

vi. The Master Agreement identifier.

- G. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- H. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- I. Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

14. Intentionally Omitted.

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 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 is a process to ascertain that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is applicable, this subsection applies to Products, 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 does not meet the standard of performance, the Purchasing Entity may, at its option:
 - i. declare Contractor to be in breach and terminate the Order;
 - ii. demand replacement Product from Contractor at no additional cost to Purchasing Entity; or
 - iii. 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 this section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met.

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 interest percentage is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments may be remitted by mail or electronic transfer or may be made via a State or political subdivision "Purchasing Card" with no additional charge.

18. **Warranty.** Notwithstanding any other provision of the Contract, the parties agree to the following provisions concerning the Contractor's warranty. The Contractor warrants for a period of one year from the date of Acceptance that:

- A. the Product performs according to all specific claims that the Contractor made in its response to the solicitation;
- B. the Product is suitable for the ordinary purposes for which such Product is used;
- C. the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment;
- D. the Product is designed and manufactured in a commercially reasonable manner; and
- E. the Product is free of defects.

Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

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.

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

 - i.** Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate and
 - ii.** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- 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:

 - i.** names the Participating States identified in the Request for Proposal as additional insureds;
 - ii.** provides that written notice of cancellation shall be delivered in accordance with the policy provisions; and
 - iii.** 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, result in this Master Agreement's termination or, at the sole option of any Participating Entity, 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 seven (7) 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:
 - i. any Purchasing Entity's records;
 - ii. personnel records; and
 - iii. 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:

- i. is or becomes (other than by disclosure by Contractor) publicly known;
- ii. is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement;

- iii. is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement;
 - iv. is obtained from a source other than Purchasing Entity without the obligation of confidentiality;
 - v. is disclosed with the written consent of Purchasing Entity; or
 - vi. 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. 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 or expiration 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 contract 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 this Master Agreement in writing within ten (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 sufficient education, training, and experience.
27. **Independent Contractor.** The Contractor is an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, 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. **Cancellation.** Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and Accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.
29. **Force Majeure.** Neither party to this Master Agreement shall be held responsible for delay or default caused by unusually severe weather, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement, and a Participating Entity may terminate a Participating Addendum, after determining such delay or default will reasonably prevent successful performance of the Master Agreement or Participating Addendum, as applicable.
30. **Defaults and Remedies.**

- A.** The occurrence of any of the following events shall be an event of default under this Master Agreement:
- i.** Nonperformance of contractual requirements; or
 - ii.** A material breach of any term or condition of this Master Agreement; or
 - iii.** 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
 - iv.** 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
 - v.** 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:
- i.** Exercise any remedy provided by law; and
 - ii.** Terminate this Master Agreement and any related Contracts or portions thereof; and
 - iii.** Impose liquidated damages as provided in this Master Agreement; and
 - iv.** Suspend Contractor from being able to respond to future bid solicitations; and
 - v.** Suspend Contractor's performance; and
 - vi.** Withhold payment until the default is remedied.
- D.** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in 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 this Master Agreement 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.
33. **Indemnification**
- A. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.
- B. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.
- C. The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
- i. Provided by the Contractor or the Contractor's subcontractor, subsidiary or affiliate;
 - ii. Specified by the Contractor to work with the Product;

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

34. No Waiver of Sovereign Immunity. In no event shall this Master Agreement, any Participating Addendum 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 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. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum is solely and exclusively in the Purchasing Entity's State.
- B. 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.

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT B – SCOPE OF WORK

1. **Scope and General Information.** This Master Agreement provides a competitively bid contractual vehicle for Participating Entities to purchase construction equipment including equipment with warranty work and replacement parts. The Product line within scope of this Master Agreement and pricing offered at a “catalog discount” and includes a multi-unit discount. Pricing and the percentage discount are set forth at Attachment C -1 to Exhibit C hereto. Approved distributors through which a Purchasing Entity may purchase products and the distributor coverage area are set forth in Exhibit D hereto. Each Contractor shall ensure the Lead State Contract Administrator is provided with up to date information regarding the status of approved distributors. New distributors should be added by providing a replacement list of authorized distributors to the Lead State Contract Administrator. The Lead State Contract Administrator should be notified in writing, via email, of any distributors that should be removed from the list of approved distributors. Distributors may provide service nationally or locally. Each state represented by NASPO ValuePoint that chooses to participate in this Master Agreement independently has the option of deploying only resellers approved by the Participating Entity. The Participating Entity that chooses to exercise this option may define the process to add and remove resellers in its Participating Addendum.

