STATE OF OREGON

COVER PAGE

THE STATE OF OREGON ("STATE"), ACTING BY AND THROUGH ITS DEPARTMENT OF ADMINISTRATIVE SERVICES, PROCUREMENT SERVICES ("DAS"), for the member states of the NASPO ValuePoint Cooperative Purchasing Program ("NASPO ValuePoint") and other Purchasing Entities,

FOR

Parks and Recreation Equipment and Related Services

Request for Proposal (RFP)

DASPS-2114-16

Date of Issue: May 9, 2016

Closing: July 6, 2016 @ 2:00PM

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SECTION 1: GENERAL INFORMATION

1.1 INTRODUCTION

The State of Oregon, acting by and through the Department of Administrative Services, ("DAS"), is acting as the Lead State and is issuing this Request for Proposals for playground, parks and recreation equipment (collectively referred to as, "Parks and Recreation Equipment"), and installation, training, and other related services ("Related Services") for the members of the NASPO ValuePoint Cooperative Purchasing Program ("NASPO ValuePoint") and other Purchasing Entities. The purpose of this Request for Proposals ("RFP") is to establish one or more Master Agreements for the purchase of Parks and Recreation Equipment and Related Services by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the Participating Entity's procurement director and compliance with local statutory and regulatory provisions ("Purchasing Entities").

All suppliers of Parks and Recreation Equipment and Related Services are invited and encouraged to submit a Proposal.

DAS intends to award one or more Master Agreement(s) from this RFP, as in the best interest of the State and the members of the NASPO ValuePoint. The initial term of the Master Agreement(s) is anticipated to be two years with options to renew for additional years, up to a total term of five (5) years, including the initial year term and any extension terms.

1.2 SCHEDULE

The table below represents a tentative schedule of events. All times are listed in Pacific Time. All dates listed are subject to change.

RFP Advertised	*As stated on the cover page*
Pre-Proposal Conference	May 24, 2016
Questions / Requests for Clarification Due	June 23, 2016
Answers / Clarification Issued (approx.)	June 30, 2016
RFP Protest Period Ends	May 13, 2016
Closing (Proposals Due)	*As stated on the cover page*
Evaluation Period (approx..)	August 1 thru 5, 2016
Notice of Intent to Award (approx..)	August 8, 2016
Award Protest Period Ends	Seven calendar days after notice @ 5:00PM

1.3 SINGLE POINT OF CONTACT (SPC)

The SPC for this RFP is identified on the Cover Page, along with the SPC's contact information. Proposer shall direct all communications related to any provision of the RFP, whether about the

technical requirements of the RFP, contractual requirements, the RFP process, or any other provision only to the SPC.

SECTION 2: AUTHORITY, OVERVIEW, AND SCOPE

2.1 AUTHORITY AND METHOD

DAS is issuing this interstate cooperative procurement pursuant to its authority under OAR 125-246-0170(3) and ORS 279A.200, et. seq., specifically including ORS 279A.220.

DAS is using the Competitive Sealed Proposals method, pursuant to ORS 279B.060 and OAR 125-247-0260. DAS may use a combination of the methods for Competitive Sealed Proposals, including optional procedures: a) Competitive Range; b) Discussions and Revised Proposals; c) Revised Rounds of Negotiations; d) Negotiations; e) Best and Final Offers; and f) Multistep Sealed Proposals.

2.2 DEFINITION OF TERMS

For the purposes of this RFP, capitalized words will refer to the following definitions:

2.2.1 General Definitions

Capitalized terms not specifically defined in this document are defined in OAR 125-246-0110.

2.2.2 Project Specific Definitions

"Cost Analysis" means a review and analysis of the cost elements that make up the price of the individual Parks and Recreation Equipment and Related Services.

"Lead State" means the State conducting this cooperative procurement, evaluation, and award. For this RFP, the State of Oregon, acting by and through the Department of Administrative Services, Procurement Services is the Lead State.

"MSRP" means the price at which the manufacturer suggests that retailers sell the product.

"Parks and Recreation Equipment" includes Athletic Equipment, Bleachers, Bundled Playgrounds, Commercial Play Equipment, Dog Parks, Outdoor Fitness Equipment, Independent Play, Recycled Material Equipment, Replacement Parts, Site Furnishings, Shade and Shelter, Surfacing, Swing Sets and Waterpark Equipment, and Barbecue Grills, Barbecue Smoker Grills, Banquet Tables, Benches, Bike Racks, Bleachers, Grandstands, Bus Stop Shelters, Canopy Tents, Cigarette Receptacles, Drinking Fountains, Exercise Equipment, Fire Rings, Flags, Floor Matting, Message Centers, Park Benches, Park Grills, Camp Stoves, Parking Lot Equipment, Patio and Café Furniture, Pet Products, Picnic Tables, Planters, Playground Equipment, Pool Furniture, Sanitation Equipment, Security, Sports Equipment, Tables, Trash Receptacles, Umbrellas and Universal Access.

"UNSPSC" Means The United Nations Standard Products and Services Code (UNSPSC) is a taxonomy of products and services for use in eCommerce. It is a four-level hierarchy coded as an eight-digit number, with an optional fifth level adding two more digits.

2.3 OVERVIEW

2.3.1 Overview and Purpose

In the past, the State of Oregon has had various price agreement and contracts for playground equipment and for equipment for parks and recreation, along with the services necessary to install and maintain that equipment. Those contracts have expired and the State of Oregon has a need for this equipment. DAS .benchmarked its old price agreements for playground equipment that had expired. This process utilized various economic factors for playground equipment. As a result of that effort it was determined that most of those equipment manufacturers offer a wider range of products and services that could be used for a complete procurement solution to the Purchasing Entities. Concurrently, **NASPO ValuePoint** was interested in soliciting a multi-state proposal opportunity for playground equipment solely.

DAS produced a feasibility study proposing three scenarios. a) Playground equipment solely; b) Site Furnishings; and c) Parks and Recreation equipment (All equipment covering and encompassing a park). DAS considered the information provided in the feasibility study and determined that DAS should engage in the multi-state endeavor to expand the parks and recreation equipment to obtain the maximum benefit of delivery, cost, and quality to the Purchasing Entities. DAS decided to participate as the lead State for this multi-state venture.

Due to economic considerations and to maximize local commerce the **NASPO ValuePoint** sourcing team decided to expand into the larger option above Parks and Recreation equipment (encompassing).

The resulting RFP is tailored to obtain the maximum benefit to the Purchasing Entities and obtain the maximum benefit to the Participating States by; a) economic ordering quantities; b) cost, and price breaks (depending on order size); c) socio economic considerations (states may have aspirational targets for Certified Firms, and/or Department of Correction (DOC), and/or Qualified Rehabilitation Facilities (QRF), and/or Disabled Veterans considerations); d) market indices grouping (commodities to obtain the maximum discount); e) indefinite delivery concept (engage the contractor for all products and services that a Participating State may require); f) stabilize contract cost and price by using selecting the most advantageous contractor for every procurement action.

The Master Agreement(s) issued in this RFP will allow Purchasing Entities to buy Parks and Recreation Equipment and Related Services, regardless of manufacturer, in many different categories as described in the spreadsheet attached hereto as Attachment C. Description of Parks and Recreation Equipment and Related Services and Prices. Purchasing Entities will order Parks and Recreation Equipment and Related Services by Purchase Order directly with the successful Proposer(s), as described in the awarded Master Agreement(s). Each Master Agreement will establish the maximum prices for Parks and Recreation Equipment and Related Services available from the Contractor.

Proposers are encouraged to propose options for purchases of Parks and Recreation Equipment and Related Services in quantities that would be more advantageous to a Purchasing Entity, and are invited to recommend Economic Purchase Quantities. An

"Economic Purchase Quantity" is that quantity of Parks and Recreation Equipment and Services at which a significant price break occurs. If there are significant price breaks at different quantity points, this information is desired as well in Attachment C. Proposers are also encouraged to propose pricing for Parks and Recreation Equipment and Services of related types usually purchased together ("Market Basket"). If one or more of these pricing options are offered, a total and a unit price must be proposed for identified Parks and Recreation Equipment and Services See Attachment C.

Attachment C is organized by UNSPSC commodity codes, awards may be made based on Segment, Family, Class Title, or commodity codes. Generally awards will be ranked and no more than four awards will be made to a given code segment or in the best interest of the participating states.

Examples: Thus ' Office Equipment, Accessories and Supplies" are coded as **44**000000, ' Office supplies ' are coded as 44**12**0000 and ' Ink and lead refills ' as 4412**19**00. The class of ' Pen refills ' is 44121**903.**

Code	Example	Description
Segment	**44**000000	Office Equipment, Accessories and Supplies
Family	44**12**0000	Office supplies
Class	4412**19**00	Ink and lead refills
Commodity	44121**903**	Pen refills

General requirements including but not limited to web ordering capabilities, e-procurement, on-site support, and training, reporting, etc, can be found in Attachment B, Exhibit B.

Proposers must provide an MSDS and sample of the Parks and Recreation Equipment, upon request by DAS, during the evaluation period, and DAS may prohibit sale of any Parks and Recreation Equipment from any Master Agreement(s) due to environmental, health, quality and performance concerns.

DAS and the NASPO ValuePoint States intend to provide opportunities to promote economic development by encouraging the use of small business into this solicitation. Also, as part of this solicitation, DAS and NASPO ValuePoint Participants have incorporated requirements which are intended to assist in tracking spend, savings, small business or state-specific requirements, in order to effectively communicate these results. The goal is to provide increased focus on financial accountability and transparency.

Through this solicitation, DAS and NASPO ValuePoint will have the opportunity to reach an audience of Purchasing Entities that seek not only competitive prices, but also best value, performance, convenient ordering, reliable delivery and reliable sustainable products, packaging and transportation practices.

It is anticipated that this RFP may result in Master Agreement awards to multiple

contractors, or a single contractor, at DAS' discretion.

2.3.2 NAPSO ValuePoint Overview and Background

NASPO ValuePoint (formerly known as WSCA-NASPO) is a cooperative purchasing program of all 50 states, the District of Columbia and the territories of the United States. The Program is facilitated by the NASPO Cooperative Purchasing Organization LLC, a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO), doing business as NASPO ValuePoint. NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO ValuePoint 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, the District of Columbia, and territories of the United States. For more information consult the following websites www.naspovaluepoint.org and www.naspo.org.

2.3.3 Permissive Cooperative Procurement

DAS is serving as the Lead State for this procurement and is conducting a permissive cooperative solicitation for the Participating States of NASPO ValuePoint and other participants as defined in the Master Agreement attached hereto as Attachment B and more specifically in the NASPO ValuePoint Master Agreement Terms and Conditions, attached hereto as Attachment B, Exhibit D.

Other entities may elect to participate in this solicitation or the Master Agreement(s) resulting from this solicitation. Use of cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by an Participating Entity's state statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official. Other entities electing to enter into an agreement with Contractor(s) for the Parks and Recreation Equipment and Related Services may negotiate their own state specific terms and conditions through use of a Participating Addendum upon approval by the applicable State Procurement Official as set out in the NASPO ValuePoint Master Agreement Terms and Conditions attached hereto as Attachment B, Exhibit D. A sample Participating Addendum is attached to this RFP as Attachment B, Exhibit A.

In addition to Oregon, the following Participating States have requested to be named in this RFP as potential users of the resulting Master Agreement: North Dakota, Maine, Virginia, South Dakota, Nevada, Montana, Washington, Arkansas, Vermont, Hawaii, and Utah**.** However this is not a guarantee that any State will issue a Participating Addendum. Other entities may become Participating Entities after award of the Master Agreement. State-specific terms and conditions that will govern each state's Participating Addendum are included in Attachment I (State of Oregon); **Attachment J, K, L, M, N, and O,** or may be incorporated into the Participating Addendum after award. Other entities may become Participating Entities after award of the Master Agreement. Some States may have included special or unique terms and conditions for their state that will govern their state Participating Addendum. These terms and conditions are being provided as a courtesy to Proposers to indicate which additional terms

and conditions may be incorporated into the state Participating Addendum after award of the Master Agreement. The Lead State will not address questions or concerns or negotiate other States' terms and conditions. The Participating States shall negotiate these terms and conditions directly with the supplier.

Historical Data

This is a new Master Agreement for the State of Oregon and NASPO ValuePoint. Therefore, annual usage data is not available. No minimum or maximum level of sales volume is guaranteed or implied in awarded agreements made under this RFP.

2.3.4 Purchasing Entity - Contractor Selection Process

Each Participating Entity shall set forth its process for selection of a Contractor for award of a Contract.

SECTION 3: PROCUREMENT REQUIREMENTS AND EVALUATION

3.1 MINIMUM REQUIREMENTS

To be considered for evaluation, Proposal must demonstrate how Proposer meets all requirements of this section:

3.1.1 Minimum Proposer Requirements

Proposer must certify in Attachment D its capability to meet the following requirements:

3.1.1.1 CAPABILITY

Proposer must have the capability to provide the Parks and Recreation Equipment and Related Services under the scope of this RFP.

Participating Entity Only: While the primary purpose of this RFP is to select one or more contractor(s) who can offer the Parks and Recreation Equipment and Related Services for all Participating States, Proposers are permitted to submit a Proposal for one or more State(s). However, if a Proposer elects to submit a Proposal for one or more State(s), then the Proposer must be willing to supply the entire State and will not be allowed to add additional States following award or at any time during the term of the Master Agreement(s) resulting from this RFP, including all optional renewals. Proposers must propose to all RFP Mandatory Requirements. See Attachment A to enter the state(s) for which Proposer intends to submit a Proposal.

DAS and Sourcing Team, with the assistance of the relevant Participating State (or relevant group of Participating States), may evaluate and select a Proposer for award in more limited geographical areas (e.g. single state) where judged to be in the best interest of the State or States involved.

3.1.1.2 RELATIONSHIP WITH MANUFACTURERS

Proposer must be able to meet the product needs of Purchasing Entities. Proposers are encouraged to work closely with all Parks and Recreation Equipment manufacturers to

obtain additional discounts that may be passed on to the Participating States and Purchasing Entities. DAS desires each Proposer to offer a fixed percentage discount ("Discount") in Attachment C for each subcategory offered under the Master Agreement. The final pricing for Parks and Recreation Equipment and Services ("Final Proposed Price") in Attachment C must include Proposer's overhead, profit, and on-site delivery to the Purchasing Entity's location within 60 miles of Contractor's location. DAS encourages Proposers to carefully consider their discount amounts to assure that the pricing is adequate to cover the Proposer's requirements and still provide high quality Parks and Recreation Equipment and Services and also provide a competitive edge for a Master Agreement.

If awarded a Master Agreement, Proposer shall maintain business relationships with a broad spectrum of manufacturers establishing new relationships over time as equipment evolves.

3.1.1.3 EXPERIENCE

Proposer must have 5 years' experience in the sale or servicing of Parks and Recreation Equipment for large volume customers.

3.1.1.4 CERTIFICATION OF NON-DEBARMENT

Proposer must certify that neither the Proposer nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Master Agreement) by any governmental department or agency. If the Proposer cannot certify this statement, attach a written explanation for review by DAS. See Attachment D.

3.2 MINIMUM SUBMISSION REQUIREMENTS

3.2.1 Proposal Format and Quantity

Proposal should follow the format and reference the sections listed in the Proposal Content Requirements section. Responses to each section and subsection should be labeled to indicate the item being addressed. Proposal must describe in detail how requirements of this RFP will be met and may provide additional related information. Proposer shall submit its Proposal without extensive art work, unusual printing or other materials not essential to the utility and clarity of the Proposal.

Proposer shall submit **ONE** original, hard copy on white 8 ½" x 11" Paper, bearing the Proposer's authorized representative's Signature, and one (1) additional hard copies, **however, Attachment C must be submitted through electronic format.**

In addition to the original and hard copies, Proposer shall submit an electronic copy of its Proposal on five separate electronic media devices such as thumb drive, DVD or CD. Proposer's electronic copies of the Proposal by USB drive, DVD, or CD must be formatted using Adobe Acrobat (pdf), Microsoft Word (docx), or Microsoft Excel (xlsx). Some forms may specify a specific format requirement for their submission. Attachment C must be submitted in the approved format (Excel).

If Proposer believes any of its Proposal is exempt from disclosure under Oregon Public Records Law (ORS 192.410 through 192.505), Proposer shall complete and submit the Affidavit of

Trade Secret (Attachment E) and a fully redacted version of its Proposal, clearly identified as the redacted version.

Proposer shall submit its Proposal in a sealed package addressed to the SPC with the Proposer's name and the RFP number clearly visible on the outside of the package.

3.2.2 Authorized Representative

A representative authorized to bind the Proposer shall sign the Proposal. Failure of the authorized representative to sign the Proposal may subject the Proposal to rejection by DAS.

3.3 PROCUREMENT PROCESS

3.3.1 Public Notice

The RFP, including all Addenda and attachments, is published in the Oregon Procurement Information Network (ORPIN) at http://www.orpin.oregon.gov. RFP documents will not be mailed to prospective Proposers.

DAS shall advertise all Addenda on ORPIN. Prospective Proposer is solely responsible for checking ORPIN to determine whether or not any Addenda have been issued. Addenda are incorporated into the RFP by this reference.

