executed State Payment Voucher. Interest will be paid on delinquent accounts at a rate established by the New Jersey State Treasurer (the "State Treasurer"). Interest will not be paid until it exceeds \$5.00 per properly executed invoice.
8. Cash discounts and other payment terms included as part of the Agreement are not affected by the Prompt Payment Act.
9. Contractor and Fulfillment Partners are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest quote.

Discount periods shall be calculated starting from the next business day after the recipient has accepted the goods or services received a properly signed and executed State Payment Voucher form and, when required, a properly executed performance security, whichever is latest.
10. The date on the check issued by the State in payment of that Voucher shall be deemed the date of the State's response to that Voucher.

10.0 Additions to the State of New Jersey Compliance Terms and Conditions

1. Compliance With State Laws-

It is agreed and understood that any contracts and/or orders placed under this Participating Addendum and any claims and any and all litigation arising there from or related thereto shall be governed and construed and the rights and obligations of the parties hereto and of the Authorized Purchasers shall be determined in accordance with the laws of the State of New Jersey, including without limitation, by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., the New Jersey Contractual Liability Act, N.J.S.A., 59:13-1, et seq., and governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles, and any and all litigation arising therefrom or related thereto shall be filed in the appropriate Division of the New Jersey Superior Court.

2. Open Public Records Act-

All documents and information submitted by Contractor to the State under this Participating Addendum are considered public information, notwithstanding any disclaimers to the contrary submitted by a Contractor, except as may be exempted from public disclosure by the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law.

3. Maintenance of Records-

The Contractor shall maintain records for products and/or services directly related to sales orders and corresponding invoices, including product specifications at time of shipping, issued in accordance with this Participating Addendum for a period of five (5) years from the date of final payment. Such records shall be made available to the State, including the State of New Jersey, Office of the State Comptroller, for audit and review.

4. Organ and Tissue Donation –

As required by N.J.S.A. 52:32-33.1, the State encourages Contractors to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. §1320b-8 to serve in this State.

5. Tax Exemption-

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

11.0 Liabilities

1. Unless otherwise agreed in writing and signed by the Director, the following limitation of liability shall apply:
 - a. Contractor's liability arising out of or in connection with each Order(s) is limited to two times (2x) the amount paid by the State under the applicable Order(s) over the prior twelve months. Notwithstanding the preceding sentence, in no event shall the limit of liability be less than \$250,000.
 - b. In no event shall Contractor be liable for any punitive, special, indirect, or consequential damages arising out of this Participating Addendum.
 - c. This limitation of liability shall not apply to:
 - i. Contractor's obligation to indemnify, defend, and save harmless the State and its employees as described in Section 13, Indemnification, of the Original Master Agreement as amended by this Participating Addendum,
 - ii. Claims arising from Section 8, Confidentiality, Non-Disclosure, and Injunctive Relief, of the Original Master Agreement as amended by this Participating Addendum, or
 - iii. Claims arising from Section 30, Data Privacy, of the Original Master Agreement.
 - d. Notwithstanding the foregoing exclusions, where a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release as reasonably determined by the State, the Contractor shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state or federal law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and (5) completing all corrective actions as reasonably determined by Contractor based on root cause of the Data Breach.
2. Where Contractor, Authorized Purchaser, and the Director agree in writing to a different limitation of liability than that established in this Section 11.0 ("Negotiated LOL"), the Negotiated LOL shall

only apply to the specific Order for that Authorized Purchaser. The Negotiated LOL shall not be deemed an amendment to this Participating Addendum. For the avoidance of doubt, all other terms of the Order shall be subject to the order of precedence established in Section 1.0 of this Participating Addendum.

12.0 Miscellaneous

1. Mergers, Acquisitions and Dissolutions-

Merger or Acquisition:

If, during the term of this Participating Addendum, the Contractor shall merge with or be acquired by another firm, the Contractor shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. Any such merger or acquisition will require the assignment of the Agreement, as amended by this Participating Addendum, pursuant to the provisions related thereto set forth therein. The Contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the Contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents shall be submitted within thirty (30) days of the request. Failure to do so may result in termination of this Participating Addendum for cause.

Dissolution:

If, during the term of this Participating Addendum, the Contractor's partnership, joint venture or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director, in writing, the names of the parties proposed to perform under this Participating Addendum and the names of the parties to whom payment should be made. No payment will be made until all parties to the dissolved business entity submit the required documents to the Director.

2. Announcements and/or Advertisements-

All publicity and/or public announcements pertaining to this Participating Addendum shall be approved in writing by the State prior to release.

Contractor must obtain prior written (email) approval, no less than seven (7) business days before release for any and all advertisements pertaining to this Participating Addendum during its effective term. Any and all Fulfillment Partners may not directly send advertisements to any and all Authorized Purchasers without explicit written approval from the Contractor.

3. Contractor and/or Fulfillment Partner Audit-

The State and Authorized Purchasers reserve the right to audit the Contractor and/or Fulfillment Partner's compliance with the Agreement. Such audit shall be in accordance with Section 26, Records Administration and Audit, in the Original Master Agreement. The State or Authorized Purchaser shall provide Contractor and/or Fulfillment Partner thirty (30) days' written notice of intent to audit and such audit such be conducted during normal business hours.

4. Request for Additional Information-

The Director reserves the right to request relevant information from the Contractor, including factors necessary to evaluate the Contractor's financial capabilities to perform the Agreement.

5. Audit of Authorized Purchaser use of Intellectual Property -

1. Notwithstanding anything to the contrary in the Agreement, in the event that the Contractor seeks to exercise a right in the Agreement to audit the State's use of Contractor's intellectual property,

the Contractor shall deliver simultaneous written notice, no less than thirty (30) days in advance of the audit start date (unless the Contractor's notice provides a longer notice period), to:

- a. the Director of the New Jersey Department of Treasury, Division of Purchase and Property:
Procurement Bureau, Technology Unit
P.O. Box 230
Trenton, NJ 08625-0230
 - b. the Chief Data Officer of the New Jersey Office of Information Technology:
Office of the Chief Technology Officer
300 Riverview Plaza
Trenton, NJ 08625
 - c. and the State Contract Manager for this contract.
2. The notice shall reference the specific audit provision(s) in the Agreement being exercised and include copies of same, specify the means by which the Contractor will conduct the audit, and shall require the audit to be conducted in accordance with generally accepted standards in the field of such audits.
 3. To the extent the agreement permits Contractor to conduct periodic audits of the State's usage of the Products and/or Services provided thereunder, such provision is amended to include the following dispute resolution process:

If the State, in good faith, provides Contractor with written notice of an alleged error in the amount of underpaid fees due Contractor as a result of an audit (the "dispute"), then the parties will endeavor to resolve the dispute in accordance with this paragraph. Each party will appoint a Vice President, Assistant Director, or the equivalent (hereinafter referred to as "Representative") to discuss the dispute and no formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such Representative concludes, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely. In addition, the parties shall refrain from exercising any termination right related to the dispute being considered under this paragraph and shall continue to perform their respective obligations under the license agreement, while they endeavor to resolve the dispute under this paragraph.

4. Notwithstanding anything to the contrary in the Agreement, the State will not pay or reimburse Contractor for costs or expenses associated with the performance of an audit.
5. In the event that the Agreement does not permit audits of the State's usage of the Contractor's Intellectual Property this provision shall not be interpreted to provide such an audit right.

6. Dispute Resolution –

The State and Contractor will attempt to resolve any dispute through face-to-face negotiation with persons fully authorized to resolve the dispute or through non-binding mediation utilizing a mediator agreed to by the parties, rather than through litigation. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such persons conclude, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely.

7. Arbitration or Mediation –

Any provision regarding arbitration or binding mediation within the Agreement is deleted in its entirety.

13.0 Waiver

No term or provision of this Participating Addendum shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or any subsequent breach, except as may be expressly provided in the waiver or consent.

14.0 The State of New Jersey Mandatory Certification Requirements

The following are New Jersey procurement requirements that Contractor agrees to fulfill prior to the Effective Date. Some Authorized Purchasers may have additional requirements when placing an order and Contractor shall comply with same as necessary.