2. **Motor Vehicle Licensing.** The Contractor certifies that all required Motor Vehicle Commission licenses are in place and current and copies of all such licenses, if requested, will be submitted with each Participating Addendum. Additional license requirements for Participating Entities will be addressed in each state’s Participating Addendum.

The Contractor shall maintain all required motor vehicle licensing during the term of the contract and furnish copies at any time upon request by the Lead State Contract Administrator or a Purchasing Entity. Failure to adhere to this requirement may result in termination, in whole or in part, of this Master Agreement for cause. Contracts for motor vehicles to be sold may be made only with properly licensed Motor Vehicle Dealers.

3. **Warranty and Buy Back.** The Contractor shall correct ordering errors without further cost to the Purchasing Entity.

The Contractor agrees the Products shall be covered by all commercial warranties the Contractor provides for such products, and rights and remedies provided therein are in addition to and do not limit any rights afforded by any other clause of this Master Agreement. A copy of the Contractor’s warranties applicable to its products is set forth at Attachment D-1 to Exhibit D. If Contractor changes its warranty with respect to a Product, Contractor shall promptly provide a replacement copy to the Lead State Contract Administrator and clarify which Products are covered by the revised warranty. Contractor also agrees to provide a copy of the warranty applicable to replacement parts purchased. All equipment warranties shall start on the later of the date of delivery or the date of Acceptance and shall be for the full term of said warranty.

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

The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work. All persons utilized in the performance of this Master Agreement shall be authorized by the Contractor and be fully qualified to perform the warranty work required. Warranty work shall be performed by certified or trained or authorized service technicians.

All warranty work performed and parts/materials supplied shall meet original equipment manufacturer (OEM) warranty requirements. Equivalent substitutions must be approved in writing by the Purchasing Entity contact person prior to installation. Warranty work performed not meeting specifications or found to be defective, shall not be accepted. The Contractor shall be required to make repairs or corrections at no additional cost to the Purchasing Entity. Repairs made that are covered by a warranty shall not be paid for by the Purchasing Entity.

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

- A. name of Purchasing Entity and division, if applicable;
- B. make, model, and VIN of equipment; and
- C. control number of Purchasing Entity (Inventory number).

Repair facilities that will perform warranty work under this Master Agreement shall be identified as the Contractor's dealer network. As the manufacturer, the Contractor is responsible for insuring that the facilities are able to adhere to the contract requirements for warranty work performance.

Equipment that will remain in the Contractor's possession overnight and/or for extended periods shall be stored in a safe and secure location for protection from theft and environmental dangers. The Contractor shall be responsible for the proper care and custody of any such equipment in the Contractor's possession.

In connection with replacement parts sold to a Purchasing Entity, Contractor shall provide a copy of any applicable buy-back, trade-in or exchange policy and applicable warranty at the time of purchase.

4. **Quality of Parts.** Parts associated with products available under this Master Agreement shall be name brand, nationally advertised merchandise and equivalent substitutions may only occur with the prior written approval of the Purchasing Entity. After market repair, rebuilt or remanufactured parts must be equal to or exceed Contractor's OEM specifications. Repair parts must be packaged and distributed under the respective nationally known name brands and may be required to be OEM repair parts. Contractor agrees its dealers or distributors network shall provide a complete line of OEM parts for all models of equipment available from such dealer or distributor. Preservation, packaging,

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

5. **Delivery.** Delivery on parts is to be made within 30 calendar days and delivery of equipment shall be made within 120 calendar days after receipt of order unless other arrangements are made between the Purchasing Entity and the Contractor. Earlier deliveries are encouraged however there shall be no change in contract price or discount terms because of the earlier delivery. Some ordering entities will have the capacity to pick up equipment from the dealer.