3.3.2 Questions / Requests for Clarification

All inquiries, whether relating to the RFP process, administration, deadline or method of award, or to the intent or technical aspects of the RFP must:

- Be emailed to the SPC
- Reference the RFP number
- Identify Proposer's name and contact information
- Be sent by an authorized representative
- Refer to the specific area of the RFP being questioned (i.e. page, section and paragraph number); and
- Be received by the due date and time for Questions/Requests for Clarification identified in the Schedule

3.3.3 Pre-Proposal Conference

A pre-Proposal conference will be held at the date and time listed in the Schedule. Prospective Proposers' participation in this conference is highly encouraged but not mandatory.

The purpose of the pre-Proposal conference is to:

- Provide additional description of the project;
- Explain the RFP process; and
- Answer any questions Proposers may have related to the project or the process.

Statements made at the pre-Proposal conference are not binding upon DAS or any Participating State or Entity or Purchasing Entity. Proposers may be asked to submit questions in Writing. DAS will consider all comments, concerns, questions and protests. If, based upon the

comments, questions, concerns or protests, DAS, in its sole discretion, believes it should make a change to the solicitation documents including the Sample Master Agreement, DAS will post an addendum in ORPIN.

3.3.3.1 Attendance at Pre-Proposal Conference

Attendance at Pre-Proposal Conference is **voluntary:**

A pre-proposal conference will be held on Tuesday, May 24, 2016, at 12:00pm (noon) PST at the Location listed below. Attendance at the conference is optional. Answers to questions asked during the pre-proposal conference will be provided via an addendum posted in http://orpin.oregon.gov/open.dll/welcome

DATE	TIME	LOCATION
May 24, 2016	12:00pm (noon) PST	Department of Administrative Services 1225 Ferry Street SE Salem, OR 97301-4285 Mt Mazama Conference Room Check in with receptionist on 1st floor.
		Dial In Toll Free: 1-800-375-2612 Access Code Passcode (Participant): 201-008-8429

3.3.4 Solicitation Protests

3.3.4.1 Protests to RFP

Prospective Proposer may submit a Written protest of anything contained in this RFP, including but not limited to, the RFP process, Specifications, Scope of Work, and the proposed Master Agreement. This is prospective Proposer's only opportunity to protest the provisions of the RFP, except for protests of Addenda or the terms and conditions of the proposed Master Agreement, as provided below.

3.3.4.2 Protests to Addenda

Prospective Proposer may submit a Written protest of anything contained in the respective Addendum. Protests to Addenda, if issued, must be submitted by the date/time specified in the respective Addendum, or they will not be considered. Protests of matters not added or modified by the respective Addendum will not be considered.

3.3.4.3 Protests must:

- Be emailed to the SPC
- Reference the RFP number
- Identify prospective Proposer's name and contact information
- Be sent by an authorized representative

- State the reason for the protest, including:
  - the grounds that demonstrate how the Procurement Process is contrary to law, Unnecessarily Restrictive, legally flawed, or improperly specifies a brand name; and
  - evidence or documentation that supports the grounds on which the protest is based
- State the proposed changes to the RFP provisions or other relief sought
- Protests to the RFP must be received by the due date and time identified in the Schedule
- Protests to Addenda must be received by the due date identified in the respective Addendum

3.3.4.4 Protest Response

DAS will respond timely to all protests submitted by the due date and time listed in the Schedule. Protests that are not received timely or do not include the required information may not be considered.

3.3.5 Proposal Submission Options

Proposer is solely responsible for ensuring its Proposal is received by the SPC in accordance with the RFP requirements before Closing. DAS is not responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Proposal submitted by any means not authorized will be rejected.

3.3.5.1 Submission through Mail or Parcel Carrier

Proposal may be submitted through the mail or via parcel carrier, and must be clearly labeled and submitted in a sealed envelope, package or box. The outside of the sealed submission must clearly identify the Proposer's name and the RFP number. It must be sent to the attention of the SPC at the address listed on the Cover Page.

3.3.5.2 Submission in Person

Proposal may be hand delivered, and must be clearly labeled and submitted in a sealed envelope, package or box. Proposal will be accepted, prior to Closing, during DAS' normal Monday –Friday business hours of 8:00 am to 5:00 pm Pacific Time, except during State of Oregon holidays and other times when DAS is closed. The outside of the sealed submission must clearly identify the Proposer's name and the RFP number. It must be delivered to the attention of the SPC at the address listed on the Cover Page.

3.3.6 Proposal Modification or Withdrawal

Any Proposer who wishes to make modifications to a Proposal already received by DAS shall submit its modification in one of the manners listed in the Proposal Submission Options section and must denote the specific change(s) to the Proposal submission.

If a Proposer wishes to withdraw a submitted Proposal, it shall do so prior to Closing. The Proposer shall submit a Written notice Signed by an authorized representative of its intent to

withdraw its Proposal in accordance with OAR 125-247-0440. The notice must include the RFP number and be submitted to the SPC.

3.3.7 Proposal Due

Proposal and all required submittal items must be received by the SPC on or before Closing. Proposal received after the Closing will not be accepted. All Proposal modifications or withdrawals must be completed prior to Closing.

Proposals received after Closing are considered LATE and will NOT be accepted for evaluation. Late Proposals will be returned to the respective Proposer or destroyed.

3.3.8 Proposal Rejection

DAS may reject a Proposal for any of the following reasons:

- Proposer fails to substantially comply with all prescribed RFP procedures and requirements, including but not limited to the requirement that Proposer's authorized representative sign the Proposal in ink.
- Proposer fails to meet the responsibility requirements of ORS 279B.110.
- Proposer makes any contact regarding this RFP with State representatives such as State employees or officials other than the SPC or those the SPC authorizes, or inappropriate contact with the SPC.
- Proposer attempts to inappropriately influence a member of the Evaluation Committee.
- Proposal is conditioned on DAS' acceptance of any other terms and conditions or rights to negotiate any alternative terms and conditions that are not reasonably related to those expressly authorized for negotiation in the RFP or Addenda.

3.3.9 Public Record/Confidential or Proprietary Information

All Proposals are public record and are subject to public inspection after DAS issues the Notice of the Intent to Award. If a Proposer believes that any portion of its Proposal contains any information that is a trade secret under ORS Chapter 192.501(2) or otherwise is exempt from disclosure under the Oregon Public Records Law (ORS 192.410 through 192.505), Proposer shall complete and submit the Affidavit of Trade Secret (Attachment E) and a fully redacted version of its Proposal.

Proposer is cautioned that cost information generally is not considered a trade secret under Oregon Public Records Law (ORS 192.410 through 192.505) and identifying the Proposal, in whole, as exempt from disclosure is not acceptable. DAS advises each Proposer to consult with its own legal counsel regarding disclosure issues.

If Proposer fails to identify the portions of the Proposal that Proposer claims are exempt from disclosure, Proposer has waived any future claim of non-disclosure of that information.

3.3.10 Opening of Proposal

There will be no public Opening of Proposals. Proposals received will not be available for inspection until after the evaluation process has been completed and the Notice of Intent to Award

is issued pursuant to OAR 125-247-0630. However, DAS will record and make available the identity of all Proposers after Opening.

3.4 PROPOSAL CONTENT REQUIREMENTS

The Proposal must address each of the items listed in this section and all other requirements set forth in this RFP. Proposer shall describe the Goods to be provided or the Services to be performed or both. A Proposal that merely offers to provide the Goods or Services as stated in this RFP will be considered non-Responsive to this RFP and will not be considered further.

This RFP is designed to provide interested Proposers with sufficient information to submit Proposals meeting minimum requirements, but is not intended to limit a Proposal's content or exclude any relevant or essential data. Proposers are encouraged to expand upon the specifications to add service and value consistent with state requirements. However, please do not include marketing or advertising material in the Proposal. Proposals should be straightforward and address the requests of the RFP. Proposals containing excess marketing or advertising material may receive a lower evaluation score if specific information is difficult to locate.

3.4.1 Proposal Cover Sheet

The Proposer shall complete and submit the Proposal Cover Sheet (Attachment A).

3.4.2 Tax Attestation

The Proposer shall complete and submit the Tax Attestation (Attachment F).

Failure to demonstrate compliance with Oregon Tax Laws may result in a finding of non-responsibility.

3.4.3 Pay Equity Compliance Training and Certification from DAS

This is a legislatively-mandated requirement effective January 1, 2016. This requirement applies to Proposers with 50 or more full-time employees that submit Proposals on State agency contracts valued at $500,000 or more. If applicable, the selected Proposer will be required to submit a copy of an unexpired certificate (held by a current authorized representative of Proposer) issued by DAS documenting completion of the pay equity overview training. Proposer shall submit the certificate with its Proposal.

3.4.4 Company Experience

Describe Proposer's experience. Describe how it meets or exceeds all aspects of the minimum Proposer requirements:

- CAPABILITY - Describe Proposer's capability to provide the Parks and Recreation Equipment and Related Services.
- MANUFACTURER RELATIONSHIP - Describe how Proposer will maintain business relationships with a broad spectrum of manufacturers, and how it will establish new relationships over time as equipment evolves.
- EXPERIENCE - Describe Proposer's experience providing sales and service for Parks and Recreation Equipment. Include large customers and how providing their sales and

services prepared you to provide Parks and Recreation Equipment and Related Services to NASPO ValuePoint and its Purchasing Entities.

3.4.5 Team Experience / Team Structure (Key Persons and their Resumes)

3.4.5.1 Contract Manager

Propose the person who will be assigned to manage the Master Agreement. This person will be the primary point of contract for the Master Agreement Administrator for the duration of the Master Agreement.

- Describe why this person is being proposed to be the Contract Manager
- Include a current resume

3.4.5.2 Account Manager

Propose the person who will be assigned to lead the account team that serves the needs of the Purchasing Entities (this may or may not be the same person as the Contract Manager).

- Describe why this person is being proposed to be the Account Manager
- Include a current resume (if a different person than above)

3.4.5.3 Account Team

Describe the structure of the account team that will serve the needs of the Purchasing Entities. It is critical that the process for a Purchasing Entity to receive help is simple. There may be a single point of contact for the entire State or a team that manages different areas.

- Describe why the team is structured this way and why this structure is the best fit for Oregon
- Specifying the members of the account team and providing their resumes is optional

3.4.6 References

Provide 3 references from current or former client firms for similar projects performed for any clients within the last 5 years. References must verify the quality of previous, related sales and services.

DAS may check to determine if references provided support Proposer's ability to comply with the requirements of this RFP. DAS may use references to obtain additional information, break tie scores, or verify any information needed. DAS may contact any reference (submitted or not) to verify Proposer's qualifications.

Proposer shall send the Reference Check Form (Attachment G) to its references. Reference forms must be completed by the reference, returned to the Proposer and submitted with the Proposal.

3.4.7 Description of Parks and Recreation Equipment and Related Services

In order to offer Purchasing Entities the widest breadth possible of Parks and Recreation

Equipment and Related Services, Proposers (including authorized dealers, and manufacturers) may propose to provide any combination of Parks and Recreation Equipment, or on individual sub categories set forth on Attachment C.

Manufacturer and Product Availability: Proposer must complete and return an Attachment C, which must indicate that Proposer can provide the Goods relating to one or more sub categories of The Goods and/or services (including associated warranties) from at least one manufacturer, or equal, on the list specified in Attachment C. Attachment C includes the framework for pricing but each subcategory line item may have multiple pieces of information and pricing, depending upon the number of manufacturers offered for the particular line item and the type of the line item (for example, OEM Parts, Aftermarket Parts, Rebuilt Parts, etc.). Proposers shall submit the following:

- Itemized prices, listed discounts and other information as called for in Attachment C; and
- Literature for the Parks and Recreation Equipment and Related Services proposed.

3.4.8 Price Proposal

Proposers are encouraged to work closely with the Parks and Recreation Equipment manufacturers to obtain additional discounts that may be passed on to the Participating States and Purchasing Entities. DAS desires each Proposer to offer a fixed percentage discount ("Discount") in Attachment C for each subcategory offered under the Master Agreement. The final pricing for Parks and Recreation Equipment and Services ("Final Proposed Price") in Attachment C must include Proposer's overhead, profit, and on-site delivery to the Purchasing Entity's location within 60 miles of Contractor's location. DAS encourages Proposer to carefully consider its discount amounts to assure that the pricing is adequate to cover the Proposer's requirements and still provide high quality Parks and Recreation Equipment and Related Services and also provide a competitive edge for a Master Agreement.

Proposer shall submit its Price Proposal per the instruction in Attachment C, with the required data and in the same format as RFP. Proposals must include pricing on Attachment C for all Parks and Recreation Equipment and Services from Proposers completed Attachment C of the RFP "the Excel Spreadsheet").

DAS wishes to offer Purchasing Entities a "catalog" approach to purchasing the Parks and Recreation Equipment and Services. This catalog approach will list Contractor's Parks and Recreation Equipment and Services in a master index of all Parks and Recreation Equipment and Services, which will act as a single starting point for Purchasing Entities to locate the Parks and Recreation Equipment and Services available under the resulting Master Agreement(s).

3.4.9 Certification of Non-Debarment

Proposer shall submit a certification of non-debarment, stating that neither the Proposer nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Master Agreement) by any governmental department or agency. If the Proposer cannot certify this statement, attach a

written explanation for review by DAS. See Attachment D.

3.4.10 Affidavit of Trade Secret

If a Proposer believes that any portion of its Proposal contains any information that is a trade secret under ORS Chapter 192.501(2) or otherwise is exempt from disclosure under the Oregon Public Records Law (ORS 192.410 through 192.505), Proposer shall complete and submit the Affidavit of Trade Secret (Attachment E) and a fully redacted version of its Proposal.

3.4.11 Sample Master Agreement and Participating Addendum

Along with its Proposal, Proposer shall submit exceptions, if any, to the terms and conditions of the Sample Master Agreement or any Participating Addendum and provide Proposer's alternative language.

3.4.12 Promotion of the NASPO ValuePoint Master Agreement

The NASPO ValuePoint Master Agreement Terms and Conditions include program provisions governing participation in the cooperative, reporting and payment of administrative fees, and marketing/education relating to the NASPO ValuePoint cooperative procurement program. In this regard, Proposer must submit responses to the following along with its Proposal:

a. Briefly describe how Proposer intends to promote the use of the Master Agreement.

b. Knowing that state procurement officials (CPO) must permit use of the Master Agreement in their state, how will Proposer integrate the CPO's permission into Proposer's plan for promoting the agreement?

c. Public entities are sensitive to "scope" issues, that is, whether performance is within the intended scope of the solicitation as awarded. In the context of Proposer's method of promoting agreements of this nature, how would Proposer clarify any questions regarding the scope the agreement with respect to any potential order?

d. How will Proposer manage due dates for administrative fee payments and usage reports?

e. Through its Cooperative Development Coordinators and Education & Outreach team, NASPO ValuePoint assists Lead States by engaging vendors in strategies aimed at promoting master agreements. What opportunities and/or challenges does Proposer see in working with NASPO ValuePoint staff in this way?

3.5 EVALUATION PROCESS

3.5.1 Responsiveness and Responsibility Determination

Proposals received prior to Closing will be reviewed for Responsiveness to all RFP requirements including compliance with Minimum Requirements section and Proposal Content Requirements section. If the Proposal is unclear, the SPC may request clarification from Proposer. However, clarifications may not be used to rehabilitate a non-Responsive Proposal. If the SPC finds the Proposal non-Responsive, the Proposal may be rejected, however, DAS may waive mistakes in accordance with OAR 125-247-0470.

At any time prior to award, DAS may reject a Proposer found to be not Responsible.

3.5.2 Technical and Management Proposal Scoring

Proposals that satisfy all Pass/Fail requirements specified in section 3.4 will proceed through a Best Value Analysis. "Best Value" is determined by reviewing and analyzing various factors related to the Proposer and proposed Parks and Recreation Equipment and Services pricing, to reach a conclusion that the pricing is fair and reasonable. Parks and Recreation Equipment and Services that are a Best Value are not necessarily the lowest priced Parks and Recreation Equipment and Related Services. A committee of at least 3 individuals ("Evaluation Committee") will conduct the Best Value Analysis under section 4, to evaluate, score and rank each Proposal. As part of the Best Value Analysis, the Evaluation Committee will review the information provided by each Proposer as requested under section 3.4 and section 3.5. If the Proposal is unclear, the Evaluation Committee may ask Proposer to provide clarification.

3.5.3 References

All reference questions are scored by the reference on a scale of 0 to 10. All reference question scores from all submitted reference forms Attachment G will be averaged to determine the reference score.

3.5.4 Evaluation Criteria

Each Proposer must provide detailed responses in the Proposal to the line items under section 3.4, to the extent offered by the Proposer, and must include a completed Attachment C with the Proposal, as described under section 3.4.11. If a particular line item under section 3.4 is not included in the Proposal, Proposer must identify the specific number and indicate that the line item it is not applicable to the Proposal. The Evaluation Committee will conduct a Best Value Analysis of the Parks and Recreation Equipment and Services offered, taking into account the responses provided in each Proposal for each of the following:

1. Lead time (must reflect information provided in Attachment C).

2. Other Goods or Services Offered: If Proposer included other products on Attachment C as "equal to" those listed by DAS, describe their potential benefit to Purchasing Entities.