1. New Jersey Business Registration (N.J.S.A. 52:32-44);
2. Ownership Disclosure (N.J.S.A. 52:25-24.2);
3. Disclosure of Investment Activities in Iran (N.J.S.A. 52:32-55 et seq.)
4. Executed MacBride Principles (N.J.S.A. 52:34-12.2);
5. Completed Contractor Certification and Disclosure of Political Contributions (N.J.S.A. 19:44A-20:13 et. seq.);
6. Disclosure of Investigations and Actions Involving Bidder
7. Vendor Certification (P.L. 2005, c.271);
8. Proof of insurance as specified herein;
9. Proof of compliance with New Jersey Affirmative Action requirements (N.J.A.C. 17:27-1.1 et. seq.):
 - a. New Jersey Form AA-302 Affirmative Action Employee Information Report; or
 - b. New Jersey Affirmative Action Certificate; or
 - c. Federal Affirmative Action Approval Letter.

15.0 Primary Contacts

The Division of Purchase and Property contact for this Participating Addendum is as follows:

Name: [REDACTED]
Title: Procurement Specialist
Participating Entity Name: Division of Purchase and Property,
Department of the Treasury
State of New Jersey
Address: 33 West State Street, 8th Floor
PO Box 230
Trenton, New Jersey 08625-0230
Telephone: [REDACTED]
Fax: [REDACTED]@treas.nj.gov

The State Contract Manager for this Participating Addendum is as follows:

Name: [REDACTED]
Title: State Contract Manager
Participating Entity Name: Office of Information Technology,
State of New Jersey
Address: 300 Riverview Plaza
Trenton, New Jersey 08625
Telephone: [REDACTED]

E-mail: Lynne.Gash@tech.nj.gov

The primary Contractor contact for this Participating Addendum is as follows:

Name: Pam Potter
Title: SLED Compliance Manager
Contractor: Insight Public Sector, Inc.
Address: 2250 Pinehurst Blvd. #200, Addison, IL 60101-6100
Telephone: [REDACTED]
E-mail: [REDACTED]
sledcontracts@insight.com




The parties hereto agree that this Participating Addendum may be executed in counterpart, each original signed page to become part of the original document.

[Remainder of page intentionally blank. Signature page to follow.]

IN WITNESS WHEREOF, authorized representatives of Contractor and the State have executed this Participating Addendum to be effective on the Effective Date.

<p>State of New Jersey, Department of the Treasury, Division of Purchase and Property</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: Director</p> <p>Date: _____</p>	<p>Insight Public Sector, Inc.</p> <p>By: <u>David Cristal</u></p> <p>Name: <u>David Cristal</u></p> <p>Title: <u>VP - General Manager</u></p> <p>Date: <u>September 14, 2017</u></p>
<p>Approved as to Form: Christopher S. Porrino Attorney General of the State of New Jersey</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: Deputy Attorney General</p> <p>Date: _____</p>	

IN WITNESS WHEREOF, authorized representatives of Contractor and the State have executed this Participating Addendum to be effective on the Effective Date.

<p>State of New Jersey, Department of the Treasury, Division of Purchase and Property</p> <p>By: <u></u> Name: <u>[REDACTED]</u> Title: Director Date: <u>10/2/2017</u></p>	<p>Insight Public Sector, Inc.</p> <p>By: <u></u> Name: <u>David Cristal</u> Title: <u>VP - General Manager</u> Date: <u>September 14, 2017</u></p>
<p>Approved as to Form: Christopher S. Porrino Attorney General of the State of New Jersey</p> <p>By: <u></u> Name: <u>[REDACTED]</u> Title: Deputy Attorney General Date: <u>9/18/2017</u></p>	

State of New Jersey Compliance Terms and Conditions

The following terms and conditions shall be deemed incorporated by reference into each Participating Addendum entered into by the State of New Jersey under an awarded Master Agreement. The State of New Jersey reserves the right to add additional terms and conditions to each Participating Addendum.

1. LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS -

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625. The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the solutions and/or services provided hereunder. The contractor must comply with all State and Federal data and privacy laws, rules and regulations applicable to contractor under the contract.

1.1 BUSINESS REGISTRATION – Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

1.2 ANTI-DISCRIMINATION - All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.

1.3 ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS -

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- a) The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- b) The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- c) The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows;

1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

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3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
 4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.
- 1.4 PREVAILING WAGE ACT** - Pursuant to the New Jersey Prevailing Wage Act (N.J.S.A. 34: 11-56.26 et seq.), contractor guarantees that it has not been suspended or debarred by the Commissioner, New Jersey Department of Labor and Workforce Development, for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; contractor also guarantees that it will comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required and to the extent applicable to this contract.
- 1.5 AMERICANS WITH DISABILITIES ACT** - The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L 101-336, in accordance with 42 U.S.C. 12101, *et seq.*
- 1.6 MACBRIDE PRINCIPLES** – The contractor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom’s Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.
- 1.7 PAY TO PLAY PROHIBITIONS** – Pursuant to N.J.S.A. 19:44A-20.13 et seq (L.2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:
- a. make or solicit a contribution in violation of the statute;
 - b. knowingly conceal or misrepresent a contribution given or received;
 - c. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
 - d. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor, or to any State or county party committee;
 - e. engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
 - f. fund contributions made by third parties, including consultants, attorneys, family members, and employees;
 - g. engage in any exchange of contributions to circumvent the intent of the Legislation; or
 - h. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.
- 1.8 POLITICAL CONTRIBUTION DISCLOSURE** – The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one or more contracts valued at \$50,000.00 or more. It is the contractor’s responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888) 313-3532 or on the internet at <http://www.elec.state.nj.us/>.
- 1.9 STANDARDS PROHIBITING CONFLICTS OF INTEREST** - The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).
- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to

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- any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.
- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
 - c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
 - d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
 - e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
 - f. The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

- 1.10 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE** - Pursuant to L 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 *et seq.*), to the taxpayer shall be stayed.

- 1.11 COMPLIANCE - STATE LAWS; JURISDICTION** - It is agreed and understood that any contracts and/or orders shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY, without giving effect to its conflict of laws. Any action brought regarding the contract or products or services purchased thereunder shall be filed in the appropriate Division of the State of New Jersey Superior Court.
- 1.12 OWNERSHIP DISCLOSURE** – In accordance with N.J.S.A. 52:25-24.2, contractor shall disclose the names and addresses of all of its owners holding 10% or more of the corporation's stock or interest during the term of the contract, by submitting an Ownership Disclosure Form at time of contract award. The contractor has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed.
- 1.13 PROHIBITED INVESTMENT IN IRAN** - Pursuant to N.J.S.A. 52:32-55 et seq., the contractor must utilize the Disclosure of Investment Activities in Iran form to certify that neither the contractor, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the contractor,

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nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the contractor is unable to so certify, the contractor shall provide a detailed and precise description of such activities as directed on the form.

- 2. LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**
- 2.1 COMPLIANCE - CODES** – The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.
- 2.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT** - The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.
- 2.3 COMPLIANCE WITH ACCESSIBILITY STANDARDS** – The contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.
- 2.4 BUILDING SERVICE** – Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.
- 2.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** - The provisions of N.J.S.A. 34:5A-l et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.
- 2.6 BUY AMERICAN** – Pursuant to N.J.S.A. 52:32-1, if applicable to the contract, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.



Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

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

- (1) A Participating Entity's Participating Addendum¹ ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions, including the applicable Exhibits² to the Master Agreement;
- (3) The Solicitation;
- (4) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State; and
- (5) A Service Level Agreement issued against the Participating Addendum.

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

2. Definitions - Unless otherwise provided in this Master Agreement, capitalized terms will have the meanings given to those terms in this Section.

Confidential Information means 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.

Contractor means the person or entity providing solutions under the terms and conditions set forth in this Master Agreement. Contractor also includes its employees, subcontractors, agents and affiliates who are providing the services agreed to under the Master Agreement.

¹ A Sample Participating Addendum will be published after the contracts have been awarded.

² The Exhibits comprise the terms and conditions for the service models: PaaS, IaaS, and PaaS.

Data means all information, whether in oral or written (including electronic) form, created by or in any way originating with a Participating Entity or Purchasing Entity, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with a Participating Entity or Purchasing Entity, in the course of using and configuring the Services provided under this Agreement.

Data Breach means any actual or reasonably suspected non-authorized access to or acquisition of computerized Non-Public Data or Personal Data that compromises the security, confidentiality, or integrity of the Non-Public Data or Personal Data, or the ability of Purchasing Entity to access the Non-Public Data or Personal Data.

Data Categorization means the process of risk assessment of Data. See also “High Risk Data”, “Moderate Risk Data” and “Low Risk Data”.