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

Delivery shall be made in accordance with instructions on the Order from each Purchasing Entity. If there is a discrepancy between the Order and what is listed in this Master Agreement, the Contractor shall seek clarification from the Purchasing Entity and/or the Lead State Contract Administrator.

Delivery to a Purchasing Entity is to be Free On Board Destination (to the Destination stated in the Order) freight prepaid and added. Any allowable freight, shipping and handling costs and set-up fees paid by a Purchasing Entity are to be annotated on the quote/invoice as a separate line item. Quotes shall show the Contractor's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidental costs and the final price for each item delivered.

Allied and incidental items requested by a Purchasing Entity shall comply with its state or other government regulations. Allied equipment may only be sold in connection with the sale of an item within scope of this Master Agreement. Items must be clearly labeled on the Order or quote as allied.

Allied and incidental items are attachments, accessories, parts or bundles not manufactured by the Contractor that are requested by a Purchasing Entity to complete the purchase of equipment within scope of this Master Agreement (but not to substantially convert the Product).

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EXHIBIT C - PRICING

The pricing structure for this Master Agreement is a percentage discount off the Contractor's catalogue pricing and multi-unit discounts are offered, as reflected in the attached Attachment C-1 (prices and percentage discount). Contractor offers a discount of 25% off list price for its extended warranty plans. Additional terms related to pricing are set forth in the General Terms and Conditions and Exhibits A and B of this Master Agreement.

Contractor offers the following multi-unit discounts:

Multiple Unit discount: 1% (In addition to the equipment discount) based on 2 – 3 Units purchased

Multiple Unit discount: 2% (In addition to the equipment discount) based on 4 -5 Units purchased

Multiple Unit discount: 3% (In addition to the equipment discount) based on 6-9 Units purchased

Multiple Unit discount: 4% (In addition to the equipment discount) based on 10+ Units purchased

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT– D - CONTRACTOR’S TERMS AND CONDITIONS CONTAINED IN CONTRACTOR’S RESPONSE AS REVISED AND ACCEPTED BY THE LEAD STATE

Approved distributors through which a Purchasing Entity may purchase products and the distributor coverage area is set forth at <http://agriculture1.newholland.com/nar/en-us/about-us/buying-services/sale/find-a-dealer>. The link will provide a list and contact information of the five closest Contractor dealers to a selected city or zip code.

Product information and specifications offered by Contractor hereunder are set forth at <http://agriculture1.newholland.com/nar/en-us>. At the link, select Products, then Product Family, then Model for specific information.

The Contractor’s NHCE Warranty is applicable to Products and warranty details are set forth at Attachment D-1. An extended warranty is also available at a discount. For avoidance of doubt, terms related to warranty that are set forth elsewhere in this Master Agreement or a Participating Addendum shall take precedence over the Contractor warranty to the extent there is a conflict.

No other terms and conditions contained in Contractor’s Bid are accepted by the Lead State for inclusion in the Contract.

ATTACHMENT C-1 TRACKED LOADERS

If you have different discounts for different sizes of equipment or options, you **WILL** have to list the items. If you need more space, attach sheets in the same format as this one.

Brand Name	Model	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	Percentage off discount %
New Holland	200 Series Compact Track Loaders (except C232)	Current	30%
New Holland	C232 Compact Track Loader	Current	28%
Attachments/Accessories: 28-30* ___ % * (same as base unit when ordered with base unit)			
Options: 28-30* ___ % Trade-ins: ___ X ___ Available ___ Not Available (Include any special conditions on a separate sheet)			
Multiple Unit discount: ___ 1 ___ % (In addition to the equipment discount) based on ___ 2-3 ___ Units purchased			
Multiple Unit discount: ___ 2 ___ % (In addition to the equipment discount) based on ___ 4-5 ___ Units purchased			
Multiple Unit discount: ___ 3 ___ % (In addition to the equipment discount) based on ___ 6-9 ___ Units purchased			
Multiple Unit discount: ___ 4 ___ % (In addition to the equipment discount) based on ___ 10+ ___ Units purchased			

If you have different discounts for different sizes of equipment or options, you **WILL** have to list the items. If you need more space, attach sheets in the same format as this one.

ATTACHMENT C PRICING PAGES for OK-SW-192 - New Holland.xlsx

If you have different discounts for different sizes of equipment or options, you **WILL** have to list the items. If you need more space, attach sheets in the same format as this one.