3. Free Services: Describe any services Proposer will provide to a Purchasing Entity at no charge.

4. Electronic Ordering and Payment: Describe the proposed electronic ordering and payment options. If electronic ordering and payment are not currently offered, how soon will it be operational and available to Purchasing Entities?

5. Service: A detailed description of the Proposer's field service or support network, skill levels, organization to perform warranty and location of service facility, if any. The experience of the Proposer's aftermarket support organization will be evaluated. For this purpose, description of Proposer's support organization and experience with adequate references will be required. The experience and qualifications of the Proposer's support staff will also be considered. The Proposer's ability to provide spare parts to adequately address the operation of the proposed vehicle in transit properties operations that are similar to the State will be considered.

6. Delivery Services: Describe the proposed delivery services and policies (days ARO, in-stock delivery time, out-of-stock delivery time, backorders, etc.). The degree to which the Proposal will meet or exceed the Purchasing Entity's delivery schedule requirements stated in the RFP.

7. Warranty Provisions: Provide complete warranty information for all proposed goods, including available extended warranty options. Provide information on how proposed services will comply with the warranty provisions in the sample Master Agreement.

8. Quality Assurance: Quality Control Program and organization. The Proposal must address the following:

(1) Company Organizational Chart (include all key positions)

(2) Quality control documentation/design and control procedures

(3) Ongoing tests and inspections, including final inspection

(4) Compliance certification with recognized entity

(5) Applicable discounts and incremental pricing options;

(6) Shipping costs;

(7) Delivery process and service levels;

(8) Installation, maintenance and repair service levels;

(9) Applicable warranties;

(10) Contractor's past performance record through reference checks;

(11) Contractor's service area;

(12) Inventory levels;

(13) submit a Price comparison of the current market value of Parks and Recreation Equipment and Related Services similar to the Parks and Recreation Equipment and Related Services;

(14) Submit a Price comparison to pricing in GSA contracts and other federal price agreements; Best Value pricing is typically lower than GSA pricing;

(15) Submit a Price comparison to past purchases of Parks and Recreation Equipment and Related Services similar to the Parks and Recreation Equipment and Related Services, taking the inflation rate into account;

(16) Submit a brief summary of Proposers knowledge of 'Children's Safe Products Act'" and conformance to Safety Improvement Act of 2008, P.L. 110-314, 122 Stat. 3016," Proposer is to describe its conformance to those requirements"

Cost and price analysis

The team shall perform a Cost analysis through an element-by-element examination of the estimated or actual cost of proposed Parks and Recreation Equipment and Related Services to determine whether the supplier's costs are in line with what reasonably economical and efficient performance should cost. Some of the cost elements examined for fair and reasonableness are materials' costs, labor costs, equipment and overhead;

1. Comparison of pricing to MSRP;
2. Market conditions and competition levels;
3. General economic conditions;
4. Life cycle costing including expected life, salvage value and discounted total cost of ownership.

3.5.5 Public Record/Confidential or Proprietary Information

All Proposals are public record and are subject to public inspection after DASPS issues the Notice of the Intent to Award. If a Proposer believes that any portion of its Proposal contains any information that is a trade secret under ORS Chapter 192.501(2) or otherwise is exempt from disclosure under the Oregon Public Records Law (ORS 192.410 through 192.505), Proposer shall complete and submit the Affidavit of Trade Secret (Attachment E) and a fully redacted version of its Proposal.

Proposer is cautioned that cost information generally is not considered a trade secret under Oregon Public Records Law (ORS 192.410 through 192.505) and identifying the Proposal, in whole, as exempt from disclosure is not acceptable. DASPS advises each Proposer to consult with its own legal counsel regarding disclosure issues.

If Proposer fails to identify the portions of the Proposal that Proposer claims are exempt from disclosure, Proposer has waived any future claim of non-disclosure of that information.

3.6 EVALUATION PROCESS

3.6.1 Responsiveness Determination

Proposals received prior to Closing will be reviewed for completeness and compliance with submission Content Requirements section. If the Proposal is unclear, Proposer may be asked to provide clarification. Proposals meeting all requirements will be evaluated by an Evaluation Committee as described below:

3.6.2 Evaluation Criteria

Proposals meeting the requirements of the submission Content Requirements section will be evaluated by a committee.

DAS may request clarification to gain understanding of Proposals. A response to a clarification must be to clarify or explain portions of the already submitted Proposal and may not contain new information not included in the original Proposal. Pricing and Payment Structure.

3.6.3 Scoring (Best Value Factors)

Each Proposer must provide detailed responses in the Proposal to the line items under section 3.5.4, to the extent offered by the Proposer, and must include a completed Attachment C with the Proposal to the extent of their products, as described under section 3.5. If a particular line item under section 3.5.4 is not included in the Proposal, Proposer must identify the specific number and indicate that the line item it is not applicable to the Proposal. The Evaluation Committee will conduct a Best Value Analysis of the Parks and Recreation Equipment and Services offered,

taking into account the responses provided in each Proposal for each of the following:

Lead time (must reflect information provided in Attachment C).

Other Goods or Services Offered: If Proposer included other products on Attachment C as "equal to" those listed by DAS, describe their potential benefit to Purchasing Entities.

Free Services: Describe any services Proposer will provide to an Purchasing Entity at no charge.

Electronic Ordering and Payment: Describe the proposed electronic ordering and payment options. If electronic ordering and payment are not currently offered, how soon will it be operational and available to Purchasing Entities?

Service: A detailed description of the Proposer's field service or support network, skill levels, organization to perform warranty and location of service facility, if any. The experience of the Proposer's aftermarket support organization will be evaluated. For this purpose, description of Proposer's support organization and experience with adequate references will be required. The experience and qualifications of the Proposer's support staff will also be considered. The Proposer's ability to provide spare parts to adequately address the operation of the proposed vehicle in transit properties operations that are similar to the State will be considered.

Delivery Services: Describe the proposed delivery services and policies (days ARO, in-stock delivery time, out-of-stock delivery time, backorders, etc.). The degree to which the Proposal will meet or exceed the Purchasing Entity's delivery schedule requirements stated in the RFP.

Warranty Provisions: Provide complete warranty information for all proposed goods, including available extended warranty options. Provide information on how proposed services will comply with the warranty provisions in the sample Master Agreement.

Quality Assurance: Quality Control Program and organization. The Proposal must address the following:

- Company Organizational Chart (include all key positions)
- Quality control documentation/design and control procedures
- Ongoing tests and inspections, including final inspection
- Compliance certification with recognized entity
- Applicable discounts and incremental pricing options;
- Shipping costs;
- Delivery process and service levels;
- Installation, maintenance and repair service levels;
- Applicable warranties;
- Contractor's past performance record through reference checks;
- Contractor's service area;
- Inventory levels;
- Price comparison of the current market value of Parks and Recreation Equipment and Related Services similar to the Parks and Recreation Equipment and Related Services;
- Price comparison to pricing in GSA contracts and other federal price agreements; Best Value pricing is typically lower than GSA pricing;
- Price comparison to past purchases of Parks and Recreation Equipment and Related

Services similar to the Parks and Recreation Equipment and Related Services, taking the inflation rate into account;

- Cost analysis through an element-by-element examination of the estimated or actual cost of proposed Parks and Recreation Equipment and Related Services to determine whether the supplier's costs are in line with what reasonably economical and efficient performance should cost. Some of the cost elements examined for necessity and reasonableness are materials' costs, labor costs, equipment and overhead;
- Comparison of pricing to MSRP;
- Market conditions and competition levels;
- General economic conditions;
- Life cycle costing including expected life, salvage value and discounted total cost of ownership.

3.6.4 SCORING AND RANKING

The maximum number of points available for award to each Proposal is 1,000. The Evaluation Committee will rank each Proposal based upon the total points awarded. A higher score means that the Proposal offers a Best Value relative to Proposals with lower scores. The Evaluation Committee will determine the percentage of the total points available for award by evaluating the Best Value factors against the following standards:

90% to 100%: The Proposal overall is outstanding for this criterion and exceeds the minimum requirements in several respects; the Evaluation Committee did not identify any limitations or concerns.

80% to 89%: The Proposal overall is above average for this criterion and exceeds the minimum requirements in some respects; the Evaluation Committee identified only minor limitations or concerns.

70% - 79%: The Proposal overall is acceptable for this criterion and meets the minimum requirements; the Evaluation Committee identified some significant limitations or concerns.

60% - 69%: The Proposal overall is marginal to fair for this criterion but does not meet the minimum requirements in some respects; the Evaluation Committee identified a number of significant limitations or concerns.

50% – 59%: The Proposal overall is inadequate for this criterion and does not meet a substantial portion of the minimum requirements; the Evaluation Committee identified a substantial number of significant limitations or concerns.

3.7 DETERMINATION

DAS may determine Apparent Successful Proposer at the conclusion of the evaluation, or DAS may conduct additional rounds of evaluation if in the best interest of NASPO ValuePoint and its Purchasing Entities. Additional rounds of evaluation may consist of, but will not be limited to:

- Establishing a Competitive Range
- Presentations/Demonstrations/Additional Submittal Items
- Interviews

- Best and Final Offer

3.8 PREFERENCES

3.8.1 Reciprocal Preference

For evaluation purposes per OAR 125-246-0310, DASPS shall add a percent increase to each out-of-state Proposer's Proposal price that is equal to the percent preference, if any, given to a Resident Offeror of the Proposer's state.

3.8.2 Recycled Materials

In comparing Goods from two or more Proposers, if at least one Proposer offers Goods manufactured with Recycled Materials, and at least 1 Proposer does not, DAS will select the Proposer offering Goods manufactured from Recycled Materials if each of the conditions specified in ORS 279A.125 (2) exists following any adjustments made to the price of the Goods according to any applicable reciprocal preference.

3.9 RANKING OF PROPOSERS

SPC will rank all Proposers. The SPC will total the final average score (calculated by totaling the points awarded by each Evaluation Committee member and dividing by the number of members) together with references, and final cost. After each applicable preference has been applied, SPC will determine rank order for each respective Proposal and Proposer, with the highest score receiving the highest rank, and successive rank order determined by the next highest score See table below.

Ranking of proposers							
Proposer	MAX Point Available	max points for reference	References	Evaluation	Total point Given	Total Points	RANK
4	1000.00	10.00	10.00	100%	1000.00	1,000	1
2	1000.00	10.00	10.00	98%	980.00	980	2
10	1000.00	10.00	3.00	54%	540.00	54%	No Award

SECTION 4: AWARD AND NEGOTIATION

4.1 AWARD NOTIFICATION PROCESS

4.1.1 Award Consideration

DAS, if it awards a Master Agreement(s), shall award a Master Agreement to the highest ranking Responsible Proposer(s) based upon the scoring methodology and process described in Section 3. DAS may award one or more Master Agreement or Master Agreement(s) for less than the full Scope defined in this RFP.

4.1.2 Intent to Award Notice

DAS will notify all Proposers in Writing that DAS intends to award a Master Agreement to the selected Proposer(s) subject to successful negotiation of any negotiable provisions.

4.2 INTENT TO AWARD PROTEST

4.2.1 Protest Submission

An Affected Proposer shall have 7 calendar days from the date of the intent to award notice to file a Written protest.

A Proposer is an Affected Proposer only if the Proposer would be eligible for Master Agreement award in the event the protest was successful and is protesting for one or more of the following reasons as specified in ORS 279B.410:

- All higher ranked Proposals are non-Responsive.
- DAS has failed to conduct an evaluation of Proposals in accordance with the criteria or process described in the RFP.
- DAS abused its discretion in rejecting the protestor's Proposal as non-Responsive
- DAS' evaluation of Proposals or determination of award otherwise violates ORS Chapter 279B or ORS Chapter 279A.

If DAS receives only one Proposal, DAS may dispense with the intent to award protest period and proceed with Master Agreement Negotiations and award.

4.2.1.1 Protests must:

- Be delivered to the SPC via email
- Reference the RFP number
- Identify prospective Proposer's name and contact information
- Be signed by an authorized representative
- Specify the grounds for the protest
- Be received within 7 calendar days of the intent to award notice

4.2.2 Response to Protest

DAS will address all timely submitted protests within a reasonable time and will issue a Written decision to the respective Proposer. Protests that do not include the required information may not be considered by DAS.

4.3 APPARENT SUCCESSFUL PROPOSER SUBMISSION REQUIREMENTS

4.3.1 Insurance

Prior to execution of the Master Agreement, the apparent successful Proposer shall secure and demonstrate to DAS proof of insurance coverage meeting the requirements identified in the RFP or as otherwise negotiated.

Failure to demonstrate coverage may result in DAS terminating Negotiations and commencing Negotiations with the next highest ranking Proposer. Proposer is encouraged to consult its insurance agent about the insurance requirements contained in Insurance Requirements (Exhibit C of Attachment B) prior to Proposal submission.

4.3.2 Taxpayer Identification Number

The apparent successful Proposer shall provide its Taxpayer Identification Number (TIN) and backup withholding status on a completed W-9 form if either of the following applies:

- When requested by DAS (normally in an intent to award notice), or
- When the backup withholding status or any other information of Proposer has changed since the last submitted W-9 form, if any.

DAS will not make any payment until DAS has a properly completed W-9.

4.3.3 Business Registry

If selected for award, Proposer shall be duly authorized by the State of Oregon to transact business in the State of Oregon before executing the Master Agreement. The selected Proposer shall submit a current Oregon Secretary of State business registry number, or an explanation if not applicable.

All Corporations and other business entities (domestic and foreign) must have a Registered Agent in Oregon. See requirements and exceptions regarding Registered Agents. For more information, see Oregon Business Guide, How to Start a Business in Oregon and Laws and Rules. The titles in this subsection are available at the following Internet site: http://www.filinginoregon.com/index.htm.

4.3.4 NASPO ValuePoint Administrative Fee and Reporting Requirements

To be eligible for award, Proposer agrees to pay a NASPO ValuePoint administrative fee as specified in Attachment B, Exhibit D, Section 6 of the NASPO ValuePoint Master Agreement Terms and Conditions. Moreover, specific summary and detailed usage reporting requirements are prescribed by Attachment B, Exhibit D Section 7 of NASPO ValuePoint Master Agreement Terms and Conditions.

Proposer shall identify the person responsible for providing the mandatory usage reports. This information must be kept current during the term of the Master Services Agreement. The Contractor will be required to provide reporting contact within 15 days of Master Agreement execution.

4.3.5 NASPO ValuePoint eMarket Center

To be eligible for award, the Proposer agrees, by submission of a Proposal, to cooperate with NASPO ValuePoint and SciQuest (and any authorized agent or successor entity to SciQuest) to integrate its presence in the NASPO ValuePoint eMarket Center either through an electronic catalog (hosted or punchout site) or unique ordering instructions. Refer to Exhibit D, Section 9, NASPO ValuePoint Master Agreement Terms and Conditions for the prescribed requirements.

Those terms and conditions require as a minimum that the Offeror agree to participate in development of ordering instructions. Proposer shall respond how they can support the eMarket Center in the Proposal through either a hosted catalog or punchout solution.

4.4 MASTER AGREEMENT NEGOTIATION

4.4.1 Negotiation

By submitting a Proposal, Proposer agrees to comply with the requirements of the RFP, including the terms and conditions of the Sample Master Agreement (Attachment B and all related Exhibits), with the exception of those terms reserved for negotiation. Proposer shall review the attached Sample Master Agreement and note exceptions to the terms and provisions in its Proposal. Subject to negotiation of the terms and provisions listed below as Negotiable Items, the State intends to enter into a Master Agreement with the successful Proposer substantially in the form set forth in Sample Master Agreement (Attachment B). It may be possible to negotiate some provisions of the final Master Agreement; however, many provisions cannot be changed. Proposer is cautioned that the State of Oregon and NASPO ValuePoint believe modifications to the standard provisions constitute increased risk and increased cost to the State, NASPO ValuePoint and its Purchasing Entities. Therefore, DAS will consider the scope of requested exceptions in the evaluation of Proposals.

Any Proposal that is conditioned upon DAS' acceptance of any other terms and conditions may be rejected. Any subsequent negotiated changes are subject to prior approval of the Oregon Department of Justice.

This section highlights particular terms and conditions of NASPO ValuePoint Master Agreement Terms and Conditions, although Offerors will be bound to all the terms and conditions when executing a Master Agreement as shown in Attachment B. Offerors must include a statement in their Proposal that they have read and understand all of the terms and conditions as shown in the Master Agreement (Attachment B).

4.4.2 Negotiable Items

The following terms and conditions in the Sample Master Agreement are negotiable:

- Term of Master Agreement (Length of Contract) Extensions
- Descriptions of the Parks and Recreation Equipment and Related Services
- Specifications
- Park and Recreation Equipment Warranties
- Prices or Consideration
- Indemnity
- Limitation of Liability
- Insurance
- Participating Addendum(s)

4.4.3 Final Agreement

In the event that the parties have not reached mutually agreeable terms within 14 calendar days, DAS may terminate Negotiations and commence Negotiations with the next highest ranking Proposer.

4.5 PARTICIPATING ADDENDUM NEGOTIATION

As a courtesy to Proposers, some Participating State specific Terms and Conditions are provided in Attachments to this RFP. These terms and conditions are being provided as a courtesy to proposers to indicate which additional terms and conditions may be incorporated into the state Participating Addendum after award of the Master Agreement. The Lead State will not address questions or concerns or negotiate other States' terms and conditions. The Participating States shall negotiate these terms and conditions directly with the supplier.