Disabling Code means computer instructions or programs, subroutines, code, instructions, data or functions, (including but not limited to viruses, worms, date bombs or time bombs), including but not limited to other programs, data storage, computer libraries and programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that alter, destroy, inhibit, damage, interrupt, interfere with or hinder the operation of the Purchasing Entity’s software, applications and/or its end users processing environment, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.

Fulfillment Partner means a third-party contractor qualified and authorized by Contractor, and approved by the Participating State under a Participating Addendum, who may, to the extent authorized by Contractor, fulfill any of the requirements of this Master Agreement including but not limited to providing Services under this Master Agreement and billing Customers directly for such Services. Contractor may, upon written notice to the Participating State, add or delete authorized Fulfillment Partners as necessary at any time during the contract term. Fulfillment Partner has no authority to amend this Master Agreement or to bind Contractor to any additional terms and conditions.

High Risk Data is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“High Impact Data”).

Infrastructure as a Service (IaaS) as used in this Master Agreement is defined the capability provided to the consumer to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications; and possibly limited

control of select networking components (e.g., host firewalls).

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

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

Low Risk Data is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“Low Impact Data”).

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

Moderate Risk Data is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems (“Moderate Impact Data”).

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

Non-Public Data means High Risk Data and Moderate Risk Data that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the Purchasing Entity because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information.

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

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

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity.

Personal Data means data alone or in combination that includes information relating to an individual that identifies the individual by name, identifying number, mark or description can be readily associated with a particular individual and which is not a public record. Personal Information may include the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information, including account number, credit or debit card numbers; or Protected Health Information (PHI) relating to a person.

Platform as a Service (PaaS) as used in this Master Agreement is defined as the capability provided to the consumer to deploy onto the cloud infrastructure consumer-created or -acquired applications created using programming languages and tools supported by the provider. This capability does not necessarily preclude the use of compatible programming languages, libraries, services, and tools from other sources. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application hosting environment configurations.

Product means any deliverable under this Master Agreement, including Services, software, and any incidental tangible goods.

Protected Health Information (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer. PHI may also include information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

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

Services mean any of the specifications described in the Scope of Services that are supplied or created by the Contractor pursuant to this Master Agreement.

Security Incident means the possible or actual unauthorized access to a Purchasing Entity's Non-Public Data and Personal Data the Contractor believes could reasonably result in the use, disclosure or theft of a Purchasing Entity's Non-Public Data within the possession or control of the Contractor. A Security Incident also includes a major security breach to the Contractor's system, regardless if Contractor is aware of unauthorized access to a Purchasing Entity's Non-Public Data. A Security Incident may or may not turn into a Data Breach.

Service Level Agreement (SLA) means a written agreement between both the Purchasing Entity and the Contractor that is subject to the terms and conditions in this Master Agreement and relevant Participating Addendum unless otherwise expressly agreed in writing between the Purchasing Entity and the Contractor. SLAs should include: (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) remedies, such as credits, and (5) an explanation of how remedies or credits are calculated and issued.

Software as a Service (SaaS) as used in this Master Agreement is defined as the capability provided to the consumer to use the Contractor's applications running on a Contractor's infrastructure (commonly referred to as 'cloud infrastructure'). The applications are accessible from various client devices through a thin client interface such as a Web browser (e.g., Web-based email), or a program interface. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.

Solicitation means the documents used by the State of Utah, as the Lead State, to obtain Contractor's Proposal.

Statement of Work means a written statement in a solicitation document or contract that describes the Purchasing Entity's service needs and expectations.

3. Term of the Master Agreement: The initial term of this Master Agreement is for ten (10) years with no renewal options.

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

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

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

6. Discount Guarantee Period: All discounts must be guaranteed for the entire term of the Master Agreement. Participating Entities and Purchasing Entities shall receive the immediate benefit of price or rate reduction of the services provided under this Master Agreement. A price or rate reduction will apply automatically to the Master Agreement and an amendment is not necessary.

7. Termination: Unless otherwise stated, this Master Agreement may be terminated by either party upon 60 days written notice prior to the effective date of the termination. Further, any Participating Entity may terminate its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Termination may be in whole or in part. Any termination under this provision shall not affect the rights and obligations attending orders outstanding at the time of termination, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for Services delivered and accepted, data ownership, Contractor obligations regarding Purchasing Entity Data, rights attending default in performance an applicable Service Level of Agreement in association with any Order, Contractor obligations under Termination and Suspension of Service, and any responsibilities arising out of a Security Incident or Data Breach. Termination of the Master Agreement due to Contractor default may be immediate.

8. Confidentiality, Non-Disclosure, and Injunctive Relief

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

b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason

to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

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

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

9. Right to Publish: Throughout the duration of this Master Agreement, Contractor must secure prior approval from the Lead State or Participating Entity for the release of any information that pertains to the potential work or activities covered by the Master Agreement, including but not limited to reference to or use of the Lead State or a Participating Entity's name, Great Seal of the State, Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion which is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Master Agreement or Participating Addendum shall not be made without prior written approval of the Lead State or a Participating Entity.

The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

10. Defaults and Remedies

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

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the

solicitation or in this Master Agreement that proves to be untrue or materially misleading; or

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

(5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 30 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages.

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

(1) Exercise any remedy provided by law; and

(2) Terminate this Master Agreement and any related Contracts or portions thereof; and

(3) Suspend Contractor from being able to respond to future bid solicitations; and

(4) Suspend Contractor's performance; and

(5) Withhold payment until the default is remedied.

d. 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 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. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

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

12. Force Majeure: Neither party shall be in default by reason of any failure in

performance of this Contract in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

13. Indemnification

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

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

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

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

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

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

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

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor and then only to the extent of the prejudice or expenses. If the Contractor promptly and

reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

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

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

16. Insurance

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

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

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability,

personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$3 million general aggregate;

(2) CLOUD MINIMUM INSURANCE COVERAGE:

Level of Risk	Data Breach and Privacy/Cyber Liability including Technology Errors and Omissions Minimum Insurance Coverage	Crime Insurance Minimum Insurance Coverage
Low	\$2,000,000	\$2,000,000
Moderate	\$5,000,000	\$5,000,000
High	\$10,000,000	\$10,000,000

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

(4) Professional Liability. As applicable, Professional Liability Insurance Policy in the minimum amount of \$1,000,000 per occurrence and \$1,000,000 in the aggregate, written on an occurrence form that provides coverage for its work undertaken pursuant to each Participating Addendum.

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

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor’s general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating State has been given at least thirty (30) days prior written notice, and (3) provides that the Contractor’s liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, the Participating Entity’s rights and Contractor’s obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.

e. Contractor shall furnish to the Lead State, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within thirty (30) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order’s effective date and prior to performing

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

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

17. Laws and Regulations: Any and all Services offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

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

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

19. Ordering

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

b. This Master Agreement permits Purchasing Entities to define project-specific requirements and informally compete the requirement among other firms 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 Purchasing Entity rules and policies. The Purchasing Entity may in its sole discretion determine which firms should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

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

d. Contractor shall not begin providing Services without a valid Service Level Agreement or other appropriate commitment document compliant with the law of the Purchasing Entity.

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

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

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

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

h. Orders must be placed pursuant to this Master Agreement prior to the termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

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

20. Participants and Scope

a. Contractor may not deliver Services under this Master Agreement until a Participating

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

b. Subject to subsection 20c and a Participating Entity's Participating Addendum, the use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts is subject to the approval of the respective State Chief Procurement Official.

c. Unless otherwise stipulated in a Participating Entity's Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Services by state executive branch agencies, as required by a Participating Entity's statutes, are subject to the authority and approval of the Participating Entity's Chief Information Officer's Office³.

d. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions.

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

f. Participating Addenda shall not be construed to amend the terms of this Master Agreement between the Lead State and Contractor.

³ Chief Information Officer means the individual designated by the Governor with Executive Branch, enterprise-wide responsibility for the leadership and management of information technology resources of a state.

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

h. Resale. Subject to any explicit permission in a Participating Addendum, Purchasing Entities may not resell goods, software, or Services obtained under this Master Agreement. This limitation does not prohibit: payments by employees of a Purchasing Entity as explicitly permitted under this agreement; sales of goods to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities under cooperative agreements 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.