Attachments/Accessories: 28 % * (same as base unit when ordered with base unit)
Options: 28 % Trade-ins: X Available Not Available (Include any special conditions on a separate sheet)
Multiple unit discount: 1 % (In addition to the equipment discount) based on 2-5 Units purchased
Multiple Unit discount: 2 % (In addition to the equipment discount) based on 6+ Units purchased

If you have different discounts for different sizes of equipment or options, you **WILL** have to list the items. If you need more space, attach sheets in the same format as this one.

Brand Name	Model		Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	Percentage of discount %
New Holland	C Series Loader Backhoes		Current	35%
Attachments/Accessories: <u>35% %</u> * (same as base unit when ordered with base unit)				
Options: <u>35% %</u> Trade-ins: <u>X Available</u> <u>Not Available</u> (Include any special conditions on a separate sheet)				
Multiple Unit discount: <u>1 %</u> (In addition to the equipment discount) based on <u>2-3</u> Units purchased				
Multiple Unit discount: <u>2 %</u> (In addition to the equipment discount) based on <u>4-5</u> Units purchased				
Multiple Unit discount: <u>3 %</u> (In addition to the equipment discount) based on <u>6-9</u> Units purchased				
Multiple Unit discount: <u>4 %</u> (In addition to the equipment discount) based on <u>10+</u> Units purchased				

If you have different discounts for different sizes of equipment or options, you **WILL** have to list the items. If you need more space, attach sheets in the same format as this one.

ATTACHMENT C PRICING PAGES for OK-SW-192 - New Holland.xlsx



CNH Industrial America LLC
and CNH Industrial Canada, Ltd.

WARRANTY AND LIMITATION OF LIABILITY AGREEMENT NEW HOLLAND CONSTRUCTION EQUIPMENT

The NHCE Warranty

The NHCE Warranty is a limited warranty that is provided to the initial retail purchaser in return for consideration paid as part of the purchase price of the product. The selling dealer must review the warranty coverage with the initial retail purchaser and obtain signature on this document.

New Limited Warranty

The warranty described here is from CNH Industrial America LLC and in Canada, CNH Industrial Canada Ltd., both of which are referred to in this agreement as "NHCE". This warranty is for NHCE products sold and registered in the United States or Canada and normally operated in the United States or Canada. This warranty does NOT apply to any product normally operated outside of the United States and/or Canada, or to any unit purchased outside of the United States or Canada and imported in for any reason other than a customer relocation/personal move.

Warranty Period

For the products listed below, the Warranty Period for all coverage begins at the time that any person, dealer or agent first places the unit into service. At the latest, a unit is considered to be placed into service when purchased or delivered to an initial retail purchaser. Certain demonstration, rental, lease, and other used units may be eligible for a portion of a new unit warranty. The availability of the remaining portion of a new unit warranty does not mean that a unit is new or unused. The Warranty Period ends when either the month or machine hour limit is reached, whichever limit occurs first.

PRODUCT	WARRANTY COVERAGE
SKID STEER / COMPACT TRACK LOADERS ³	12 Months / Unlimited Hours 24 Months / 2000 Hours
CRAWLER DOZERS ¹	12 Months / Unlimited Hours
LOADER BACKHOES / TRACTOR LOADERS	12 Months / Unlimited Hours
WHEEL LOADERS	12 Months / Unlimited Hours
COMPACT WHEEL LOADERS	12 Months / Unlimited Hours
MOTOR GRADERS ¹	12 Months / Unlimited Hours
EXCAVATORS ²	12 Months / 2000 Hours
COMPACT EXCAVATORS E-B Series ¹	12 Months / Unlimited Hours
COMPACT EXCAVATORS E-C Series ¹	24 Months / 3000 Hours
TELESCOPIC HANDLERS	12 Months / Unlimited Hours
SEVERE APPLICATIONS (for all of the above)	6 Months / 1000 Hours

1) Engine coverage is provided by directly by the engine manufacturer.

2) Warranty does not cover any configuration excavator equipped with feller buncher/accumulator attachments.