4.6 CERTIFIED FIRM PARTICIPATION

Pursuant to Oregon Revised Statute (ORS) Chapter 200, and as a matter of commitment, DAS encourages the participation of disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business and business enterprises owned by service-disabled veterans in all contracting opportunities. DAS also encourages joint ventures or subcontracting with disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business and business enterprises owned by service-disabled veterans.

If the Master Agreement results in subcontracting opportunities, the successful Proposer may be required to submit a completed Certified Small Business Outreach Plan (Attachment H) prior to execution.

4.7 GOVERNING LAWS AND REGULATIONS

This RFP is governed by the laws of the State of Oregon. Venue for any administrative or judicial action relating to this RFP, evaluation and award is the Circuit Court of Marion County for the State of Oregon; provided, however, if a proceeding must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event shall this Section be construed as a waiver by the State of Oregon 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, to or from any Claim or from the jurisdiction of any court.

4.8 OWNERSHIP/PERMISSION TO USE MATERIALS

All Proposals submitted in response to this RFP become the Property of DAS. By submitting an Proposal in response to this RFP, Proposer grants the State a non-exclusive, perpetual, irrevocable, royalty-free license for the rights to copy, distribute, display, prepare derivative works of and transmit the Proposal solely for the purpose of evaluating the Proposal, negotiating an Agreement, if awarded to Proposer, or as otherwise needed to administer the RFP process, and to fulfill obligations under Oregon Public Records Law (ORS 192.410 through 192.505). Proposals, including supporting materials, will not be returned to Proposer unless the Proposal is submitted late.

4.9 CANCELLATION OF RFP; REJECTION OF PROPOSALS; NO DAMAGES.

Pursuant to ORS 279B.100, DAS may reject any or all Proposals in-whole or in-part, or may cancel this RFP at any time when the rejection or cancellation is in the best interest of the State or DAS, as determined by DAS. Neither the State nor DAS is liable to any Proposer for any loss or expense caused by or resulting from the delay, suspension, or cancellation of the RFP, award, or rejection of any Proposal.

4.10 COST OF SUBMITTING A PROPOSAL

Proposer shall pay all the costs in submitting its Proposal, including, but not limited to, the costs to prepare and submit the Proposal, costs of samples and other supporting materials, costs to participate in demonstrations, or costs associated with protests.

4.11 STATEWIDE E-WASTE/RECOVERY POLICY

If applicable, Proposer shall include information in its Proposal that demonstrates compliance with the Statewide E-Waste/Recover Policy effective July 1, 2012.

4.12 RECYCABLE PRODUCTS

Proposer shall use recyclable products to the maximum extent economically feasible in the performance of the Services or Work set forth in this document and the subsequent Master Agreement. (ORS 279B.025)

Attachment A
Parks and Recreation Equipment and Related Services

PROPOSAL COVER SHEET
CERTIFICATION

This form must be completed and returned with the Proposal in response to Section 3.4.1 of this RFP. Failure to submit this form with the Proposal may result in disqualification for non-responsiveness.

1. *Proposer/Firm Information:*

Proposer/Firm Name (Printed): _____

Address: _____

_____

_____

Citizenship, if applicable: Non-resident alien ☐ Yes ☐ No

Business Designation (Check One):

☐ Professional Corporation ☐Partnership ☐Ltd. Partnership Ltd.
☐ Liability Company ☐Ltd. Liability Partnership ☐Sole Proprietorship
☐ Other _____

Federal Tax ID #: _____

State Tax #: _____

Secretary of State Corporations Division Registration #: _____

2. *Identify Individual with Authority to Obligate the Proposer Contractually:*

Name/Title: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

3. *Identify Person Authorized to Negotiate the Master Agreement on Behalf of Firm:*

Name/Title: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

4. *Identify Person Authorized to be Contacted for Clarification of Proposal:*

Name/Title: _____

Telephone Number: _____ Fax Number: _____

E-mail Address: _____

5. *CONTRACTOR CERTIFICATION CLAUSES IN RESPONSE TO RFP*

a. Proposer understands and accepts the requirements of this RFP. By Proposal submission, the Successful Proposer(s) agree(s) to be bound by the Master Agreement attached hereto as Attachment B as modified by Addendum, except for those terms and conditions that DAS PS has reserved for negotiation in the RFP.

b. Proposer acknowledges receipt of any and all Addendum to this RFP.

c. Proposal is FIRM for 180 days following the Closing.

d. If awarded a Master Agreement, Proposer agrees to perform the scope of work and meet the performance standards set forth in the final negotiated scope of work of the Contract.

e. Proposer does not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation or national origin. Nor has Proposer or will Proposer discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business that is certified under ORS 200.055.

f. Proposer certifies that, to the best of its knowledge, there exists no actual or potential conflict between the business or economic interests of Proposer, its employees, or its agents, on the one hand, and the business or economic interests of the State, on the other hand, arising out of, or relating in any way to, the subject matter of the RFP. Proposer shall provide prompt written notification to the State of any change occurring with respect to Proposer's business or interests which is reasonably likely to result in (or has resulted in) an actual or potential conflict between the business or economic interests of the Proposer and those of the State, arising out of, or relating in any way to, the subject matter of the RFP. In its notice, Proposer will describe the nature of such actual or potential conflict of interest or remuneration in question in reasonable detail.

g. Proposer and Proposer's employees and agents are not included on the list titled "Specially Designated Nationals and Blocked Persons" maintained by the Office of Foreign Assets Control of the United States Department of the Treasury and currently found at http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf.

h. Proposer certifies that all contents of the Proposal (including any other forms or documentation, if required under this RFP) and this Proposal Certification Sheet, are truthful and accurate and have been prepared independently from all other Proposers, and without collusion, fraud, or other dishonesty. Proposer acknowledges these certifications are in addition to any certifications required in the Master Agreement Attachment B at the time of Master Agreement execution.

i. **Participating Entity Only:** While the primary purpose of this RFP is to select one or more contractor(s) who can offer the Parks and Recreation Equipment and Related Services for all Participating States, Proposers are permitted to submit a Proposal for one or more State(s). However, if a Proposer elects to submit a Proposal for one or more State(s), then the Proposer must

be willing to supply the entire State and will not be allowed to add additional States following award or at any time during the term of the Master Agreement(s) resulting from this RFP, including all optional renewals. Proposers must propose to all RFP Mandatory Requirements.

I, the undersigned, certify that I am duly authorized to legally bind the Proposer to the provisions of the RFP and the Master Agreement.

Authorized Signature **Date**

Typed or Printed Name and Title of Signatory

Attachment B

Sample Master Agreement

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

FOR

Parks and Recreation Equipment and Related Services

MASTER AGREEMENT
WITH

_____

Master Agreement number DASPS-XXXX-16

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

Recitals

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

Agreement

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

Section 1 –Master Agreement

1.1 Parties

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

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

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

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

1.2 Ordering Process

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

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

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

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

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

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

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

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

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

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

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

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

1.3 Prices

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

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

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

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

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

1.5 Term of Master Agreement

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

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

1.5.3 Termination of this Master Agreement also terminates ordering instruments in which the Contractor is not legally required to deliver specific quantities of Goods or Services at specific times. The intent of this paragraph is to terminate what is commonly known as a blanket purchase order (an order that may contain detail of the Goods, but actual sale of Goods is made by periodic releases that specify a date for delivery of specific Goods).

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

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

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

1.7 Miscellaneous

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

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

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

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

i. Amendments to extend the term of the Master Agreement for additional periods;

ii. Amendments to add new Goods or Services within the scope of the Master Agreement, if any, at the prices specified within the Master Agreement or at a discount to these prices, or amendments to delete Goods or Services; or

iii. Amendments to increase or decrease prices for the Goods or Services.

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

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

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

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

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

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

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

1.7.10 Intended Beneficiaries: DAS PS and Contractor are the only parties to this Master Agreement and are the only parties entitled to enforce its terms. Nothing in this Master Agreement

gives, is intended to give, or will be construed to give or provide, any benefit or right, whether directly, indirectly, or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Master Agreement. Purchasing Entities from the member states of NASPO ValuePoint are intended beneficiaries of this Master Agreement.

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

1.7.12 Certification of Compliance with Tax Laws: By signature on this Master Agreement for Contractor, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Contractor and that Contractor is, to the best of the undersigned's knowledge, not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150 and 403.200 to 403.250 and ORS chapters 118, 314, 316, 317, 318, 321 and 323 and the elderly rental assistance program under ORS 310.630 to 310.706 and local taxes administered by the Department of Revenue under ORS 305.620.

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

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

Section 2 – Standard Terms for Contracts Under This Master Agreement

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

2.1.1 Participating Addendum,
2.1.2 Master Agreements, less its exhibits;
2.1.3 Exhibit D, NASPO Master Terms and Conditions

2.1.4 Exhibit E, Federal Terms and Conditions
2.1.5 Exhibit B, Parks and Recreation Equipment
2.1.6 Exhibit F, Specifications
2.1.7 Exhibit C, Insurance
2.1.8 Exhibit A, Participating Addendum form
2.1.9 Purchase Order issued against the Master Agreement

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

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

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

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

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

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

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

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

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

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

2.8 Representations and Warranties:

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

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

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

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

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

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

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

2.9 Compliance with Applicable Law and Standards:

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

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

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

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

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

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

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

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

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

2.14 Funds Available and Authorized; Payments: Purchasing Entity's payment obligations under this Contract are conditioned upon Purchasing Entity receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Purchasing Entity, in the

exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract. At the time the ordering instrument was issued, Purchasing Entity had sufficient funds available and authorized to make payments under this Contract.

2.16 Independent Contractor Status; Responsibility for Taxes and Withholding:

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

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

2.17 Indemnification:

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

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

2.18 Breach:

2.18.1 BY CONTRACTOR: Contractor breaches this Contract if:

2.18.1.1 Contractor institutes or has instituted against it insolvency, receivership or bankruptcy proceedings, makes an assignment for the benefit of creditors, or ceases doing business on a regular basis;

2.18.1.2 Contractor no longer holds a license or certificate that is required for Contractor to perform Contractor's obligations under this Contract; or

2.18.1.3 Contractor commits any breach of any covenant, warranty, obligation or certification under this Contract, provided however that Contractor may cure the breach within the period specified in Purchasing Entity's notice of default when Purchasing Entity determines the breach is curable by Contractor.

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

2.18.2.1 Purchasing Entity fails to pay Contractor any amount pursuant to the terms of this Contract, and Purchasing Entity fails to cure such failure within ten (10) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice; or

2.18.2.2 Purchasing Entity commits any breach of any covenant, warranty, or obligation under this Contract and such breach is not cured within ten (10) business days after delivery of Contractor's notice of breach or such longer period as Contractor may specify in such notice.

2.19 Remedies:

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

2.19.1.1 Termination of the Contract as provided in Section 2.20.1;

2.19.1.2 Withholding all monies due for invoiced Goods that Contractor is obligated but has failed to deliver or perform within any scheduled completion dates or has performed inadequately or defectively;

2.19.1.3 Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief; and

2.19.1.4 Exercise of its right of setoff, and withholding of monies otherwise due and owing in an amount equal to Purchasing Entity's setoff without penalty to Purchasing Entity.

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

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

2.19.2.1 A claim against Purchasing Entity for the unpaid purchase price for Goods or Services delivered and accepted by Purchasing Entity,

2.19.2.2 With respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked but not yet billed and authorized expenses for services completed and accepted by Purchasing Entity, and

2.19.2.3 With respect to deliverable-based services, a claim for the sum designated for completing the deliverable multiplied by the percentage of services completed and accepted by Purchasing Entity, less previous amounts paid and any claim(s) which Purchasing Entity has against Contractor. If previous amounts paid to Contractor exceed the amount due to Contractor under this Section, Contractor shall pay any excess to Purchasing Entity upon written demand.

2.20 Termination:

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

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

2.20.2.1 Purchasing Entity fails to receive funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Purchasing Entity, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Contract;

2.20.2.2 Federal or state laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of the Goods by Purchasing Entities under the Master Agreement is prohibited, or Purchasing Entities are prohibited from paying for such Goods from the planned funding sources; or

2.20.2.3 Contractor is in breach of this Contract under Section 2.18.1.

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

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

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

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

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

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

2.25 Venue; Consent to Jurisdiction:

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

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

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

2.28 Assignments, Subcontracts and Successors: Contractor shall not assign, sell, transfer, or subcontract rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of Purchasing Entity. Further, no such written approval shall relieve Contractor of any obligations under the Contract, and any assignee, transferee, or delegate shall be considered the agent of Contractor. The provisions of this Contract are binding upon, and shall inure to the benefit of the parties and their respective successors and permitted assigns.

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

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

Section 3 – Special Terms for Contracts Under This Master Agreement

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

To be negotiated at time of contract award.

Section 4 – Signature of Contractor's Duly Authorized Representative

The undersigned represents:

(a) He/she is a duly authorized representative of Contractor, has been authorized by Contractor to make all representations, attestations, and certifications contained in this Master Agreement and to execute this Master Agreement on behalf of Contractor;
(b) Contractor is bound by and will comply with all requirements, specifications, and terms contained in this Master Agreement;
(c) Contractor will furnish the Goods in accordance with Contracts under this Master Agreement; and
(d) Contractor shall furnish federal identification number or social security number under a separate document.
(e) All Contractor affirmations contained in its bid or proposal related to this Master Agreement are true and correct.
(f) Contractor has not discriminated against and will not discriminate against minority, women or emerging small business enterprises certified under ORS 200.055 or against a business enterprise that is owned or controlled by or that employs a disabled veteran as defined in ORS

408.225 in obtaining any required subcontracts, and that Contractor is not in violation of any nondiscrimination laws.

Agreed:

Contractor's Name: _____

Authorized Signature: _____

Printed Name of Authorized Signature: _____

Title of Authorized Signature: _____

Date: _____

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

_____

Telephone Number of Administrative Contact: (_____) _____

Fax Number of Administrative Contact: (_____) _____

Email Address of Administrative Contact: _____

Mailing Address of Administrative Contact: _____

_____

_____

Section 5 – Signature of DAS PS

Agreed:

Authorized Signature: _____

Date: _____

DAS PS Contract Administrator (Type or Print):

_____

Telephone Number: (_____) _____

Fax Number: (_____) _____

Email Address of DASPS Contract Administrator: _____

Mailing Address of DASPS Contract Administrator:

_____

_____

_____

Exhibit A

PARTICIPATING ADDENDUM

NASPO ValuePoint

FOR

Parks and, Recreation Equipment and Installation and Related Services

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

MASTER AGREEMENT
[Contractor Name xxxxx]
Master Agreement No: xxxxxx
(hereinafter "Contractor")

And

[insert name of participating state/entity xxxxxxxx]
(hereinafter "Participating State/Entity")

1. Scope: This addendum covers the *[contract title]* led by the State of **xxxxxx** for use by state agencies and other entities located in the Participating **State/Entity** authorized by that state's statutes to utilize **state/entity** contracts with the prior approval of the state's chief procurement official.

2. Participation: Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an Participating Entity's state's statutes to use **state/entity** contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Participating State/Entity Modifications or Additions to Master Agreement:
(These modifications or additions apply only to actions and relationships within the Participating Entity.)

Participating State/Entity to check one box.

[__] No changes to the terms and conditions of the Master Agreement are required

[__] The following changes are modifying or supplementing the Master Agreement terms and conditions.

[Replace this with specific changes to the terms and conditions. Indicate which section numbers of the Master Agreement are modified. If no changes are required, check the box above and delete this paragraph]

4. Lease Agreements: **[If applicable, insert a statement about whether or not equipment lease agreement terms and conditions included in the Master Agreement have been approved for use by the Participating State and any restrictions or requirements for the use of the lease agreement language in the Master Agreement. If not applicable, mark Section 4 as "Reserved"]**

5. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	
Address	
Telephone	
Fax	
E-mail	

Participating Entity

Name	
Address	
Telephone	
Fax	
E-mail	

6. Subcontractors: All [contactor] dealers and resellers authorized in the State of xxxxxxxxx, as shown on the dedicated **[contractor]** (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The **[contractors]** dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

7. Orders: Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State/Entity:	Contractor:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

[Additional signatures as required by Participating State]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org

[Please email fully executed PDF copy of this document to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases]

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

Pricing: (Including attached pricing spreadsheet From Attachment C of the RFP)

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

_____

_____

_____

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

_____ _% Discount Net days

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

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

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

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

SERVICES, GENERALLY: Contractor shall:

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

Identify the Contractor's Representative, who will be either Contractor's "Contract Administrator." Contractor's Contract Administrator or that person's authorized delegate, is the principal point of

contact for the Purchasing Entity's representative concerning Contractor's performance under the Contract.

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

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

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

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

TRAINING:

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

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

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

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

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

Exhibit C

Insurance Requirements

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

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

COMMERCIAL GENERAL LIABILITY:
☒ **Required by DAS** ☐ **Not required by DAS**

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

AUTOMOBILE LIABILITY INSURANCE:
☒ **Required by DAS** ☐ **Not required by DAS.**

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

PROFESSIONAL LIABILITY:
☒ **Required by DAS** ☐ **Not required by DAS.**

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

POLLUTION LIABILITY:

When Contractor is Storing Hazardous Material on the Job Site:

☐ **Required by DAS** ☒ **Not required by DAS.**

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

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

☐ **Required by DAS** ☒ **Not required by DAS.**

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

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

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

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

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

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

provided. As proof of insurance DAS has the right to request copies of insurance policies relating to the insurance requirements in this Contract.