21. Payment: Unless otherwise stipulated in the Participating Addendum, Payment is normally made within 30 days following the date of a correct invoice is received. Purchasing Entities reserve the right to withhold payment of a portion (including all if applicable) of disputed amount of an invoice. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

22. Data Access Controls: Contractor will provide access to Purchasing Entity's Data only to those Contractor employees, contractors and subcontractors ("Contractor Staff") who need to access the Data to fulfill Contractor's obligations under this Agreement. Contractor shall not access a Purchasing Entity's user accounts or Data, except on the course of data center operations, response to service or technical issues, as required by the express terms of this Master Agreement, or at a Purchasing Entity's written request.

Contractor may not share a Purchasing Entity's Data with its parent corporation, other affiliates, or any other third party without the Purchasing Entity's express written consent.

Contractor will ensure that, prior to being granted access to the Data, Contractor Staff who perform work under this Agreement have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all Data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling.

23. Operations Management: Contractor shall maintain the administrative, physical, technical, and procedural infrastructure associated with the provision of the Product in a manner that is, at all times during the term of this Master Agreement, at a level equal to or more stringent than those specified in the Solicitation.

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

25. Purchasing Entity Data: Purchasing Entity retains full right and title to Data provided by it and any Data derived therefrom, including metadata. Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding Purchasing Entity's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. The obligation shall extend beyond the term of this Master Agreement in perpetuity.

Contractor shall not use any information collected in connection with this Master Agreement, including Purchasing Entity Data, for any purpose other than fulfilling its obligations under this Master Agreement.

26. Records Administration and Audit.

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

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

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

d. The Contractor shall allow the Purchasing Entity to audit conformance to the Master Agreement and applicable Participating Addendum terms. The purchasing entity may perform this audit or contract with a third party at its discretion and at the purchasing entity's expense.

27. Administrative Fees: The Contractor shall pay to NASPO ValuePoint, or its

assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than 60 days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on sales of the Services. The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

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

28. System Failure or Damage: In the event of system failure or damage caused by Contractor or its Services, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

29. Title to Product: If access to the Product requires an application program interface (API), Contractor shall convey to Purchasing Entity an irrevocable and perpetual license to use the API.

30. Data Privacy: The Contractor must comply with all applicable laws related to data privacy and security, including IRS Pub 1075. Prior to entering into a SLA with a Purchasing Entity, the Contractor and Purchasing Entity must cooperate and hold a meeting to determine the Data Categorization to determine whether the Contractor will hold, store, or process High Risk Data, Moderate Risk Data and Low Risk Data. The Contractor must document the Data Categorization in the SLA or Statement of Work.

31. Warranty: At a minimum the Contractor must warrant the following:

a. Contractor has acquired any and all rights, grants, assignments, conveyances, licenses, permissions, and authorization for the Contractor to provide the Services described in this Master Agreement.

b. Contractor will perform materially as described in this Master Agreement, SLA, Statement of Work, including any performance representations contained in the Contractor's response to the Solicitation by the Lead State.

c. Contractor represents and warrants that the representations contained in its response to the Solicitation by the Lead State.

d. The Contractor will not interfere with a Purchasing Entity's access to and use of the

Services it acquires from this Master Agreement.

e. The Services provided by the Contractor are compatible with and will operate successfully with any environment (including web browser and operating system) specified by the Contractor in its response to the Solicitation by the Lead State.

f. The Contractor warrants that the Products it provides under this Master Agreement are free of malware. The Contractor must use industry-leading technology to detect and remove worms, Trojans, rootkits, rogues, dialers, spyware, etc.

32. Transition Assistance:

a. The Contractor shall reasonably cooperate with other parties in connection with all Services to be delivered under this Master Agreement, including without limitation any successor service provider to whom a Purchasing Entity's Data is transferred in connection with the termination or expiration of this Master Agreement. The Contractor shall assist a Purchasing Entity in exporting and extracting a Purchasing Entity's Data, in a format usable without the use of the Services and as agreed by a Purchasing Entity, at no additional cost to the Purchasing Entity. Any transition services requested by a Purchasing Entity involving additional knowledge transfer and support may be subject to a separate transition Statement of Work.

b. A Purchasing Entity and the Contractor shall, when reasonable, create a Transition Plan Document identifying the transition services to be provided and including a Statement of Work if applicable.

c. The Contractor must maintain the confidentiality and security of a Purchasing Entity's Data during the transition services and thereafter as required by the Purchasing Entity.

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

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

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

36. Performance and Payment Time Frames that Exceed Contract Duration: All maintenance or other agreements for services entered into during the duration of an SLA and whose performance and payment time frames extend beyond the duration of this Master Agreement shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No new leases, maintenance or other agreements for services may be executed after the Master Agreement has expired. For the purposes of this section, renewals of maintenance, subscriptions, SaaS subscriptions and agreements, and other service agreements, shall not be considered as "new."

37. Governing Law and Venue

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

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

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

d. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

38. No Guarantee of Service Volumes: The Contractor acknowledges and agrees that the Lead State and NASPO ValuePoint makes no representation, warranty or condition as to the nature, timing, quality, quantity or volume of business for the Services or any other products and services that the Contractor may realize from this Master Agreement, or the compensation that may be earned by the Contractor by offering the Services. The Contractor acknowledges and agrees that it has conducted its own due diligence prior to entering into this Master Agreement as to all the foregoing matters.

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

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

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

40. 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.

41. Government Support: No support, facility space, materials, special access, personnel or other obligations on behalf of the states or other Participating Entities, other than payment, are required under the Master Agreement.

42. NASPO ValuePoint Summary and Detailed Usage Reports: In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

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

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

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

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

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

f. If requested by a Participating Entity, the Contractor must provide detailed sales data within the Participating State.

43. Entire Agreement: This Master Agreement, along with any attachment, contains the entire understanding of the parties hereto with respect to the Master Agreement unless a term is modified in a Participating Addendum with a Participating Entity. No click-through, or other end user terms and conditions or agreements required by the Contractor (“Additional Terms”) provided with any Services hereunder shall be binding on Participating Entities or Purchasing Entities, even if use of such Services requires an affirmative “acceptance” of those Additional Terms before access is permitted.

Exhibit 1 to the Master Agreement: Software-as-a-Service

1. Data Ownership: The Purchasing Entity will own all right, title and interest in its data that is related to the Services provided by this Master Agreement. The Contractor shall not access Purchasing Entity user accounts or Purchasing Entity data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Master Agreement, Participating Addendum, SLA, and/or other contract documents, or (4) at the Purchasing Entity's written request.

Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding a Purchasing Entity's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this Master Agreement.

2. Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of Purchasing Entity information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of Purchasing Entity information and comply with the following conditions:

- a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and Non-Public Data of similar kind.
- b. All data obtained by the Contractor in the performance of the Master Agreement shall become and remain the property of the Purchasing Entity.
- c. All Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the Personal Data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of the Master Agreement.
- d. Unless otherwise stipulated, the Contractor shall encrypt all Non-Public Data at rest and in transit. The Purchasing Entity shall identify data it deems as Non-Public Data to the Contractor. The level of protection and encryption for all Non-Public Data shall be identified in the SLA.
- e. At no time shall any data or processes — that either belong to or are intended for the use of a Purchasing Entity or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the Purchasing Entity.
- f. The Contractor shall not use any information collected in connection with the Services issued from this Master Agreement for any purpose other than fulfilling the Services.

3. Data Location: The Contractor shall provide its services to the Purchasing Entity and its end users solely from data centers in the U.S. Storage of Purchasing Entity data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store Purchasing Entity data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access Purchasing Entity data remotely only as required to provide technical support. The Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in a Participating Addendum.

4. Security Incident or Data Breach Notification:

a. Incident Response: Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the Purchasing Entity should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes as mutually agreed upon, defined by law or contained in the Master Agreement.

b. Security Incident Reporting Requirements: The Contractor shall report a security incident to the Purchasing Entity identified contact immediately as soon as possible or promptly without out reasonable delay, or as defined in the SLA.

c. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any purchasing entity's content that is subject to applicable data breach notification law, the Contractor shall (1) as soon as possible or promptly without out reasonable delay notify the Purchasing Entity, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

5. Personal Data Breach Responsibilities: This section only applies when a Data Breach occurs with respect to Personal Data within the possession or control of the Contractor.

a. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate Purchasing Entity identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.

b. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate Purchasing Entity identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a Data Breach. The Contractor shall (1) cooperate with the Purchasing Entity as reasonably requested by the Purchasing Entity to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

c. Unless otherwise stipulated, if a data breach is a direct result of Contractor's breach of its contractual obligation to encrypt personal data or otherwise prevent its release as reasonably determined by the Purchasing Entity, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause.