3) Second year machine warranty coverage 24 months / 2000 hours

Definition of Severe Application: Severe duty applications include equipment used in Forestry, Demolition, Scrap & Waste Recycling, Mining and Landfills. Misrepresenting the application in which the product will be used on the Warranty Registration, will void Warranty.

Operator's Manual / Warranty Receipt Verification

The selling dealer has reviewed the correct operator's manual with me and will provide upon delivery of the product. YES ☐ / NO ☐

The selling dealer explained safety precautions to me. YES ☐ / NO ☐

The selling dealer explained the warranty terms and coverage to me. YES ☐ / NO ☐

The selling dealer explained Purchased Protection Plan options for additional coverage on select components. YES ☐ / NO ☐

I wish to be part of future NHCE communications, offers or events. YES ☐ / NO ☐

Model:	Serial Number:
Retail DATE / HOURS:	Operator Manual Number:
Purchaser Name (please print):	Dealer Name:
Address:	Address:
City / State:	City / State:
Zip code:	Zip code:
Phone Number:	Phone Number:

The answers checked above are correct. I acknowledge that I have read and I accept this warranty policy statement.

Purchaser Signature _____ Date _____

Dealer Signature _____ Date _____

USA mail original to CNH Industrial Capital America LLC, Attn: WLL Agreement, PO Box 3700, Lancaster, PA 17604-3700 USA
Overnight courier mail original to CNH Industrial Capital America LLC, Attn: WLL Agreement, 500 Diller Ave., New Holland, PA 17557
Canada mail original to CNH Industrial Capital America LLC, Attn: WLL Agreement, 4475 North Service Rd, Suite 301, Burlington, ON L7L4X7 Canada

NHCE is a trademark in the United States and many other countries, owned by or licensed to CNH Industrial N.V., its subsidiaries or affiliates

Original – CNH

Copy 2 – Purchaser

Copy 3 – Dealer

What's Covered

If a defect in material or workmanship is found in a unit and reported during the Warranty Period, NHCE will pay parts and labor costs to repair the defect if the services are performed by an authorized NHCE dealer at the dealer's location. If parts are needed during the repair, NHCE will, at its option, use genuine NHCE new or remanufactured parts. NHCE replacement parts that are used in a warranty repair are warranted until the end of the machine warranty or to the end of the NHCE Replacement Parts Warranty, whichever is longer.

NHCE PROVIDES NO WARRANTY, EXPRESS OR IMPLIED, FOR A COMPONENT OR OTHER ITEM THAT IS SEPARATELY WARRANTED TO THE PURCHASER BY ITS MANUFACTURER, SUCH AS TIRES, BATTERIES AND FUEL INJECTION COMPONENTS. CHECK WITH YOUR DEALER FOR DETAILS

No Modification or Extension of Warranty Period

The NHCE Warranty is limited to the written terms in this document. NHCE does not authorize any person, dealer or agent to change or extend the terms of this warranty in any manner. Any assistance to the purchaser in the repair or operation of any NHCE product outside the terms or limitations or exclusions of this warranty will not constitute a waiver of the terms, limitations or exclusions of this warranty, nor will such assistance extend or re-establish the warranty.

EXCLUSIVE REMEDY

THE REMEDY OF REPAIRING A DEFECT IN MATERIALS OR WORKMANSHIP AT A NHCE DEALERSHIP UNDER THE TERMS OF THIS WARRANTY IS THE PURCHASER'S EXCLUSIVE REMEDY AND IS IN LIEU OF ANY OTHER REMEDY OTHERWISE AVAILABLE.

This Warranty is Void If

The unit's hour meter is changed or altered, unless a NHCE dealer, at the direction of NHCE, changed the meter. If the unit is used in an application for which it is not designed or the unit has been scrapped, salvaged, stolen, junked or totaled.

Limitation and Exclusions

The NHCE Warranty gives you specific legal rights and you may also have other rights, which vary, from region to region.

THIS DOCUMENT CONTAINS THE ENTIRE NHCE WARRANTY. NHCE MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESSED OR IMPLIED, AND SPECIFICALLY EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE.* NHCE WILL NOT BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM A BREACH OF THE WRITTEN WARRANTY OR ANY IMPLIED WARRANTY IMPOSED BY LAW.*

Owner's Responsibility

The NHCE warranty remains in effect during the Warranty Period if the owner performs the required maintenance at the recommended intervals outlined in the product operator's manual and the unit is operated within its rated capacity. Genuine NHCE service parts or NHCE approved service parts that meet NHCE specifications must be used for maintenance and repair.