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

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

NASPO Master Terms and Conditions

1. Master Agreement Order of Precedence

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

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

2. Definitions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NASPO ValuePoint Program Provisions

3. Term of the Master Agreement

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

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

4. Amendments

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

5. Participants and Scope

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

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

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

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

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

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

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

6. Administrative Fees

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

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

7. NASPO ValuePoint Summary and Detailed Usage Reports

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

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

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

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

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

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

8. NASPO ValuePoint Cooperative Program Marketing and Performance Review

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

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

9. NASPO ValuePoint eMarket Center

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

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

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

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

10. Right to Publish

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

11. Price and Rate Guarantee Period

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

12. Individual Customers

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

Administration of Orders

13. Ordering

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

b. Purchasing Entities may define project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be

used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

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

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

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

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

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

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

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

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

14. Shipping and Delivery.

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

b. All deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If

damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

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

15. Laws and Regulations

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

16. Inspection and Acceptance.

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

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

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

d. The warranty period shall begin upon Acceptance.

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

17. Payment

Payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

18. Warranty

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

19. Title of Product

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

20. License of Pre-Existing Intellectual Property

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

General Provisions

21. Insurance

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

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

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation

or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

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

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

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

22. Records Administration and Audit.

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

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

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

23. Confidentiality, Non-Disclosure, and Injunctive Relief

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its

disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

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

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

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

24. Public Information.

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

25. Assignment/Subcontracts

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

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

26. Changes in Contractor Representation

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

27. Independent Contractor

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

28. [Reserved]

29. Force Majeure

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

30. Defaults and Remedies

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

(1) Nonperformance of contractual requirements; or

(2) A material breach of any term or condition of this Master Agreement; or

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

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

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

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

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

(1) Exercise any remedy provided by law; and

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

(3) Impose liquidated damages as provided in this Master Agreement; and

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

(5) Suspend Contractor's performance; and

(6) Withhold payment until the default is remedied.

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

31. Waiver of Breach

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

32. Debarment

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

33. Indemnification

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

34. No Waiver of Sovereign Immunity

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

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

35. Governing Law and Venue

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

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

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

36. Assignment of Antitrust Rights

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

37. Contract Provisions for Orders Utilizing Federal Funds.

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

38. eMarket Center Appendix

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

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

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

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

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

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

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

d. Revising Pricing and Product Offerings: Any revisions to product/service offerings (new products, altered SKUs, new pricing etc.) must be pre-approved by the Lead State and shall be subject to any other applicable restrictions with respect to the frequency or amount of such revisions. However, no

cooperative contract enabled in the eMarket Center may include price changes on a more frequent basis than once per year. The following conditions apply with respect to hosted catalogs:

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

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

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

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

(1) Catalog must contain the most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the cooperative contract; and

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

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

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

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

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

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

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

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

j. The Lead State reserves the right to approve the pricing on the eMarket Center. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices (and approved fees) required by the Master Agreement.

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

Exhibit E

Federal Terms and Conditions

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

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

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

(3) Energy Efficiency. Contractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94163).

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

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

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

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

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

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

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

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

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

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

a. Contractor will not use or further disclose Protected Health Information otherwise than as permitted or required by this Master Agreement or Contract or as required by law;

b. Contractor will use appropriate safeguards to prevent use or disclosure of PHI otherwise than as provided for by this Master Agreement or Contract;

c. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor in violation of the requirements of the Master Agreement or Contract;

d. Contractor will report to DASPS or Participating Entity any use or disclosure of PHI not provided for by this Master Agreement or Contract of which Contractor becomes aware;

e. Contractor agrees to ensure that any agents, including subcontractors, to whom it provides PHI, agree to the same restrictions and conditions that apply to Contractor with respect to such information;

f. Contractor shall make available to DASPS or Participating Entity such information as they may require to fulfill their obligations to account for disclosures of such information;

g. Contractor shall make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from the DASPS or Participating Entity or trading partner (or created or received by Contractor on behalf of DASPS or Participating Entity or trading partner) available to DASPS or Participating Entity and to the Secretary of the United States Department of Health and Human Services, for purposes of determining DASPS or Participating Entity's or trading partners' compliance with HIPAA; and

h. If feasible, upon termination of this Master Agreement or Contract, Contractor shall return or destroy all PHI received from DASPS or Participating Entity or trading partners (or created or received by Contractor on behalf of DASPS or Participating Entity or trading partners) that Contractor still maintains in any form, and shall retain no copies of such information or, if return or destruction is not feasible, Contractor shall continue to extend the protections of this Master Agreement or Contract to such information, and limit further use of the information to those purposes that make the return or destruction of the information infeasible.

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

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

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

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

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

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

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

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

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

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

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

Exhibit F
Specifications

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

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

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

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

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

All equipment goods and services shall conform to NRPA guidelines.

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

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

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

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

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

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

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

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

CSA: http://www.csa-international.org (Canadian) **TUV** http://www.tuvglobal.com/(EU)

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

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

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

Attachment C
Price Pages (Upload template)

Attachment D

Certification of Non-Debarment

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

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

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

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

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

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

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

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

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

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

Business Name

Date By

Name and Title of Authorized Representative
Signature of Authorized Representative

Attachment E

Affidavit of Trade Secrets

State of _____)
) ss:
County of _____)

_____ (Affiant), being first duly sworn under oath, and representing [insert Proposer Name] (hereafter "Proposer"), hereby deposes and swears or affirms under penalty of perjury that:

1. I am an employee of the Proposer, I have knowledge of the Request for Proposals referenced herein, and I have full authority from the Proposer to submit this affidavit and accept the responsibilities stated herein.

2. I am aware that the Proposer has submitted a Proposal, dated on or about [insert date] (the "Proposal"), to the State of Oregon (State) in response to Request for Proposals [insert number], for [insert brief description of the goods and/or services sought in the RFP] and I am familiar with the contents of the RFP and Proposal.

3. I have read and am familiar with the provisions of Oregon's Public Records Law, Oregon Revised Statutes ("ORS") 192.410 through 192.505, and the Uniform Trade Secrets Act as adopted by the State of Oregon, which is set forth in ORS 646.461 through ORS 646.475. I understand that the Proposal is a public record held by a public body and is subject to disclosure under the Oregon Public Records Law unless specifically exempt from disclosure under that law.

4. I have reviewed the information contained in the Proposal. The Proposer believes the information listed in Exhibit A is exempt from public disclosure (collectively, the "Exempt Information"), which is incorporated herein by this reference. It is my opinion that the Exempt Information constitutes "Trade Secrets" under either the Oregon Public Records Law or the Uniform Trade Secrets Act as adopted in Oregon because that information is either:

A. A formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information that:
   i. is not patented,
   ii. is known only to certain individuals within the Proposer's organization and that is used in a business the Proposer conducts,
   iii. has actual or potential commercial value, and
   iv. gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

or

B. Information, including a drawing, cost data, customer list, formula, pattern, compilation, program, device, method, technique or process that:
   i. Derives independent economic value, actual or potential, from not being generally known to the public or to other persons who can obtain economic value from its disclosure or use; and

ii. Is the subject of efforts by the Proposer that are reasonable under the circumstances to maintain its secrecy.

5. I understand that disclosure of the information referenced in Exhibit A may depend on official or judicial determinations made in accordance with the Public Records Law.

_____
Affiant's Signature

Signed and sworn to before me on _____ (date) by _____ (Affiant's name).

_____
Notary Public for the State of _____
My Commission Expires: _____

Attachment F

Tax Attestation

The individual signing on behalf of Proposer hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that:

1. The number shown on this form is Proposer's correct taxpayer identification;

Federal Tax Number _____
Oregon Tax Number _____

2. Proposer is not subject to backup withholding because:

(i) Proposer is exempt from backup withholding,
(ii) Proposer has not been notified by the IRS that Proposer is subject to backup withholding as a result of a failure to report all interest or dividends, or
(iii) the IRS has notified Proposer that Proposer is no longer subject to backup withholding.

3. S/he is authorized to act on behalf of Proposer, s/he has authority and knowledge regarding Proposer's payment of taxes,

4. For a period of no fewer than six calendar years preceding the Closing Date, Proposer faithfully has complied with:

(i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
(ii) Any tax provisions imposed by a political subdivision of this state that applied to Proposer, to Proposer's property, operations, receipts, or income, or to Proposer's performance of or compensation for any work performed by Proposer;
(iii) Any tax provisions imposed by a political subdivision of this state that applied to Proposer, or to goods, services, or property, whether tangible or intangible, provided by Proposer; and
(iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Proposer Signature_____ Date_____

Attachment G

Reference Check Form
RFP # DASPS-2114-16
Parks and Recreation

Proposer Name: _____

Instructions: Please identify three (3) references for whom Proposer has provided services that are the same as or similar to those requested in this RFP. Points for each reference will be calculated and averaged for the three reference. The State reserves the right to use the State's past experience with the Proposer as a reference. Enter the response below:

Each reference will be given a score based on the response to the question below in items 1-6

Reference Performance	Score
Poor or Inadequate Performance	0
Below Average Performance	1 – 3
Average Performance	4 – 6
Above Average Performance	7 – 9
Excellent Performance	10

Reference One: _____

Total Points _____

Name of Company or Governmental Entity_____

Mailing Address_____

Telephone Number _____

Contact Name _____

Title_____

Fax Number_____

E-mail Address_____

Services Start Date: _____

Services Ending Date: _____

Please describe any concerns regarding service provided or previous service by this

Reference: _____

_____

1. Rate vendor's knowledge and expertise.	**SCORE:**
Comments:	

2. Rate the accuracy and timeliness of the vendor's billing and/or invoices.	**SCORE:**
Comments:	

3. Rate the vendor's ability to quickly and thoroughly resolve a problem related to the services provided.	**SCORE:**
Comments:	

4. Rate the likelihood of your company/organization recommending this vendor to others in the future.	**SCORE:**
Comments:	

5. With which aspect(s) of this vendor's services are you most satisfied?	**SCORE:**
Comments:	

6. Would you recommend this vendor to your organization again?	**SCORE:**
Comments:	

Reference Two:_____

Total Points _____

Name of Company or Governmental Entity_____

Mailing Address_____

Telephone Number _____

Contact Name _____

Title_____

Fax Number_____

E-mail Address_____

Services Start Date: _____

Services Ending Date: _____

Please describe any concerns regarding service provided or previous service by this

Reference: _____

_____

7. Rate vendor's knowledge and expertise.	**SCORE:**
Comments:	

8. Rate the accuracy and timeliness of the vendor's billing and/or invoices.	**SCORE:**
Comments:	

9. Rate the vendor's ability to quickly and thoroughly resolve a problem related to the services provided.	**SCORE:**
Comments:	

10. Rate the likelihood of your company/organization recommending this vendor to others in the future.	**SCORE:**
Comments:	

11. With which aspect(s) of this vendor's services are you most satisfied?	SCORE:
Comments:	

12. Would you recommend this vendor to your organization again?	SCORE:
Comments:	

Reference Three:_____

Total Points_____

Name of Company or Governmental Entity_____

Mailing Address_____

Telephone Number _____

Contact Name _____

Title_____

Fax Number_____

E-mail Address_____

Services Start Date: _____

Services Ending Date: _____

Please describe any concerns regarding service provided or previous service by this

Reference: _____

_____

13. Rate vendor's knowledge and expertise.	SCORE:
Comments:	

14. Rate the accuracy and timeliness of the vendor's billing and/or invoices.	**SCORE:**
Comments:	

15. Rate the vendor's ability to quickly and thoroughly resolve a problem related to the services provided.	**SCORE:**
Comments:	

16. Rate the likelihood of your company/organization recommending this vendor to others in the future.	**SCORE:**
Comments:	

17. With which aspect(s) of this vendor's services are you most satisfied?	**SCORE:**
Comments:	

18. Would you recommend this vendor to your organization again?	**SCORE:**
Comments:	

Attachment H

CERTIFIED FIRM OUTREACH PLAN

"Certified Firm" means a small business certified under ORS 200.055 by the Oregon Certification Office for Business Inclusion and Diversity ("COBID") as "disadvantaged business enterprise", "minority-owned business", "woman-owned business", "emerging small business" or "business that a service-disabled veteran owns".

Certified Firm Participation

As noted in Governor Kitzhaber's Executive Order 12-03: "Minority-owned and Woman-owned businesses continue to be a dynamic and fast-growing sector of the Oregon economy. Oregon is committed to creating an environment that supports the ingenuity and industriousness of Oregon's Minority Business Enterprise ["MBE"] and Woman Business Enterprise ["WBE"]. Emerging Small Business ["ESB"] firms are also an important sector of the state's economy."

In 2015, HB 3303 revised ORS 200.055 to add "a business that a service-disabled veteran owns" as a business type that may apply to COBID for certification. Contracting agencies shall aggressively pursue a policy of providing opportunities to Certified Small Businesses (hereinafter "Certified Firms") according to ORS 200.090. As such, Oregon Certified firms must have an equal opportunity to participate in the performance of contracts financed with state funds. By submitting its offer, Offeror certifies that it will take reasonable steps to ensure that Certified Firms are provided an equal opportunity to compete for and participate in the performance of any subcontracts resulting from this procurement. Proposer further certifies and agrees that it has not discriminated and will not discriminate in its employment practices with regard to race, creed, age, religious affiliation, sex, disability, sexual orientation or national origin, and it has not discriminated and will not discriminate against a subcontractor in the awarding of a subcontract because the subcontractor is a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business certified under ORS 200.055.

If there may be opportunities for subcontractors to work on the project, it is the expectation of the DAS and NASPO ValuePoint and its Purchasing Entities that the Proposer will take reasonable steps to ensure that Certified Firms are provided an equal opportunity to compete for and participate in the performance of any contract and/or subcontracts resulting from this procurement.

Following opening of bids and prior to Contract Award, the Proposer with the apparent highest scoring Proposal or lowest Bid must provide, within five days of Notice of Intent to Award, a Certified Firms Outreach Plan using the form on the following page. The information submitted in response to this clause will not be considered in any scored evaluation and no evaluative points will be assigned to the information.

Certified Small Business Outreach Plan

1. Is Proposer an Oregon Certified Firm? Yes ☐ No ☐

If yes, indicate all certification type(s): MBE ☐ WBE ☐ ESB ☐ DBE ☐ SDV ☐

Oregon State Certification number: _____

2. Does Proposer foresee any subcontracting opportunities for this procurement? Yes ☐ No ☐

If no, do not complete the rest of this form.

3. The Proposer shall provide a narrative description of its experience in obtaining Certified Firms participation as subcontractors, consultants or suppliers on previous projects, and discuss any innovative or particularly successful measures that the Proposer has undertaken. The Proposer shall include a list of those certified firms with which it has had a contractual relationship during the past 24 months immediately preceding the date this solicitation document was issued. If none, mark the following checkbox: ☐ ***No prior experience obtaining participation from Certified Firms.***

4. The Proposer shall provide examples where Certified Firms participation was achieved, along with information on Certified Firms subcontracting participation levels for up to three projects/contracts that the Proposer is either currently performing or has completed within the past 24 months immediately preceding the date this solicitation document was issued. Certified Firms participation should be described as the percentage of the dollar value of subcontracts and material or supply contracts awarded to Certified Firms as compared with the total dollar value of subcontracts and material or supply contracts let for each identified project or contract. The Proposer shall describe any technical assistance or mentoring the firm provided to Certified Firms subcontracting on each project. If none, mark the following checkbox: ☐ ***No prior experience obtaining participation from Certified Firms.***

Project 1 Name_____
Award Date ___/___/___ Completion Date ___/___/___ Contract Award Amount $_____
Certified Firms goal percentage, if applicable _____% Certified Firms achievement percentage _____%
Certified Firms Subcontract Award Amount $_____ Certified Firms Spend Achieved $_____

Describe any technical assistance or mentoring provided to MWESB firms subcontracting on this project.

Project 2 Name_____

Award Date ___/___/___ Completion Date ___/___/___ Contract Award Amount $_____
Certified Firms goal percentage, if applicable _____% Certified Firms achievement percentage _____%
Certified Firms Subcontract Award Amount $_____ Certified Firms Spend Achieved $_____

Describe any technical assistance or mentoring provided to Certified Firms subcontracting on this project.

Project 3 Name_____
Award Date ___/___/___ Completion Date ___/___/___ Contract Award Amount $_____
Certified Firms goal percentage, if applicable _____% Certified Firms achievement percentage _____%
Certified Firms Subcontract Award Amount $_____ Certified Firms Spend Achieved $_____

Describe any technical assistance or mentoring provided to Firms subcontracting on this project.

5. If the total cost of the awarded contract is expected to be greater than $10,000.00, the Proposer shall describe the outreach and subcontracting plan it will use, if awarded the contract, to provide Oregon Certified Firms certified firms an equal opportunity to perform any subcontracts under the contract. The plan must be realistic and based on Proposer's successful past experience. If Proposer has no previous outreach experience, the Proposer shall describe the outreach plan it intends to use if awarded the contract.