6. Notification of Legal Requests: The Contractor shall contact the Purchasing Entity upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the Purchasing Entity's data under the Master Agreement, or which in any way might reasonably require access to the data of the Purchasing Entity. The Contractor shall not respond to subpoenas, service of process and other legal requests related to the Purchasing Entity without first notifying and obtaining the approval of the Purchasing Entity, unless prohibited by law from providing such notice.

7. Termination and Suspension of Service:

a. In the event of a termination of the Master Agreement or applicable Participating Addendum, the Contractor shall implement an orderly return of purchasing entity's data in a CSV or another mutually agreeable format at a time agreed to by the parties or allow the Purchasing Entity to extract it's data and the subsequent secure disposal of purchasing entity's data.

b. During any period of service suspension, the Contractor shall not take any action to intentionally erase or otherwise dispose of any of the Purchasing Entity's data.

c. In the event of termination of any services or agreement in entirety, the Contractor shall not take any action to intentionally erase purchasing entity's data for a period of:

- 10 days after the effective date of termination, if the termination is in accordance with the contract period
- 30 days after the effective date of termination, if the termination is for convenience
- 60 days after the effective date of termination, if the termination is for cause

After such period, the Contractor shall have no obligation to maintain or provide any purchasing entity's data and shall thereafter, unless legally prohibited, delete all purchasing entity's data in its systems or otherwise in its possession or under its control.

d. The purchasing entity shall be entitled to any post termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of an SLA.

e. Upon termination of the Services or the Agreement in its entirety, Contractor shall securely dispose of all Purchasing Entity's data in all of its forms, such as disk, CD/ DVD, backup tape and paper, unless stipulated otherwise by the Purchasing Entity. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the Purchasing Entity.

8. Background Checks: Upon the request of the Purchasing Entity, the Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Master Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the Purchasing Entity's information among the Contractor's employees and agents. If any of the stated personnel providing services under a Participating Addendum is not acceptable to the Purchasing Entity in its sole opinion as a result of the background or criminal history investigation, the Purchasing Entity, in its' sole option shall have the right to either (1) request immediate replacement of the person, or (2) immediately terminate the Participating Addendum and any related service agreement.

9. Access to Security Logs and Reports: The Contractor shall provide reports on a schedule specified in the SLA to the Purchasing Entity in a format as specified in the SLA agreed to by both the Contractor and the Purchasing Entity. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all public jurisdiction files related to this Master Agreement and applicable Participating Addendum.

10. Contract Audit: The Contractor shall allow the Purchasing Entity to audit conformance to the Master Agreement terms. The Purchasing Entity may perform this audit or contract with a third party at its discretion and at the Purchasing Entity's expense.

11. Data Center Audit: The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide an unredacted version of the audit report upon request to a Purchasing Entity. The Contractor may remove its proprietary information from the unredacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

12. Change Control and Advance Notice: The Contractor shall give a minimum forty eight (48) hour advance notice (or as determined by a Purchasing Entity and included in the SLA) to the Purchasing Entity of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

Contractor will make updates and upgrades available to Purchasing Entity at no additional costs when Contractor makes such updates and upgrades generally available to its users.

No update, upgrade or other charge to the Service may decrease the Service's functionality, adversely affect Purchasing Entity's use of or access to the Service, or increase the cost of the Service to the Purchasing Entity.

Contractor will notify the Purchasing Entity at least sixty (60) days in advance prior to any major update or upgrade.

13. Security: As requested by a Purchasing Entity, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the Purchasing Entity such that adequate protection and flexibility can be attained between the Purchasing Entity and the Contractor. For example: virus checking and port sniffing — the Purchasing Entity and the Contractor shall understand each other's roles and responsibilities.

14. Non-disclosure and Separation of Duties: The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of Purchasing Entity data to that which is absolutely necessary to perform job duties.

15. Import and Export of Data: The Purchasing Entity shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor at any time during the term of Contractor's contract with the Purchasing Entity. This includes the ability for the Purchasing Entity to import or export data to/from other Contractors. Contractor shall specify if Purchasing Entity is required to provide its' own tools for this purpose, including the optional purchase of Contractors tools if Contractors applications are not able to provide this functionality directly.

16. Responsibilities and Uptime Guarantee: The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the Contractor. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.

17. Subcontractor Disclosure: Contractor shall identify all of its strategic business partners related to services provided under this Master Agreement, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.

18. Right to Remove Individuals: The Purchasing Entity shall have the right at any time to require that the Contractor remove from interaction with Purchasing Entity any Contractor representative who the Purchasing Entity believes is detrimental to its working relationship with the Contractor. The Purchasing Entity shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the Purchasing Entity signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not assign the

person to any aspect of the Master Agreement or future work orders without the Purchasing Entity's consent.

19. Business Continuity and Disaster Recovery: The Contractor shall provide a business continuity and disaster recovery plan upon request and ensure that the Purchasing Entity's recovery time objective (RTO) of XXX hours/days is met. (XXX hour/days shall be provided to Contractor by the Purchasing Entity.) Contractor must work with the Purchasing Entity to perform an annual Disaster Recovery test and take action to correct any issues detected during the test in a time frame mutually agreed between the Contractor and the Purchasing Entity.

20. Compliance with Accessibility Standards: The Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973, or any other state laws or administrative regulations identified by the Participating Entity.

21. Web Services: The Contractor shall use Web services exclusively to interface with the Purchasing Entity's data in near real time.

22. Encryption of Data at Rest: The Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data, unless the Purchasing Entity approves in writing for the storage of Personal Data on a Contractor portable device in order to accomplish work as defined in the statement of work.

23. Subscription Terms: Contractor grants to a Purchasing Entity a license to: (i) access and use the Service for its business purposes; (ii) for SaaS, use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use Contractor's documentation.

No Contractor terms, including standard click through license or website terms or use of privacy policy, shall apply to Purchasing Entities unless such terms are included in this Master Agreement.

Exhibit 2 to the Master Agreement: Platform-as-a-Service

1. Data Ownership: The Purchasing Entity will own all right, title and interest in its data that is related to the Services provided by this Master Agreement. The Contractor shall not access Purchasing Entity user accounts or Purchasing Entity data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Master Agreement, Participating Addendum, SLA, and/or other contract documents, or (4) at the Purchasing Entity's written request.

Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding a Purchasing Entity's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this Master Agreement.

2. Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of Purchasing Entity information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of Purchasing Entity information and comply with the following conditions:

- a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and Non-Public Data of similar kind.
- b. All data obtained by the Contractor in the performance of the Master Agreement shall become and remain the property of the Purchasing Entity.
- c. All Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the Personal Data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of the Master Agreement.
- d. Unless otherwise stipulated, the Contractor shall encrypt all Non-Public Data at rest and in transit. The Purchasing Entity shall identify data it deems as Non-Public Data to the Contractor. The level of protection and encryption for all Non-Public Data shall be identified in the SLA.
- e. At no time shall any data or processes — that either belong to or are intended for the use of a Purchasing Entity or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the Purchasing Entity.
- f. The Contractor shall not use any information collected in connection with the Services issued from this Master Agreement for any purpose other than fulfilling the Services.

3. Data Location: The Contractor shall provide its services to the Purchasing Entity and its end users solely from data centers in the U.S. Storage of Purchasing Entity data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store Purchasing Entity data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access Purchasing Entity data remotely only as required to provide technical support. The Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in a Participating Addendum.

4. Security Incident or Data Breach Notification: The Contractor shall inform the Purchasing Entity of any security incident or data breach within the possession and control of the Contractor and related to the service provided under the Master Agreement, Participating Addendum, or SLA. Such notice shall include, to the best of Contractor's knowledge at that time, the persons affected, their identities, and the Confidential Information and Data disclosed, or shall include if this information is unknown.

a. Incident Response: The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Master Agreement, Participating Addendum, or SLA. Discussing security incidents with the Purchasing Entity should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes as mutually agreed, defined by law or contained in the Master Agreement, Participating Addendum, or SLA.

b. Security Incident Reporting Requirements: Unless otherwise stipulated, the Contractor shall immediately report a security incident related to its service under the Master Agreement, Participating Addendum, or SLA to the appropriate Purchasing Entity.

c. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any Purchasing Entity data that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify the appropriate Purchasing Entity within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner

5. Breach Responsibilities: This section only applies when a Data Breach occurs with respect to Personal Data within the possession or control of the Contractor.

a. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate Purchasing Entity identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.

b. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate Purchasing Entity identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a data breach. The Contractor shall (1) cooperate with the Purchasing Entity as reasonably

requested by the Purchasing Entity to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

c. Unless otherwise stipulated, if a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause.