The Proposer must include the following in its plan:
i. A description of the steps that the Proposer will take to solicit Certified Firms participation;

ii. A description of the mentoring, technical or other business development assistance the Proposer will provide to subcontractors needing or requesting such services.

If awarded the contract, the Proposer must accept, as contract performance obligations, the outreach and subcontracting plan described in this section. ***If certified firms are unavailable for type of work to be performed, please indicate in this section.***

Company Name: _____

Authorized Signature: _____ Date: ___/___/___

Name of Authorized Representative: _____

Title: _____

Attachment I

Participating Addendum for the State of Oregon

PARTICIPATING ADDENDUM

NASPO ValuePoint

FOR

Parks and, Recreation Equipment and Installation and Related Services

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

MASTER AGREEMENT
[Contractor Name xxxxx]
Master Agreement No: xxxxxx
(hereinafter "Contractor")

And

STATE OF OREGON

(hereinafter "Participating State")

1. Scope; Order of Precedence: This addendum covers the Parks and, Recreation Equipment and Installation and Related Services led by the State of Oregon for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the state's chief procurement official.

This Addendum establishes an agreement to agree between Contractor and State pursuant to ORS 279B.140. All goods and services offered under the Master Agreement may be procured under this Addendum. This Addendum contains additional terms and conditions specifically applicable to individual Contracts between Contractor and Authorized Purchasers. In the event of a conflict between the terms and conditions of this Participating Addendum and the Master Agreement, the following order of precedence applies:

(a) this Addendum, less its exhibits;
(b) Exhibit No. 1 of the Addendum (State Specific Terms and Conditions);
(c) Exhibit No. 2 of the Addendum (Insurance);
(d) Exhibit No. 3 of the Addendum (Tax Certification);
(e) any Purchase Order issued by an Authorized Purchaser pursuant to this Addendum; and
(f) the Master Agreement, including its attachments.

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

3. Participating State Modifications or Additions to Master Agreement:
(These modifications or additions apply only to actions and relationships within the Participating Entity.)

Participating State to check one box.

[_] No changes to the terms and conditions of the Master Agreement are required

[X] Please see the attached Exhibit No. 1 for changes modifying or supplementing the Master Agreement terms and conditions.

4. **Authorized Purchaser - Contractor Selection**

4.1 Contractor Selection Process, Large Purchases. For all purchases over $10,000, Authorized Purchasers shall select the contractor using one of the following selection methods:

4,1.1 Brand Name Justification

A documented brand name justification in compliance with applicable statute and rule.

4.1.2 Best Value Analysis

From time to time, Authorized Purchasers may purchase Parks and Recreation Equipment or Related Services, or both, from a Contractor. If an Authorized Purchaser expects the total purchase to exceed $10,000, Authorized Purchaser shall obtain these Parks and Recreation Equipment or Related Services, or both using the following procedure. Authorized Purchaser shall:

- Contact at least 3 different Master Agreement Contractors via phone, e-mail or facsimile and request a quote for the anticipated Parks and Recreation Equipment or Related Services, or both ("Quote"). Quoted rates must not exceed the most competitive rates and discounts set forth in the Master Agreement. However, a Contractor may agree to extend specialized, discounted pricing based on the requirements by providing a specific quote to the Authorized Purchaser.

- Determine which Contractor provides the best value for Authorized Purchaser based on Authorized Purchaser's application of some or all of the following factors:
    - Applicable discounts and incremental pricing options;
    - Shipping costs;
    - Delivery process and service levels;
    - Installation, maintenance and repair service levels;
    - Applicable warranties;
    - Contractor's past performance record through reference checks;
    - Contractor's service area;
    - Inventory levels;
    - Price comparison of the current market value of Good and services similar to the Parks and Recreation Equipment and Related Services;
    - Price comparison to pricing in GSA contracts and other federal price agreements; Best Value pricing is typically lower than GSA pricing;
    - Price comparison to past purchases the Parks and Recreation Equipment and Related Services similar to the Parks and Recreation Equipment and Related Services, taking the inflation rate into account;
    - Cost analysis through an element-by-element examination of the estimated or actual cost of proposed Parks and Recreation Equipment and Related Services to determine whether the supplier's costs are in line with what reasonably economical and efficient performance should cost. Some of the cost elements examined for necessity and reasonableness are materials' costs,

labor costs, equipment and overhead;
- o Comparison of pricing to MSRP;
- o Market conditions and competition levels;
- o General economic conditions;
- o Life cycle costing including expected life, salvage value and discounted total cost of ownership.

and

- Document its procurement files describing the process, considerations, findings, and decisions used for determining the Contractor selected through the Best Value Analysis.

4.1.3 Contractor Selection Process, Small Purchases. For purchases under $10,000, Authorized Purchasers may select the Contractor of its choice in compliance with applicable statute and rule.

5. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	
Address	
Telephone	
Fax	
E-mail	

Participating Entity

Name	
Address	
Telephone	
Fax	
E-mail	

6. Subcontractors: All Contractor dealers and resellers authorized in the State of xxxxxxxxx, as shown on the dedicated Contractor (cooperative contract) website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

7. Orders: Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

8. Tax Compliance: As set forth on Exhibit No. 3, Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state. Contractor shall, throughout the duration of this Addendum and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes: (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or

provisions.

Any violation of this Section 8 constitutes a material breach of this Addendum and any Contract issued under this Addendum. Further, any violation of Contractor's warranty set forth in Exhibit No. 3 also shall constitute a material breach of this Addendum and any Contract issued under this Addendum. Any violation shall entitle DASPS or Authorized Purchaser to terminate this Addendum or the applicable Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Addendum or the applicable Contract, and to pursue any or all of the remedies available under this Addendum, a Contract, at law, or in equity, including but not limited to:

- Termination of this Addendum or the applicable Contract, in whole or in part;
- Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to Authorized Purchaser's setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DASPS or Authorized Purchaser may recover any and all damages suffered as the result of Contractor's breach of this Addendum or the applicable Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods or Services or both.

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

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State: STATE OF OREGON, acting by and through the Department of Administrative Services	Contractor:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:
	FEID:

[Additional signatures as required by Participating State]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org

[Please email fully executed PDF copy of this document to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases]

EXHIBIT NO. 1

Changes to Master Agreement State-Specific Constitutional, Statutory and Other Requirements

1. Definitions. The following terms have the meanings set forth below. Capitalized terms not defined in this Addendum have the meaning ascribed to them in the Master Agreement and its exhibits.

"Authorized Purchaser" means an agency of the State of Oregon or any ORCPP member that submits a Purchase Order to Contractor.

"Contract" means the agreement between Authorized Purchaser and Contractor formed by the Authorized Purchaser's issuance of a Purchase Order that incorporates by reference the terms and conditions of the Master Agreement and this Addendum.

"DAS PS" means the State of Oregon acting by and through the Department of Administrative Services, Procurement Services.

"ORCPP" means the Oregon Cooperative Purchasing Program, which recognizes certain agencies and organizations within the State of Oregon as authorized to purchase the goods and services available under a price agreement or master agreement entered into by the State.

"Master Agreement" means the State of Oregon Master Agreement # _____between Contractor and the State of _____, on behalf of the member states of the National Association of State Procurement Officials and the Western States Contracting Alliance, and its attachments, which together with this Addendum sets forth terms, conditions and requirements for purchase by Authorized Purchasers of the goods and services described therein.

"Purchase Order" means the purchase order document submitted to Contractor by an Authorized Purchaser that incorporates this Addendum by reference and specifies the quantity and type of goods or services that Contractor will provide to the Authorized Purchaser under the terms of the Master Agreement and this Addendum.

"State", for the purposes of this Participating Addendum, means the State of Oregon.

2. Purchase Orders.

2.1 Purchase Orders. Authorized Purchasers may use their own forms for Purchase Orders. State agencies may also use the general State-approved Purchase Order referencing the Master Agreement Number. To the extent that the terms of any form differ from the terms of this Addendum, the terms of this Addendum supersede such contrary terms. Each Purchase Order from an Authorized Purchaser that is not a State agency must contain, on the front page, the following language:

THIS PURCHASE IS PLACED AGAINST THE STATE OF OREGON MASTER AGREEMENT NO. _ _____ THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT AND THE ASSOCIATED PARTICIPATING ADDENDUM ENTERED INTO BY THE STATE OF OREGON, CONTRACT NO. _____ APPLY TO THIS PURCHASE AND SUPERSEDE ALL CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.

2.2 Effect of Purchase Orders. The State is only liable for purchases made by State of Oregon agencies that issue Purchase Orders. Other Authorized Purchasers are responsible for any purchases under Purchase Orders they issue. The State expressly disclaims any liability for purchases made by non-State agency Authorized Purchasers or any other entity.

2.3 Verification of Authorized Purchasers. Contractor is responsible for verifying that it provides goods and services under this Addendum only to Authorized Purchasers. Contractor may verify that a particular entity is an ORCPP member on-line at http://www.oregon.gov/DAS/PFSS/SPO/coop-menu.shtml or by using the Oregon Procurement Information Network (ORPIN) at http://orpin.oregon.gov/open.dll/welcome.

3. Payment Provisions. All payments are subject to ORS 293.462.

4. Funds available and authorized/non-appropriation. The State of Oregon's and its agencies' payment obligations under this Addendum are conditioned upon Authorized Purchaser's receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Contract issued under this Addendum. Contractor is not entitled to receive payment under this Addendum or any Contract from any part of Oregon state government other than Authorized Purchaser. Nothing in this Addendum or Contract is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Authorized Purchaser represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Contract issued under this Addendum.

5. Volume Sales Reports (VSRs) / Vendor Collected Administrative Fee (VCAF)

5.1 Volume Sales Reports (VSRs):

5.1.1 Contractor shall submit a Volume Sales Report (VSR) no later than thirty (30) calendar days from the end of each calendar quarter**,** which contains:

Complete and accurate details of all receipts (sales and refunds) for the reported period;
The information as identified in the DAS PS document titled Volume Sales Report Template - Data Requirement, Format and Layout; and Such other information as DAS PS may reasonably request.

Contractor shall send a VSR to DAS PS each quarter, whether or not there are sales. When no sales have been recorded for the quarter a report must be submitted stating "No Sales for the Quarter."

5.1.2 Data Medium and Delivery Medium: Contractor shall provide VSRs in MS Excel (.xls) format. VSRs must be submitted by e-mail. Delivered print outs of VSRs are not acceptable. Hard copies of VSRs on CDs are only acceptable if the size of the file precludes transmission by email. Approval from the Contract Administrator must be obtained for deviations from these requirements.

5.1.3 Receipt/Acceptance: The first VSR submitted by the Contractor must be submitted to the DAS PS Contract Administrator for review and approval. Approved first VSRs and subsequent VSRs must be submitted to vcaf.reporting@state.or.us. A separate section follows describing the administrative

charge if it is applicable. The Contract Administrator's receipt or acceptance of any of the VSRs furnished pursuant to this Addendum shall not preclude DAS PS from challenging the validity thereof at any time.

5.1.4 DAS PS reserves the right to terminate this Addendum if volume sales reports are not received as scheduled on in the prescribed format.

5.2 Vendor Collected Administrative Fee (VCAF):

5.2.1 Vendor Collected Administrative Fee (VCAF) PERCENTAGE:

The Vendor Collected Administrative Fee (VCAF), is a charge equal to One Percent (1.0 %) of Contractor's Gross total sales, less any credits, made to Authorized Purchasers during the calendar quarter.

5.2.2 VCAF Amount / Payment Due Date: During the term of this Addendum and for the sales during the last calendar quarter of the term of this Addendum, the Contractor shall remit VCAF payment to DAS PS within forty-five (45) calendar days after the end of each calendar quarter.

5.2.3 Contractors may not reflect the VCAF fee as a separate line item charge to Authorized Purchasers. Contractor's proposed prices shall reflect all Contractor's charges to Authorized Purchasers. For the purposes of this Addendum, quarters end March 31, June 30, September 30, and December 31. DAS PS will invoice the Contractor for the VCAF on a State generated invoice from the information submitted on the VSR. Contractor is responsible for timely reporting and payment, regardless of entity that actually reports or makes VCAF payment to DAS PS.

5.2.3.1 Payment Format: The fee shall be in the form of a check remitted to:

State of Oregon
Department of Administrative Services
Attn: Shared Financial Services/PS
155 Cottage Street NE
Salem, Oregon 97301

Any other form of payment must be specifically approved by the Contract Administrator.

5.2.3.2 Interest: Any payments Contractor makes or causes to be made to DAS PS after the due date as indicated on the invoice shall accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall have been paid in full. DAS PS's right to interest on late payments shall not preclude DAS PS from exercising any of its other rights or remedies pursuant to this Addendum or otherwise with regards to Contractor's failure to make timely remittances.

5.3 Audit: DAS PS, as its own expense (except as provided herein), shall have the right during regular business hours, at Contractor's premises, and upon reasonable notice, by itself or by a person authorized by it, to audit Contractor's Records, as defined herein, and other pertinent data, to determine and verify the figures reported in any VSRs furnished by Contractor. In the event that any such audit reveals underpayment of administrative fees, Contractor shall immediately pay the amount of deficiency, together with interest thereon at the rate provided in Section 5.2.3.2. At DAS

PS'S request, Contractor shall pay the reasonable cost of an audit, but only if such audit reveals that an underpayment may exist as determined by DAS PS.

5.4 Limitation of Liability: Contractor acknowledges and agrees that the State shall bear no liability on Contracts entered into for purchases by non-State Agencies, which liability the State expressly disclaims. With regard to non-State Agencies, Contractor agrees to look solely to the respective contracting party for any rights and remedies Contractor may have at law or in equity arising out of the sale and purchase of Contractor's Goods or Services and the resulting contractual relationship, if any, with each such contracting party.

6. Warranties. Authorized Purchasers are entitled to the warranties, rights, remedies, and benefits under the Master Agreement and this Addendum for any purchases made by such Authorized Purchasers pursuant to Purchase Orders. Without limiting the generality of the warranty provisions of the Master Agreement, Contractor represents and warrants to Authorized Purchaser that:

a. Contractor has the power and authority to enter into and perform this Addendum and that this Addendum, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;
b. Goods or Products will be new, unused, current production models, where applicable, and will be free from defects in materials, design and manufacture for manufacturer's standard warranty period. Where specifications have been made a part of the RFP, Contractor further warrants that all Goods or Products conform to the specifications and meet or exceed all quality and safety standards set in the RFP;
c. all Services to be performed under this Addendum will be performed in accordance with the highest applicable professional or industry standards, and that only workmanship of the first quality shall be employed in the performance of this Addendum;
d. Contractor shall transfer to Authorized Purchaser all manufacturer warranties covering Goods or Products, if any at time of delivery at no charge, and
e. all Goods or Products, if any, are free and clear of any liens or encumbrances, and that Contractor has full legal title to such Goods or Products, and that no other person has any right, title or interest in the Goods or Products which is superior to or infringe upon the rights granted to Authorized Purchaser hereunder.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in the Master Agreement. All warranties provided in this Addendum are cumulative and will be interpreted expansively so as to afford Authorized Purchaser the broadest warranty protection available.

7. Indemnities.

7.1 General Indemnity. Contractor will defend, save, hold harmless and indemnify the Authorized Purchaser and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to the activities of Contractor or its officers, employees, subcontractors or agents under the Addendum.

7.2 Infringement Indemnity. Contractor will, at Contractor's sole expense, defend, save, hold harmless and indemnify Authorized Purchasers and the State of Oregon and their agencies,

subdivisions, officers, employees and agents from and against any and all costs, damages, attorneys' fees, and any and all costs incurred in any settlement negotiation or final settlement agreement resulting from, relating to, or arising out of a claim that any aspect of the goods or services furnished under a Purchase Order infringes a patent, utility model, industrial design, copyright, mask work, trademark, trade dress, or any other legally cognizable intellectual property right of any third party (an "Infringement Claim").

7.3 Participation. Control of Defense and Settlement. Contractor's obligation to indemnify Authorized Purchaser as set forth in Sections 7.1 and 7.2 is conditioned on Authorized Purchaser providing to Contractor prompt notification of any claim or potential claim of which Authorized Purchaser becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 7.1 or Section 7.2; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Authorized Purchaser of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

7.4 Remedies. If any goods or services furnished by Contractor are, in Contractor's opinion, likely to become the subject of an Infringement Claim, or if an Authorized Purchaser is prevented from exercising its rights under this Addendum based on any Infringement Claim or court order arising from any Infringement Claim, then Contractor may, at its option and expense, procure for the Authorized Purchaser the right to continue using the allegedly infringing goods or services, or replace or modify the goods or services so that they become non-infringing; provided that the replacement or modified good or service meets the specifications set forth in the applicable Purchase Order to the satisfaction of the Authorized Purchaser. If the foregoing remedies are not available, then Authorized Purchaser will return the allegedly infringing goods or terminate the allegedly infringing services, and Contractor will refund Authorized Purchaser's payments, in full, for the allegedly infringing goods or services.

8. Term and Termination of Participating Addendum.

8.1 Term. This Addendum remains in effect until the earlier of (a) the expiration or termination of the Master Agreement, or (b) termination of this Addendum in accordance with its terms.

8.2 Termination. DAS PS may terminate this Addendum, in whole or in part, at any time upon thirty (30) days prior notice to Contractor. In addition, DAS PS may terminate this Addendum, in whole or in part, immediately upon notice to Contractor, or at such later date as DAS PS may establish in such notice, for any reason, or upon the occurrence of any of the following events:

a. State fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Addendum; or

b. Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under this Addendum is prohibited or the State is prohibited from paying for such goods from the planned funding source.

Upon receipt of written notice of termination, Contractor will stop performance under all Purchase Orders as directed by State.

8.3 Termination under any provision of this Addendum does not extinguish or prejudice State's or an Authorized Purchaser's right to enforce this Addendum or a Purchase Order with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of the State or an Authorized Purchaser to indemnification by Contractor. If this Addendum or a Purchase Order is so terminated, the State or an Authorized Purchaser will pay Contractor in accordance with the terms of this Addendum for goods delivered and accepted by the Authorized Purchaser.

9. Termination of Individual Purchase Orders.

9.1 Individual Purchase Orders may be terminated at any time by written consent of Authorized Purchaser and Contractor or Authorized Purchaser may, at its sole discretion, terminate individual Purchase Orders, in whole or in part, upon 30 days written notice to Contractor.

9.2 Authorized Purchaser may terminate individual Purchase Orders, in whole or in part, immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events:

a. Authorized Purchaser fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Purchase Order;

b. Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods under the Purchase Order is prohibited or Authorized Purchaser is prohibited from paying for such goods from the planned funding source; or

c. Contractor commits any material breach of this Addendum or a Purchase Order

9.3 Upon receipt of written notice of termination, Contractor will stop performance under the Purchase Order as directed by Authorized Purchaser.

9.4 Termination of a Purchase Order does not extinguish or prejudice Authorized Purchaser's right to enforce the Purchase Order with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of Authorized Purchaser to indemnification by Contractor. In addition, termination of a Purchase Order does not extinguish or prejudice Authorized Purchaser's right to enforce the warranty, indemnification, governing law, venue and consent to jurisdiction provisions of this Addendum. If a Purchase Order is so terminated, Authorized Purchaser will pay Contractor in accordance with the terms of this Addendum for goods delivered and accepted by Authorized Purchaser.

10. Compliance with Applicable Law. Contractor will comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to the Work under this Contract, and an Authorized Purchaser's performance under a Purchase Order is conditioned on Contractor's

compliance with the provisions of ORS 279B.220, 279B.235, 279B.230, and 279B.270. In addition, Contractor warrants good and services provided under this Addendum will comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division. Contractor also agrees to comply with (a) Title VI of the Civil Rights Act of 1964, (b) Section v of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990 and ORS 659.425, (d) all regulations and administrative rules established pursuant to the foregoing laws and (e) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

11. Tax Compliance. As set forth on Exhibit No. 3, Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state. Contractor shall, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes: (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318; (ii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor; (iii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Any violation of this subsection 11 constitutes a material breach of this Addendum and any Contract issued under this Addendum. Further, any violation of Contractor's warranty set forth in Exhibit No. 3 also shall constitute a material breach of this Addendum and Contract. Any violation shall entitle DASPS or Authorized Purchaser to terminate this Addendum or Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Addendum or Contract, and to pursue any or all of the remedies available under this Addendum, Contract, at law, or in equity, including but not limited to:

- Termination of this Addendum or Contract, in whole or in part;
- Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to State's setoff right, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DASPS or Authorized Purchaser may recover any and all damages suffered as the result of Contractor's breach of this Addendum or Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Services and applications.

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

12. Application of Public Records Law. Contractor acknowledges that any disclosures Contractor makes to Authorized Purchaser under this Addendum are subject to application of the Oregon Public Records Law, including but not limited to ORS 192.410 – 192.505, the provisions for the Custody and Maintenance of Public Records, ORS 192.005 – 192.710, and of ORS 646.461 - 646.475. The non-disclosure of documents or of any portion of a document submitted by Contractor to Authorized Purchaser may depend upon official or judicial determinations made pursuant to the

foregoing laws. Contractor will be notified prior to Authorized Purchaser's release of documents to Entities other than participating agencies or other State agencies. Contractor shall be exclusively responsible for defending Contractor's position concerning the confidentiality of the requested documents, at its own expense,

13. Recycled Products. Contractor will use, to the maximum extent economically feasible in the performance of this Contract, recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii).

14. Notices. Except as otherwise provided in a Purchase Order, any formal communications between the parties to or notices to be given under a Purchase Order will be given in writing by personal delivery of a facsimile transmission or the notice or mailing the notice, postage prepaid, at the address or number set forth on the Purchase Order. Any communication so addressed and mailed will be deemed to have been received five (5) calendar days after mailing. Any communication delivered by facsimile will be deemed to be given when a confirming report for the transmission is generated by the transmitting machine. To be effective against the receiving party, such facsimile transmission must be confirmed by telephone notice to the receiving party's authorized representative, as set forth in the Purchase Order. Any communication or notice by personal delivery will be deemed to be given when actually received by the appropriate authorized representative.

As between Contractor and State with respect to this Addendum, the Primary Contacts of Contractor and State are set forth above.

15. Governing Law. This Addendum and resulting Contracts are governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

16. Jurisdiction and Venue. Any claim, action, suit or proceeding (collectively, "Claim") between State or any other agency or department of the State of Oregon, and Contractor, that arises from or relates to this Addendum or a Purchase Order under this Addendum, will be brought and conducted solely and exclusively in the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively in the United States District Court of the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS ADDENDUM OR ACCEPTANCE OF A PURCHASE ORDER SUBMITTED PURSUANT TO THIS ADDENDUM HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing in this section will be construed as a waiver of the State of Oregon's sovereign immunity with respect to any Claim, whether brought under State or Federal law, or in State or Federal Court.

Any Claims between Contractor and an Authorized Purchaser other than the State of Oregon or State agency that arise from or are related to individual Purchase Orders or this Addendum will be brought and conducted solely and exclusively within the Circuit Court of the county in the State of Oregon in which such Authorized Purchaser resides or has its principal office, or at Authorized Purchaser's option, within such other county as Authorized Purchaser will be entitled to proceed under the venue laws of Oregon to bring or defend Claims. If any such Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

17. Foreign Contractor. If Contractor is not domiciled in or registered to do business in the State of Oregon as of the effective date of this Addendum, Contractor will promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Contract. An Authorized Purchaser may withhold final payment under a Purchase Order until Contractor has provided the Oregon Department of Revenue with the required information.

18. Merger Clause; Waiver. This Addendum, including the Master Agreement and the exhibits attached to this Addendum, constitutes the entire agreement between the parties on the subject matter hereof, and supersede all prior agreements, oral or written. There are no understandings, agreements, or representations, oral or written, between these parties that are not specified in this Addendum. No waiver, consent, modification or change of terms of this Addendum binds either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made is effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Addendum does not constitute a waiver by the State of that or any other provision.

19. Independent Contractor. Contractor shall act at all times as an independent contractor and not as an agent or employee of Authorized Purchaser. Contractor has no right or authority to incur or create any obligation for or legally bind Authorized Purchaser in any way. Contractor is not an "officer", "employee", or "agent" of Authorized Purchaser (or any other agency, office, or department of the State of Oregon), as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither party shall make any statements, representations, or commitments of any kind or to take any action binding on the other except as provided for herein or authorized in writing by the party to be bound.

20. Access to Records. Contractor will maintain all fiscal records relating to Purchase Orders in accordance with generally accepted accounting principles and will maintain any other records relating to Purchase Orders in such a manner as to clearly document Contractor's performance thereunder. The Authorized Purchaser, the State and its agencies, the Oregon Secretary of State Audits Division and their duly authorized representatives will have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to this Addendum to perform examination and audits and make excerpts and transcripts. To the extent provided by law, the federal government will be entitled to the same access as the State of Oregon and Authorized Purchasers. Contractor will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of six years, or such longer period as may be required by applicable law following final payment and termination of this Addendum, or until the conclusion of any audit, controversy or litigation arising out of or related to this Addendum, whichever date is later.

21. Severability. If any term or provision of this Addendum is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Addendum did not contain the particular term or provision held to be invalid.

22. Survival. Any terms of this Addendum, which by their nature are intended to survive termination or expiration including but not limited to warranty, indemnification, access to records, governing law, venue, consent to jurisdiction, termination and remedies provisions survive the termination or expiration of this Addendum.

23. Insurance. Within ten (10) days of the Effective Date, Contractor must provide insurance as set forth on Exhibit No. 2. No Purchase Orders may be placed or accepted until proof is provided that these requirements have been met.

24. Anticipated Amendments. The parties may need to amend this Addendum to modify selected terms, conditions, and price(s). This Addendum maybe modified by written document only.

Exhibit No. 2 - INSURANCE

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit No. 2 prior to performing under this Addendum and shall maintain it in full force and at its own expense throughout the duration of this Addendum and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to DAS PS. See Exhibit C of Master Agreement.

EXHIBIT NO. 3

CONTRACTOR TAX CERTIFICATION

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that:

1. The number shown on this form is Contractor's correct taxpayer identification;

   Federal Tax Number _____

   Oregon Tax Number _____

2. Contractor is not subject to backup withholding because:

   (i) Contractor is exempt from backup withholding,
   (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or
   (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding.

3. S/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes,

4. For a period of no fewer than six calendar years preceding the Effective Date of this Addendum and any Contract, Contractor faithfully has complied with:

   (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
   (ii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
   (iii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
   (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Contractor Signature_____ Date_____

Attachment J

State of North Dakota-Changes to Master Agreement State-Specific Terms and Conditions

1. Confidentiality: CONTRACTOR shall not use or disclose any information it receives from STATE under this contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except from mandatory public disclosure except as necessary to carry out the purposes of this contract or as authorized in advance by STATE. STATE shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota open records law, N.D.C.C ch. 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this contract.

2. Compliance with public records laws: CONTRACTOR understands that, except for disclosures prohibited in this Contract, STATE must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Contract, except for records that are confidential under this Contract, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE as soon as reasonably possible upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

3. Spoliation: CONTRACTOR shall notify State of all potential claims that CONTRACTOR is aware of that arise as a result of CONTRACTOR'S performance under this contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to State the opportunity to review and inspect the evidence, including the scene of an accident.

4. Cooperative Purchasing Contract: This contract is a cooperative purchasing contract established pursuant to North Dakota Century Code (N.D.C.C.) § 54-44.4-13. This contract is made available to state entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C ch. 39-04.2, and the International Peace Garden. Participation in this open-ended contract is not mandated; therefore, the estimated volume of this contract is not known.

5. Governing Law and Venue: This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

6. Indemnification. In addition to any indemnity obligations found within the Master Agreement, CONTRACTOR agrees that any attorney appointed to represent the STATE must first qualify

as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08.

7. Alternative dispute resolution – jury trial
   STATE does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

8. Attorney fees
   In the event a lawsuit is instituted by STATE to obtain performance due under this Contract, and STATE is the prevailing party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE'S reasonable attorney fees and costs in connection with the lawsuit.

Attachment K

State of Maine-Changes to Master Agreement State-Specific Terms and Conditions

i. **EQUAL EMPLOYMENT OPPORTUNITY.** During the performance of this contract, the Contractor agrees as follows.

A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Contractor shall take affirmative action to ensure that applicants are employed and employees are treated during their employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation.

Such action shall include, but not be limited to, the following: employment, upgrading, demotions, transfers, recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

B. 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, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation.

C. The Contractor will send to each labor union or representative of the workers with which he has a collective or bargaining agreement, or other contract or understanding, whereby he is furnished with labor for the performances of his contract, a notice, to be provided by the contracting department or agency, advising the said labor union or workers' representative of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and to applicants for employment.

D. The Contractor will cause the foregoing provisions to be inserted in all contracts for any work covered by this agreement so that such provisions will be binding upon each subcontractor.

E. Contractors and subcontractors with contracts in excess of $50,000 will also pursue in good faith affirmative action programs.

ii. **GOVERNING LAW.** This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Contractor consents to personal jurisdiction in the State of Maine.

iii. **STATE HELD HARMLESS.** The contractor shall release, protect, indemnify and hold NASPO Value Point and the respective states and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, his employees or subcontractors or volunteers.

iv. **NON-APPROPRIATION.** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

Attachment L

State of Montana-Changes to Master Agreement State-Specific Terms and Conditions

ADDITIONAL TERMS

The State of Montana (State) would like the following clauses included in the final contract(s). In instances where there are contradictory statements, the language herein shall dictate.

ACCESS AND RETENTION OF RECORDS: Contractor shall provide the State, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. (18-1-118, MCA.)

ASSIGNMENT, TRANSFER, AND SUBCONTRACTING: Contractor may not assign, transfer, or subcontract any portion of this contract without the State's prior written consent. (18-4-141, MCA.)

COMPLIANCE WITH LAWS: Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with 49-3-207, MCA, Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

CHOICE OF LAW AND VENUE: Montana law governs this contract. The parties agree that any litigation concerning this bid, proposal, or subsequent contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (18-1-401, MCA.)

HOLD HARMLESS/INDEMNIFICATION: Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

REDUCTION OF FUNDING: The State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

Attachment M

Commonwealth of Virginia-Changes to Master Agreement State-Specific Terms and Conditions

V. REQUIRED COMMONWEALTH OF VIRGINIA CONTRACTUAL PROVISIONS

The Commonwealth requires the use of the following contractual terms and conditions in the solicitation, and it reserves to right to add any other needed terms and conditions at the appropriate time that any PA is negotiated.

These contractual terms and conditions shall be applicable to any Offeror and are required for the Commonwealth or any Commonwealth Authorized User's participation in any joint or cooperative procurement that conducted by another state.

A. VIRGINIA PUBLIC PROCUREMENT ACT

The Virginia Public Procurement Act ("VPPA", § 2.2-4300 et seq. of the Code of Virginia), including Article 6 (*Ethics in Public Contracting*), shall apply to any contract entered into between a vendor and a Virginia public body under this solicitation.

B. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH

A contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section, in addition to any other available remedy.

C. NON-DISCRIMINATION

1) During the performance of this contract, the contractor agrees as follows: a.) The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

   b.) The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

c.) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

2) The contractor will include the provisions of the foregoing paragraphs a, b and c in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor or vendor.

3) In accordance with Section 2.2-4343 of the Code of Virginia, public bodies do not discriminate against faith-based organizations, or against any bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by Virginia law.

D. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By entering into a written contract with the Commonwealth of Virginia, the contractor certifies that it does not, and shall not, during the performance of this contract, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

E. DEBARMENT STATUS

By participating in this contract, the contractor certifies that it is not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods or services covered by this contract. The contractor further certifies that it is not debarred from filling any order or accepting any resulting order, and that it is not an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

F. DRUG-FREE WORKPLACE

During the performance of this contract, the contractor agrees to:

1) provide a drug-free workplace for its employees;

2) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

3) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and

4) include the provisions of the foregoing clauses in every subcontract or purchase order of over $10,000, so that the provisions will be binding upon each subcontractor.

5) For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

G. ASSIGNMENT OF CONTRACT

Contracts and purchase orders with Virginia Authorized Users shall not be assignable by the contractor in whole or in part without the written consent of that Authorized User.

H. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS

A contractor providing goods or services to the Commonwealth of Virginia shall participate in the Commonwealth's Internet e-procurement solution, hereinafter referred to as "eVA," bycompleting the free eVA Vendor Registration at www.eva.virginia.gov. All contractors must register in eVA and pay the Vendor Transaction Fees specified below, or any such future fee in effect at the time an order is received, before they may fulfill an order for a Commonwealth Authorized User. Vendor transaction fees are currently established as follows:

1) DSBSD-certified Small Businesses*: 1%, capped at $500 per order;

2) Businesses not DSBSD-certified Small Businesses: 1%, capped at $1,500 per order.

* Virginia Department of Small Business and Supplier Development, http://www.sbsd.virginia.gov/

I. PAYMENT

1) To Prime Contractor:

a.) Contractor shall submit invoices for items ordered, delivered and accepted directly to the payment address shown on the purchase order or contract. All invoices shall show the state contract number, purchase order number, and social security number (for individual contractors) or federal employer identification number (for proprietorships, partnerships, and corporations).

b.) Any payment terms requiring payment in less than thirty (30) days will be regarded as requiring payment thirty (30) days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than thirty (30) days, however.

c.) All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the contractor at the contract price, regardless of which public body is being billed.

d.) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.

e.) **Unreasonable Charges**. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, final payment in full is contingent on a determination that all invoiced charges are reasonable. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth or applicable Authorized User shall promptly notify the contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve a Commonwealth state agency or agency of local government of its prompt payment obligations with respect to those charges that are not in dispute (Code of Virginia, § 2.2-4363).

2) To Subcontractors:

a.) A contractor awarded a contract under this solicitation is hereby obligated:

To pay the subcontractors within seven (7) days of the contractor's receipt of payment from the Commonwealth or applicable Authorized User, for the proportionate share of the payment received for work performed by the subcontractors under the contract; or 2. To notify the Commonwealth or applicable Authorized User and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

b.) The contractor is obligated to pay the subcontractors interest at the rate of one percent (1%) per month (unless otherwise provided in this contract) on all amounts owed by the contractor that remain unpaid seven days following receipt of payment from the Commonwealth, except for amounts withheld as stated in 2. above. The date of mailing of any payment by U.S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth or applicable Authorized User.