6. Notification of Legal Requests: The Contractor shall contact the Purchasing Entity upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the Purchasing Entity's data under the Master Agreement, or which in any way might reasonably require access to the data of the Purchasing Entity. The Contractor shall not respond to subpoenas, service of process and other legal requests related to the Purchasing Entity without first notifying and obtaining the approval of the Purchasing Entity, unless prohibited by law from providing such notice.

7. Termination and Suspension of Service:

a. In the event of an early termination of the Master Agreement, Participating or SLA, Contractor shall allow for the Purchasing Entity to retrieve its digital content and provide for the subsequent secure disposal of the Purchasing Entity's digital content.

b. During any period of service suspension, the Contractor shall not take any action to intentionally erase or otherwise dispose of any of the Purchasing Entity's data.

c. In the event of early termination of any Services or agreement in entirety, the Contractor shall not take any action to intentionally erase any Purchasing Entity's data for a period of 1) 45 days after the effective date of termination, if the termination is for convenience; or 2) 60 days after the effective date of termination, if the termination is for cause. After such day period, the Contractor shall have no obligation to maintain or provide any Purchasing Entity data and shall thereafter, unless legally prohibited, delete all Purchasing Entity data in its systems or otherwise in its possession or under its control. In the event of either termination for cause, the Contractor will impose no fees for access and retrieval of digital content to the Purchasing Entity.

d. The Purchasing Entity shall be entitled to any post termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of an SLA.

e. Upon termination of the Services or the Agreement in its entirety, Contractor shall securely dispose of all Purchasing Entity's data in all of its forms, such as disk, CD/ DVD, backup tape and paper, unless stipulated otherwise by the Purchasing Entity. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the Purchasing Entity.

8. Background Checks:

a. Upon the request of the Purchasing Entity, the Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Master Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the Purchasing Entity's information among the Contractor's employees and agents.

b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.

c. If any of the stated personnel providing services under a Participating Addendum is not acceptable to the Purchasing Entity in its sole opinion as a result of the background or criminal history investigation, the Purchasing Entity, in its' sole option shall have the right to either (1) request immediate replacement of the person, or (2) immediately terminate the Participating Addendum and any related service agreement.

9. Access to Security Logs and Reports:

a. The Contractor shall provide reports on a schedule specified in the SLA to the Purchasing Entity in a format as specified in the SLA and agreed to by both the Contractor and the Purchasing Entity. Reports will include latency statistics, user access, user access IP address, user access history and security logs for all Purchasing Entity files related to the Master Agreement, Participating Addendum, or SLA.

b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.

10. Contract Audit: The Contractor shall allow the Purchasing Entity to audit conformance to the Master Agreement terms. The Purchasing Entity may perform this audit or contract with a third party at its discretion and at the Purchasing Entity's expense.

11. Data Center Audit: The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide an unredacted version of the audit report upon request to a Purchasing Entity. The Contractor may remove its proprietary information from the unredacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

12. Change Control and Advance Notice: The Contractor shall give a minimum forty eight (48) hour advance notice (or as determined by a Purchasing Entity and included in the SLA) to the Purchasing Entity of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

Contractor will make updates and upgrades available to Purchasing Entity at no additional costs when Contractor makes such updates and upgrades generally available to its users.

No update, upgrade or other charge to the Service may decrease the Service's functionality, adversely affect Purchasing Entity's use of or access to the Service, or increase the cost of the Service to the Purchasing Entity.

Contractor will notify the Purchasing Entity at least sixty (60) days in advance prior to any major update or upgrade.

13. Security: As requested by a Purchasing Entity, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the Purchasing Entity such that adequate protection and flexibility can be attained between the Purchasing Entity and the Contractor. For example: virus checking and port sniffing — the Purchasing Entity and the Contractor shall understand each other's roles and responsibilities.

14. Non-disclosure and Separation of Duties: The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of Purchasing Entity data to that which is absolutely necessary to perform job duties.

15. Import and Export of Data: The Purchasing Entity shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor at any time during the term of Contractor's contract with the Purchasing Entity. This includes the ability for the Purchasing Entity to import or export data to/from other Contractors. Contractor shall specify if Purchasing Entity is required to provide its' own tools for this purpose, including the optional purchase of Contractors tools if Contractors applications are not able to provide this functionality directly.

16. Responsibilities and Uptime Guarantee: The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the Contractor. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.

17. Subcontractor Disclosure: Contractor shall identify all of its strategic business partners related to services provided under this Master Agreement, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.

18. Business Continuity and Disaster Recovery: The Contractor shall provide a business continuity and disaster recovery plan upon request and ensure that the Purchasing Entity's recovery time objective (RTO) of XXX hours/days is met. (XXX hour/days shall be provided to Contractor by the Purchasing Entity.) Contractor must work with the Purchasing Entity to perform an annual Disaster Recovery test and take action to correct any issues detected during the test in a time frame mutually agreed between the Contractor and the Purchasing Entity.

19. Compliance with Accessibility Standards: The Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973 or any other state laws or administrative regulations identified by the Participating Entity..

20. Web Services: The Contractor shall use Web services exclusively to interface with the Purchasing Entity's data in near real time.

21. Encryption of Data at Rest: The Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data as identified in the SLA, unless the Contractor presents a justifiable position that is approved by the Purchasing Entity that Personal Data, is required to be stored on a Contractor portable device in order to accomplish work as defined in the scope of work.

22. Subscription Terms: Contractor grants to a Purchasing Entity a license to: (i) access and use the Service for its business purposes; (ii) for PaaS, use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use Contractor's documentation.

No Contractor terms, including standard click through license or website terms or use of privacy policy, shall apply to Purchasing Entities unless such terms are included in this Master Agreement.

Exhibit 3 to the Master Agreement: Infrastructure-as-a-Service

1. Data Ownership: The Purchasing Entity will own all right, title and interest in its data that is related to the Services provided by this Master Agreement. The Contractor shall not access Purchasing Entity user accounts or Purchasing Entity data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this Master Agreement, Participating Addendum, SLA, and/or other contract documents, or (4) at the Purchasing Entity's written request.

Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding a Purchasing Entity's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. This obligation shall survive and extend beyond the term of this Master Agreement.

2. Data Protection: Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of Purchasing Entity information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of Purchasing Entity information and comply with the following conditions:

- a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own Personal Data and Non-Public Data of similar kind.
- b. All data obtained by the Contractor in the performance of the Master Agreement shall become and remain the property of the Purchasing Entity.
- c. All Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the Personal Data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of the Master Agreement.
- d. Unless otherwise stipulated, the Contractor shall encrypt all Non-Public Data at rest and in transit. The Purchasing Entity shall identify data it deems as Non-Public Data to the Contractor. The level of protection and encryption for all Non-Public Data shall be identified in the SLA.
- e. At no time shall any data or processes — that either belong to or are intended for the use of a Purchasing Entity or its officers, agents or employees — be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the Purchasing Entity.
- f. The Contractor shall not use any information collected in connection with the Services issued from this Master Agreement for any purpose other than fulfilling the Services.

3. Data Location: The Contractor shall provide its services to the Purchasing Entity and its end users solely from data centers in the U.S. Storage of Purchasing Entity data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store Purchasing Entity data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access Purchasing Entity data remotely only as required to provide technical support. The Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in a Participating Addendum.

4. Security Incident or Data Breach Notification: The Contractor shall inform the Purchasing Entity of any security incident or data breach related to Purchasing Entity's Data within the possession or control of the Contractor and related to the service provided under the Master Agreement, Participating Addendum, or SLA. Such notice shall include, to the best of Contractor's knowledge at that time, the persons affected, their identities, and the Confidential Information and Data disclosed, or shall include if this information is unknown.

a. **Security Incident Reporting Requirements:** The Contractor shall report a security incident to the Purchasing Entity identified contact immediately as soon as possible or promptly without out reasonable delay, or as defined in the SLA.

b. **Breach Reporting Requirements:** If the Contractor has actual knowledge of a confirmed data breach that affects the security of any purchasing entity's content that is subject to applicable data breach notification law, the Contractor shall (1) as soon as possible or promptly without out reasonable delay notify the Purchasing Entity, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

5. Breach Responsibilities: This section only applies when a Data Breach occurs with respect to Personal Data within the possession or control of the Contractor and related to the service provided under the Master Agreement, Participating Addendum, or SLA.

a. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate Purchasing Entity identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.

b. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate Purchasing Entity identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a data breach. The Contractor shall (1) cooperate with the Purchasing Entity as reasonably requested by the Purchasing Entity to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

c. Unless otherwise stipulated, if a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws — all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause.

6. Notification of Legal Requests: The Contractor shall contact the Purchasing Entity upon receipt of any electronic discovery, litigation holds, discovery searches and expert testimonies related to the Purchasing Entity's data under the Master Agreement, or which in any way might reasonably require access to the data of the Purchasing Entity. The Contractor shall not respond to subpoenas, service of process and other legal requests related to the Purchasing Entity without first notifying and obtaining the approval of the Purchasing Entity, unless prohibited by law from providing such notice.

7. Termination and Suspension of Service:

a. In the event of an early termination of the Master Agreement, Participating or SLA, Contractor shall allow for the Purchasing Entity to retrieve its digital content and provide for the subsequent secure disposal of the Purchasing Entity's digital content.

b. During any period of service suspension, the Contractor shall not take any action to intentionally erase or otherwise dispose of any of the Purchasing Entity's data.

c. In the event of early termination of any Services or agreement in entirety, the Contractor shall not take any action to intentionally erase any Purchasing Entity's data for a period of 1) 45 days after the effective date of termination, if the termination is for convenience; or 2) 60 days after the effective date of termination, if the termination is for cause. After such day period, the Contractor shall have no obligation to maintain or provide any Purchasing Entity data and shall thereafter, unless legally prohibited, delete all Purchasing Entity data in its systems or otherwise in its possession or under its control. In the event of either termination for cause, the Contractor will impose no fees for access and retrieval of digital content to the Purchasing Entity.

d. The Purchasing Entity shall be entitled to any post termination assistance generally made available with respect to the services, unless a unique data retrieval arrangement has been established as part of an SLA.

e. Upon termination of the Services or the Agreement in its entirety, Contractor shall securely dispose of all Purchasing Entity's data in all of its forms, such as disk, CD/ DVD, backup tape and paper, unless stipulated otherwise by the Purchasing Entity. Data shall be permanently deleted

and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to the Purchasing Entity.

8. Background Checks:

a. Upon the request of the Purchasing Entity, the Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Master Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the Purchasing Entity's information among the Contractor's employees and agents.

b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.

c. If any of the stated personnel providing services under a Participating Addendum is not acceptable to the Purchasing Entity in its sole opinion as a result of the background or criminal history investigation, the Purchasing Entity, in its' sole option shall have the right to either (1) request immediate replacement of the person, or (2) immediately terminate the Participating Addendum and any related service agreement.

9. Access to Security Logs and Reports:

a. The Contractor shall provide reports on a schedule specified in the SLA to the Contractor directly related to the infrastructure that the Contractor controls upon which the Purchasing Entity's account resides. Unless otherwise agreed to in the SLA, the Contractor shall provide the public jurisdiction a history or all API calls for the Purchasing Entity account that includes the identity of the API caller, the time of the API call, the source IP address of the API caller, the request parameters and the response elements returned by the Contractor. The report will be sufficient to enable the Purchasing Entity to perform security analysis, resource change tracking and compliance auditing

b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.

10. Contract Audit: The Contractor shall allow the Purchasing Entity to audit conformance to the Master Agreement terms. The Purchasing Entity may perform this audit or contract with a third party at its discretion and at the Purchasing Entity's expense.

11. Data Center Audit: The Contractor shall perform an independent audit of its data centers at least annually and at its own expense, and provide an unredacted version of the audit report upon request. The Contractor may remove its proprietary information from the unredacted version. For example, a Service Organization Control (SOC) 2 audit report would be sufficient.

12. Change Control and Advance Notice: The Contractor shall give a minimum forty eight (48) hour advance notice (or as determined by a Purchasing Entity and included in the SLA) to the Purchasing Entity of any upgrades (e.g., major upgrades, minor upgrades, system changes) that may impact service availability and performance. A major upgrade is a replacement of hardware, software or firmware with a newer or better version in order to bring the system up to date or to improve its characteristics. It usually includes a new version number.

Contractor will make updates and upgrades available to Purchasing Entity at no additional costs when Contractor makes such updates and upgrades generally available to its users.

No update, upgrade or other charge to the Service may decrease the Service's functionality, adversely affect Purchasing Entity's use of or access to the Service, or increase the cost of the Service to the Purchasing Entity.

Contractor will notify the Purchasing Entity at least sixty (60) days in advance prior to any major update or upgrade.

13. Security: As requested by a Purchasing Entity, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the Purchasing Entity such that adequate protection and flexibility can be attained between the Purchasing Entity and the Contractor. For example: virus checking and port sniffing — the Purchasing Entity and the Contractor shall understand each other's roles and responsibilities.

14. Non-disclosure and Separation of Duties: The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of Purchasing Entity data to that which is absolutely necessary to perform job duties.

15. Import and Export of Data: The Purchasing Entity shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor at any time during the term of Contractor's contract with the Purchasing Entity. This includes the ability for the Purchasing Entity to import or export data to/from other Contractors. Contractor shall specify if Purchasing Entity is required to provide its' own tools for this purpose, including the optional purchase of Contractors tools if Contractors applications are not able to provide this functionality directly.

16. Responsibilities and Uptime Guarantee: The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the Contractor. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.

17. Subcontractor Disclosure: Contractor shall identify all of its strategic business partners related to services provided under this Master Agreement, including but not limited to all subcontractors or other entities or individuals who may be a party to a joint venture or similar agreement with the Contractor, and who shall be involved in any application development and/or operations.

18. Business Continuity and Disaster Recovery: The Contractor shall provide a business continuity and disaster recovery plan upon request and ensure that the Purchasing Entity's recovery time objective (RTO) of XXX hours/days is met. (XXX hour/days shall be provided to Contractor by the Purchasing Entity.) Contractor must work with the Purchasing Entity to perform an annual Disaster Recovery test and take action to correct any issues detected during the test in a time frame mutually agreed between the Contractor and the Purchasing Entity.

19. Subscription Terms: Contractor grants to a Purchasing Entity a license to: (i) access and use the Service for its business purposes; (ii) for IaaS, use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use Contractor's documentation.

No Contractor terms, including standard click through license or website terms or use of privacy policy, shall apply to Purchasing Entities unless such terms are included in this Master Agreement.

Exhibit C – Master Agreement

Attachment 1 – Scope Addendum

STATE OF NEW JERSEY

PARTICIPATING ADDENDUM AND STANDARD TERMS AND CONDITIONS

Under

**NASPO ValuePoint Contract for Cloud Solutions
[State of Utah Master Contract Number AR2485]**

Scope Addendum

As set forth in Section 2.0, Scope of Participating Addendum, the scope of Products and Services that may be procured by Authorized Purchasers defined in Section 6.0(1) of this Participating Addendum (State Agencies) shall be those Products and Services established below. Contractor may only offer State Agencies the Products and Services from the following cloud service providers:

- Amazon
- Microsoft

Contractor may also provide State Agencies cloud related Services within the scope of its Master Agreement.

For all other Authorized Purchasers, the full suite of Product and Service offerings available under the Master Agreement may be procured under this Participating Addendum.



State of New Jersey Standard Terms and Conditions

(Revised 2/1/2021)

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

1. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT

Unless the bidder/offeror is specifically instructed otherwise in the Bid Solicitation/Request for Proposals (RFP), the following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the bidder/offeror must present those conflicts during the Question and Answer period for the State to consider. Any conflicting terms and conditions that the State is willing to accept will be reflected in an addendum to the RFP. The State's terms and conditions shall prevail over any conflicts set forth in a bidder/offeror's Proposal that were not submitted through the question and answer process and approved by the State. Nothing in these terms and conditions shall prohibit the Director of the Division of Purchase and Property (Director) from amending a contract when the Director determines it is in the best interests of the State.