J. MODIFICATIONS

This contract may be modified in accordance with §2.2-4309 of the Code of Virginia. No modifications shall be effective unless it is in writing and signed by the duly authorized representative of the Commonwealth. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing. Any contract issued on a firm-fixed-price basis may not be increased more than twenty five percent (25%) or $50,000.00 whichever is greater, without the approval of the Governor of Virginia or his authorized designee. In no event may the amount of the contract be increased without adequate consideration. The unauthorized approval of a modification cannot be the basis of a contractual claim as set forth in § 2.2-4363.

K. APPLICABLE LAWS AND COURTS

This contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without reference to its choice of law rules. Any litigation involving a Virginia public body shall be brought in the Circuit Court for the City of Richmond, Virginia. The contractor shall comply with all applicable federal, state and local laws, rules and regulations.

L. VENDORS MANUAL

This solicitation is subject to the provisions of the Commonwealth of Virginia Vendors Manual and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the Vendors Manual. A copy of the Vendors Manual is available for at the purchasing office or accessible online at www.eva.virginia.gov under the "*I Sell to Virginia*" tab.

M. ALTERNATIVE DISPUTE RESOLUTION

The Commonwealth or Authorized User and the contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (Code of Virginia, § 2.2-4366). ADR procedures are described in Chapter 9 of the Vendors Manual.

N. ETHICS IN PUBLIC CONTRACTING

By fulfilling an order placed by a Commonwealth Authorized User, the contractor certifies that they have not engaged in collusion or fraud in relation to any aspect of this contract, or its contract with the lead state or other entity that conducted the procurement upon which this contract is based, and that it has not offered or received any kickbacks or inducements to or from any other bidder, offeror, supplier, manufacturer, or subcontractor in connection with this contract or procurement. The contractor also certifies that it has not conferred on any public employee having responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

THE COMMONWEALTH RESERVES THE RIGHT TO NEGOTIATE ANY ADDITIONAL REQUIRED CONTRACTUAL PROVISIONS AT SUCH TIME THAT ANY PARTICIPATING ADDENDUM MAY BE EXECUTED, IF ANY.

Attachment N

State of Arkansas-Changes to Master Agreement State-Specific Terms and Conditions

1. GENERAL: Any special terms and conditions included in this solicitation **shall** override these Standard Terms and Conditions. The Standard Terms and Conditions and any special terms and conditions **shall** become part of any contract entered into if any or all parts of the bid are accepted by the State of Arkansas.

2. ACCEPTANCE AND REJECTION: The State **shall** have the right to accept or reject all or any part of a bid or any and all bids, to waive minor technicalities, and to award the bid to best serve the interest of the State.

3. BID SUBMISSION: Original Proposal Packets **must** be submitted to the Office of State Procurement on or before the date and time specified for bid opening. The Proposal Packet **must** contain all documents, information, and attachments as specifically and expressly required in the *Bid Solicitation*. The bid **must** be typed or printed in ink. The signature **must** be in ink. Unsigned bids **shall** be disqualified. The person signing the bid should show title or authority to bind his firm in a contract. Multiple proposals **must** be placed in separate packages and should be completely and properly identified. Late bids **shall not** be considered under any circumstances.

4. PRICES: Bid unit price F.O.B. destination. In case of errors in extension, unit prices **shall** govern. Prices **shall** be firm and **shall not** be subject to escalation unless otherwise specified in the *Bid Solicitation*. Unless otherwise specified, the bid **must** be firm for acceptance for thirty days from the bid opening date. "Discount from list" bids are not acceptable unless requested in the *Bid Solicitation*.

5. QUANTITIES: Quantities stated in a *Bid Solicitation* for term contracts are estimates only, and are not guaranteed. Vendor **must** bid unit price on the estimated quantity and unit of measure specified. The State may order more or less than the estimated quantity on term contracts. Quantities stated on firm contracts are actual Requirements of the ordering agency.

6. BRAND NAME REFERENCES: Unless otherwise specified in the *Bid Solicitation*, any catalog brand name or manufacturer reference used in the *Bid Solicitation* is descriptive only, not restrictive, and used to indicate the type and quality desired. Bids on brands of like nature and quality will be considered. If bidding on other than referenced specifications, the bid **must** show the manufacturer, brand or trade name, and other descriptions, and should include the manufacturer's illustrations and complete descriptions of the product offered. The State **shall** have the right to determine whether a substitute offered is equivalent to and meets the standards of the item specified, and the State may require the vendor to supply additional descriptive material. The vendor **shall** guarantee that the product offered will meet or exceed specifications identified in this *Bid Solicitation*. Vendors not bidding an alternate to the referenced brand name or manufacturer **shall** be required to furnish the product according to brand names, numbers, etc., as specified in the solicitation.

7. GUARANTY: All items bid **shall** be newly manufactured, in first-class condition, latest model and design, including, where applicable, containers suitable for shipment and storage, unless otherwise indicated in the *Bid Solicitation*. The vendor hereby guarantees that everything furnished hereunder **shall** be free from defects in design, workmanship and material, that if sold by drawing, sample or specification, it **shall** conform thereto and **shall** serve the function for which it was furnished. The vendor **shall** further guarantee that if the items furnished hereunder are to be installed by the vendor, such items **shall** function properly when installed.

The vendor **shall** guarantee that all applicable laws have been complied with relating to construction, packaging, labeling and registration. The vendor's obligations under this paragraph **shall** survive for a period of one year from the date of delivery, unless otherwise specified herein.

8. SAMPLES: Samples or demonstrators, when requested, **must** be furnished free of expense to the State. Each sample should be marked with the vendor's name and address, bid or contract number and item number. If requested, samples that are not destroyed during reasonable examination will be returned at vendor's expense. After reasonable examination, all demonstrators will be returned at vendor's expense.

9. TESTING PROCEDURES FOR SPECIFICATIONS COMPLIANCE: Tests may be performed on samples or demonstrators submitted with the bid or on samples taken from the regular shipment. In the event products tested fail to meet or exceed all conditions and Requirements of the specifications, the cost of the sample used and the reasonable cost of the testing **shall** be borne by the vendor.

10. AMENDMENTS: Vendor's proposals cannot be altered or amended after the bid opening except as permitted by regulation.

11. TAXES AND TRADE DISCOUNTS: Do not include State or local sales taxes in the bid price. Trade discounts should be deducted from the unit price and the net price should be shown in the bid.

12. AWARD: Term Contract: A contract award will be issued to the successful vendor. It results in a binding obligation without further action by either party. This award does not authorize shipment. Shipment is authorized by the receipt of a purchase order from the ordering agency. Firm Contract: A written State purchase order authorizing shipment will be furnished to the successful vendor.

13. DELIVERY ON FIRM CONTRACTS: This solicitation shows the number of days to place a commodity in the ordering agency's designated location under normal conditions. If the vendor cannot meet the stated delivery, alternate delivery schedules may become a factor in an award. The Office of State Procurement **shall** have the right to extend delivery if reasons appear valid. If the date is not acceptable, the agency may buy elsewhere and any additional cost **shall** be borne by the vendor.

14. DELIVERY REQUIREMENTS: No substitutions or cancellations are permitted without written approval of the Office of State Procurement. Delivery **shall** be made during agency work hours only 8:00 a.m. to 4:30 p.m. Central Time, unless prior approval for other delivery has been obtained from the agency. Packing memoranda **shall** be enclosed with each shipment.

15. STORAGE: The ordering agency is responsible for storage if the contractor delivers within the time required and the agency cannot accept delivery.

16. DEFAULT: All commodities furnished **shall** be subject to inspection and acceptance of the ordering agency after delivery. Back orders, default in promised delivery, or failure to meet specifications **shall** authorize the Office of State Procurement to cancel this contract or any portion of it and reasonably purchase commodities elsewhere and charge full increase, if any, in cost and handling to the defaulting contractor. The contractor **must** give written notice to the Office of State Procurement and ordering agency of the reason and the expected delivery date. Consistent failure to meet delivery without a valid reason may cause removal from the vendors list or suspension of eligibility for award.

17. VARIATION IN QUANTITY: The State assumes no liability for commodities produced, processed or shipped in excess of the amount specified on the agency's purchase order.

18. INVOICING: The contractor **shall** be paid upon the completion of all of the following: (1) submission of an original and the specified number of copies of a properly itemized invoice showing the bid and purchase order numbers, where itemized in the *Bid Solicitation*, (2) delivery and acceptance of the commodities and (3) proper and legal processing of the invoice by all necessary State agencies. Invoices **must** be sent to the "Invoice To" point shown on the purchase order.

19. STATE PROPERTY: Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder **shall** remain property of the State, **shall** be kept confidential, **shall** be used only as expressly authorized, and **shall** be returned at the contractor's expense to the F.O.B. point provided by the agency or by OSP. Vendor **shall** properly identify items being returned.

20. PATENTS OR COPYRIGHTS: The contractor **must** agrees to indemnify and hold the State harmless from all claims, damages and costs including attorneys' fees, arising from infringement of patents or copyrights.

21. ASSIGNMENT: Any contract entered into pursuant to this solicitation **shall not** be assignable nor the duties thereunder delegable by either party without the written consent of the other party of the contract.

22. OTHER REMEDIES: In addition to the remedies outlined herein, the contractor and the State **shall** have the right to pursue any other remedy permitted by law or in equity.

23. CANCELLATION: In the event, the State no longer needs the commodities or services specified for any reason, (e.g., program changes; changes in laws, rules or regulations; relocation of offices; lack of appropriated funding, etc.), the State **shall** have the right to cancel the contract or purchase order by giving the vendor written notice of such cancellation thirty (30) days prior to the date of cancellation.
Any delivered but unpaid for goods will be returned in normal condition to the contractor by the State. If the State is unable to return the commodities in normal condition and there are no funds legally available to pay for the goods, the contractor may file a claim with the Arkansas Claims Commission under the laws and regulations governing the filing of such claims. If upon cancellation the contractor has provided services which the State has accepted, the contractor may file a claim. **NOTHING IN THIS CONTRACT SHALL BE DEEMED A WAIVER OF THE STATE'S RIGHT TO SOVEREIGN IMMUNITY.**

24. DISCRIMINATION: In order to comply with the provision of Act 954 of 1977, relating to unfair employment practices, the vendor agrees that: (a) the vendor **shall not** discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, or national origin; (b) in all solicitations or advertisements for employees, the vendor **shall** state that all qualified applicants **shall** receive consideration without regard to race, color, sex, age, religion, handicap, or national origin; (c) the vendor will furnish such relevant information and reports as requested by the Human Resources Commission for the purpose of determining compliance with the statute; (d) failure of the vendor to comply with the statute, the rules and regulations promulgated thereunder and this nondiscrimination clause **shall** be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in

part; (e) the vendor **shall** include the provisions of above items (a) through (d) in every subcontract so that such provisions **shall** be binding upon such subcontractor or vendor.

25. CONTINGENT FEE: The vendor guarantees that he has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the vendor for the purpose of securing business.

26. ANTITRUST ASSIGNMENT: As part of the consideration for entering into any contract pursuant to this solicitation, the vendor named on the *Proposal Signature Page* for this solicitation, acting herein by the authorized individual or its duly authorized agent, hereby assigns, sells and transfers to the State of Arkansas all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or this State for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or produced by this State pursuant to this contract.

27. DISCLOSURE: Failure to make any disclosure required by Governor's Executive Order 98-04, or any violation of any rule, regulation, or policy adopted pursuant to that order, **shall** be a material breach of the terms of this contract. Any contractor, whether an individual or entity, who fails to make the required disclosure or who violates any rule, regulation, or policy **shall** be subject to all legal remedies available to the agency.

Attachment O

State of Vermont-Changes to Master Agreement State-Specific Terms and Conditions

1. **Entire Agreement:** This Agreement, whether in the form of a Contract, State Funded Grant, or Federally Funded Grant, represents the entire agreement between the parties on the subject matter. All prior agreements, representations, statements, negotiations, and understandings shall have no effect.

2. **Applicable Law:** This Agreement will be governed by the laws of the State of Vermont.

3. **Definitions:** For purposes of this Attachment, "Party" shall mean the Contractor, Grantee or Subrecipient, with whom the State of Vermont is executing this Agreement and consistent with the form of the Agreement.

4. **Appropriations:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, and in the event federal funds become unavailable or reduced, the State may suspend or cancel this Grant immediately, and the State shall have no obligation to pay Subrecipient from State revenues.

5. **No Employee Benefits For Party:** The Party understands that the State will not provide any individual retirement benefits, group life insurance, group health and dental insurance, vacation or sick leave, workers compensation or other benefits or services available to State employees, nor will the state withhold any state or federal taxes except as required under applicable tax laws, which shall be determined in advance of execution of the Agreement. The Party understands that all tax returns required by the Internal Revenue Code and the State of Vermont, including but not limited to income, withholding, sales and use, and rooms and meals, must be filed by the Party, and information as to Agreement income will be provided by the State of Vermont to the Internal Revenue Service and the Vermont Department of Taxes.

6. **Independence, Liability:** The Party will act in an independent capacity and not as officers or employees of the State.

   The Party shall defend the State and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Party or of any agent of the Party. The State shall notify the Party in the event of any such claim or suit, and the Party shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

   After a final judgment or settlement the Party may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Party shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Party.

   The Party shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Party.

7. **Insurance**: Before commencing work on this Agreement the Party must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Party to maintain current certificates of insurance on file with the state through the term of the Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Party for the Party's operations. These are solely minimums that have been established to protect the interests of the State.

   Workers Compensation: With respect to all operations performed, the Party shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

   General Liability and Property Damage: With respect to all operations performed under the contract, the Party shall carry general liability insurance having all major divisions of coverage including, but not limited to:

   Premises - Operations

   Products and Completed Operations

   Personal Injury Liability

   Contractual Liability

   The policy shall be on an occurrence form and limits shall not be less than:

   $1,000,000 Per Occurrence

   $1,000,000 General Aggregate

   $1,000,000 Products/Completed Operations Aggregate

   $ 50,000 Fire/ Legal/Liability

   Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

   Automotive Liability: The Party shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: $1,000,000 combined single limit.

   Party shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

8. **Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Party, including but not limited to bills, invoices, progress reports and other proofs of work.

9. **Requirement to Have a Single Audit:** In the case that this Agreement is a Grant that is funded in whole or in part by federal funds, the Subrecipient will complete the Subrecipient Annual Report annually within 45 days after its fiscal year end, informing the State of Vermont whether or not a Single Audit is required for the prior fiscal year. If a Single Audit is required, the Subrecipient will submit a copy of the audit report to the granting Party within 9 months. If a single audit is not required, only the Subrecipient Annual Report is required.

   For fiscal years ending before December 25, 2015, a Single Audit is required if the subrecipient expends $500,000 or more in federal assistance during its fiscal year and must be conducted in accordance with OMB Circular A-133. For fiscal years ending on or after December 25, 2015, a Single Audit is required if the subrecipient expends $750,000 or more in federal assistance during its fiscal year and must be conducted in accordance with 2 CFR Chapter I, Chapter II, Part 200, Subpart F. The Subrecipient Annual Report is required to be submitted within 45 days,

whether or not a Single Audit is required.

10. **Records Available for Audit:** The Party shall maintain all records pertaining to performance under this agreement. "Records" means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

11. **Fair Employment Practices and Americans with Disabilities Act**: Party agrees to comply with the requirement of Title 21V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Party shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Party under this Agreement. Party further agrees to include this provision in all subcontracts.

12. **Set Off**: The State may set off any sums which the Party owes the State against any sums due the Party under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

13. T**axes Due to the State**:

    a. Party understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

    b. Party certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Party is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

    c. Party understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Party is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

    d. Party also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Party has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Party has no further legal recourse to contest the amounts due.

14. **Child Support**: (Applicable if the Party is a natural person, not a corporation or partnership.) Party states that, as of the date the Agreement is signed, he/she:

    a. is not under any obligation to pay child support; or
    b. is under such an obligation and is in good standing with respect to that obligation; or
    c. has agreed to a payment plan with the Vermont Office of Child Support Services and is in full compliance with that plan.

Party makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Party is a resident of Vermont, Party makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

15. **Sub-Agreements**: Party shall not assign, subcontract or subgrant the performance of this Agreement or any portion thereof to any other Party without the prior written approval of the State. Party also agrees to include in all subcontract or subgrant agreements a tax certification in accordance with paragraph 13 above.

16. **No Gifts or Gratuities**: Party shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

17. **Copies**: All written reports prepared under this Agreement will be printed using both sides of the paper.

18. **Certification Regarding Debarment:** Party certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Party nor Party's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

    Party further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Party is not presently debarred, suspended, nor named on the State's debarment list at: http://bgs.vermont.gov/purchasing/debarment

19. **Certification Regarding Use of State Funds:** In the case that Party is an employer and this Agreement is a State Funded Grant in excess of $1,001, Party certifies that none of these State funds will be used to interfere with or restrain the exercise of Party's employee's rights with respect to unionization.

20. **Internal Controls:** In the case that this Agreement is an award that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Party must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Party is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States and the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

21. **Mandatory Disclosures:** In the case that this Agreement is an award funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Party must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

22. **Conflict of Interest:** Party must disclose in writing any potential conflict of interest in accordance with Uniform Guidance §200.112, Bulletin 5 Section X and Bulletin 3.5 Section IV.B.