1.1 CONTRACT TERMS CROSSWALK

NJSTART Term	Equivalent Statutory, Regulatory and/or Legacy Term
Bid/Bid Solicitation	Request For Proposal (RFP)/Solicitation
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order (Blanket P.O.)	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor	Bidder/Contractor

2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

2.1 BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the bidder who shall provide it to the State.

The contractor shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The contractor shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

2.2 ANTI-DISCRIMINATION

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Construction Contracts (Exhibit B and Executive Order 151, August 28, 2009, attached) as appropriate.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

2.3 PREVAILING WAGE ACT

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on [this proposal] is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by [this proposal] has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by [this proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

2.4 AMERICANS WITH DISABILITIES ACT

The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.

2.5 MACBRIDE PRINCIPLES

The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

2.6 PAY TO PLAY PROHIBITIONS

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), and specifically, N.J.S.A. 19:44A- 20.21, it shall be a breach of the terms of the contract for the business entity to:

- A. Make or solicit a contribution in violation of the statute;
- B. Knowingly conceal or misrepresent a contribution given or received;
- C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
- E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

2.7 POLITICAL CONTRIBUTION DISCLOSURE

The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one (1) or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC.

Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards, now known as the State Ethics Commission;

No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, now known as the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;

No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and

The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards, now known as the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of

the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

2.10 COMPLIANCE - LAWS

The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

2.11 COMPLIANCE - STATE LAWS

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

2.12 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT

3.1 COMPLIANCE - CODES

The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

3.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

- A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- B. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- C. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- A. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- B. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:
 - 1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
 - 2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
 - 3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
 - 4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

3.4 BUILDING SERVICE

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

3.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

3.6 SERVICE PERFORMANCE WITHIN U.S.

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

3.7 BUY AMERICAN

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.

3.8 DOMESTIC MATERIALS

Pursuant to N.J.S.A. 52:33-2 et seq., if the contract is for the construction, alteration or repair of any public work, the contractor and all subcontractors shall use only domestic materials in the performance of the work unless otherwise noted in the specifications.

3.9 DIANE B. ALLEN EQUAL PAY ACT

Pursuant to N.J.S.A. 34:11-56.14 and N.J.A.C. 12:10-1.1 et seq., a contractor performing “qualifying services” or “public work” to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

3.10 EMPLOYEE MISCLASSIFICATION

In accordance with [Governor Murphy's Executive Order #25](#) and the [Task Force's July 2019 Report](#), employers are required to properly classify their employees. Workers are presumed to be employees and not independent contractors, unless the employer can demonstrate all three factors of the “ABC Test” below:

- A. Such individual has been and will continue to be free from control or direction of the performance of such service, but under his or her contract of service and in fact; and
- B. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all places of business of the enterprise for which such service is performed; and
- C. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

This test has been adopted by New Jersey under its Wage & Hour, Wage Payment and Unemployment Insurance Laws to determine whether a worker is properly classified.

4. INDEMNIFICATION AND INSURANCE

4.1 INDEMNIFICATION

The contractor's liability to the State and its employees in third party suits shall be as follows:

- A. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;
- B. The contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and
- C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

4.2 INSURANCE

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the contractor's insurer cannot provide 30 days written notice, then it will become the obligation of the contractor to provide the same. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the State at: ccau.certificate@treas.nj.gov

The insurance to be provided by the contractor shall be as follows:

- A. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;
- B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;
- C. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
 1. \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
 2. \$1,000,000 DISEASE EACH EMPLOYEE; and
 3. \$1,000,000 DISEASE AGGREGATE LIMIT.
- D. This \$1,000,000 amount may have been raised by the RFP when deemed necessary by the Director; and
- E. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections a., b., and c. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the State by the Director.

5. TERMS GOVERNING ALL CONTRACTS

5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR

The contractor's status shall be that of any independent contractor and not as an employee of the State.

5.2 CONTRACT AMOUNT

The estimated amount of the contract(s), when stated on the RFP form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of the RFP or any contract entered into as a result of the RFP.

5.3 CONTRACT TERM AND EXTENSION OPTION

If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions of the original contract shall apply unless more favorable terms for the State have been negotiated.

5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope

of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and
- B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

5.5 CHANGE IN LAW

If, after award, a change in applicable law or regulation occurs which affects the Contract, the parties may amend the Contract, including pricing, in order to provide equitable relief for the party disadvantaged by the change in law. The parties shall negotiate in good faith, however if agreement is not possible after reasonable efforts, the Director shall make a prompt decision as to an equitable adjustment, taking all relevant information into account, and shall notify the Vendor {Contractor} of the final adjusted contract price.

5.6 SUSPENSION OF WORK

The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

A. For Convenience:

Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;

B. For Cause:

- 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond; and
- 2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.

C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and

D. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

5.8 SUBCONTRACTING OR ASSIGNMENT

A. Subcontracting: The contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If

the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws; and

- B. Assignment: The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE

Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State.

5.10 MERGERS, ACQUISITIONS

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR

The contractor hereby certifies that:

- A. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;
- B. All equipment supplied to the State and operated by electrical current is UL listed where applicable;
- C. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;
- D. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
- E. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
- F. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and
- G. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

5.12 DELIVERY REQUIREMENTS

- A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
- B. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice;
- C. Items delivered must be strictly in accordance with the contract; and
- D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

5.13 APPLICABLE LAW AND JURISDICTION

This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

5.14 CONTRACT AMENDMENT

Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.

5.15 MAINTENANCE OF RECORDS

The contractor shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment unless a longer period is required by law. Such records shall be made available to the State, including the Comptroller, for audit and review.

5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)

The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor:

- A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
- B. It shall advise the Attorney General of New Jersey:
 1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and
 2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
- D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

6. TERMS RELATING TO PRICE AND PAYMENT

6.1 PRICE FLUCTUATION DURING CONTRACT

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract. In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

In an exceptional situation the State may consider a price adjustment. Requests for price adjustments must include justification and documentation.

6.2 TAX CHARGES

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

6.3 PAYMENT TO VENDORS

- A. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or

services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price;

- B. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the Bill of Lading, and/or other documentation to confirm shipment and receipt of contracted goods must be received by the using agency prior to payment. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;
- C. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls; and
- D. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

6.4 OPTIONAL PAYMENT METHOD: P-CARD

The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 NEW JERSEY PROMPT PAYMENT ACT

The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

6.6 AVAILABILITY OF FUNDS

The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

7. TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth in this Section of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

7.1 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made the Contractor shall:

- (1) Include qualified small and minority businesses and women's business enterprises on solicitation lists;

- (2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
- (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

7.2 DOMESTIC PREFERENCE FOR PROCUREMENTS

Pursuant to 2 CFR 200.322, where appropriate, the State has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). If subawards are to be made the Contractor shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7.3 PROCUREMENT OF RECOVERED MATERIALS

Where applicable, in the performance of contract, pursuant to 2 CFR 200.323, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

To the extent that the scope of work or specifications in the contract requires the contractor to provide recovered materials the scope of work or specifications are modified to require that as follows.

- i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 2. Meeting contract performance requirements; or
 3. At a reasonable price.
- ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

7.4 EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." See, 2 CFR Part 200, Appendix II, para. C.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their

race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

7.5 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

When required by Federal program legislation, all prime construction contracts in excess of \$ 2,000 shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

7.6 COPELAND ANTI_KICK-BACK ACT

Where applicable, the Contractor must comply with Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

- a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

7.7 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The unauthorized user shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may

be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7.8 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7.9 CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED

Where applicable, Contract and subgrants of amounts in excess of \$150,000, must comply with the following:

Clean Air Act

1. The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

7.10 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State or authorized user. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or authorized user, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7.11 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or

attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

7.12 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
- (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in *Public Law 115–232*, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

EXHIBIT A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.A.C. 17:27 et seq.

GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- Letter of Federal Affirmative Action Plan Approval;
- Certificate of Employee Information Report; or
- Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at http://www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase and Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase and Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

EXHIBIT B

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.S.A. 10:5-39 et seq. (P.L. 1983, c. 197)

N.J.A.C. 17:27-1.1 et seq.

CONSTRUCTION CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of \$250,000 to guarantee equal employment opportunity to veterans.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

(A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or

subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.

(B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:

(1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

(2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;

(3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;

(4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;

(5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;

(6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:

(i) The contractor or subcontractor shall interview the referred minority or women worker.

(ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or

subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.

(D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <https://newjersey.usnlx.com/>;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.

State of New Jersey Standard Terms and Conditions

(Rev: 2/1/2021)

I HEREBY ACCEPT THE TERMS AND CONDITIONS OF THIS CONTRACT

Signature

Date

Print Name and Title

Print Name of Contractor