What's Not Covered

- Cost associated with performing pre-delivery or scheduled inspection service.
- Repairs arising from storage deterioration, failure to maintain the equipment, negligence, alteration, improper use of the equipment, collision or other accident, vandalism, or other casualty, or operation beyond rated capacity or specification.
- Repairs arising from abuse or neglect, including but not limited to: operation without adequate coolant or lubricants, adjustments to the fuel system outside equipment specifications, over-speeding, improper storage, starting, warm-up, or shutdown practices, incorrect fuel or contaminated fuel, oil or other fluids.
- Normal maintenance services, such as engine tune-ups, engine fuel system cleaning, checks, adjustments, shimming, etc.
- Replacement of non-defective wear items expected to be replaced during the warranty period, including but not limited to: light bulbs, spark plugs, ignition points, brake or clutch linings, slip clutches, belts, chains, knives, bucket cutting edges and teeth, crawler track pads and track components, crop processing and cutting components, external drive sprockets and chains, soil engaging tools and accessories.
- Items replaced due to customer demand.
- Labor charges performed by anyone except a dealer authorized by contract to repair the equipment, unless they qualify under special provisions (i.e.; outside labor).
- Any and all travel costs for items such as towing, service calls, or transporting a unit to and from the place where the warranty service is performed, unless specifically covered by a campaign or program.
- Claims involving loss or damage during shipment or handling, including units subsequently sold as a "salvage" unit.
- "Salvage" or other units sold on an "as is" basis, unless otherwise specified in writing at the time of sale.
- Normal maintenance costs, including but not limited to: lubricants, coolants, fluids, fuel, filters, and associated labor. Lubricants, filters, and coolants may qualify for warranty reimbursement if they require replacement as a DIRECT RESULT of a defect in material or workmanship.
- Claims involving the inspection or reconditioning of units after storage or prior use.
- Components or items that are separately warranted directly by the manufacturer including but are not limited to: tires, tracks, engines, transmissions, batteries, fuel injection pumps, fuel injectors, etc.
- Shop comebacks: any duplicate, repeat, or comeback repair resulting from improper diagnosis, testing, or service work. This also includes repairs arising from service performed by agents not approved by NHCE.
- Repairs arising from any unauthorized modification to the product or the use of non-NHCE parts, implements or attachments.
- Removal, replacement, or installation of non-NHCE optional equipment, attachments or components.
- Premiums charged for overtime labor costs or out of shop expenses.
- Economic loss including lost profits, crop loss, equipment rental, or other expense.
- Unauthorized modification or updating machines without a warrantable failure based on Service Bulletin information or production changes.
- Any and all costs of special tools
- Any and all costs of dealer shop supplies incurred with repairs, including but not limited to: solvents, cleaners, anti-seize lubricants, loctite, sealant, adhesive, oil-dry, shop towels, etc. Sealant or adhesive may qualify for warranty reimbursement in certain applications requiring a large volume of sealant/ adhesive.
- Failure of the machine, its implements or attachments caused by improper field application or loading.
- Any and all costs for coolant, fuel, or lube (oil) analysis including supplies and lab recommendations.
- Cost of initial setup or installation of any optional equipment or attachments to a unit
- Cost associated with cleaning of machine in preparation for servicing

USA mail original to CNH Industrial Capital America LLC, Attn: WLL Agreement, PO Box 3700, Lancaster, PA 17604-3700 USA
Overnight courier mail original to CNH Industrial Capital America LLC, Attn: WLL Agreement, 500 Diller Ave., New Holland, PA 17557
Canada mail original to CNH Industrial Capital America LLC, Attn: WLL Agreement, 4475 North Service Rd, Suite 301, Burlington, ON L7L4X7 Canada



CONTRACT

State of Oklahoma

Dispatch via Print

Supplier 0000325256
 NEW HOLLAND AGRICULTURE
 500 DILLER AVENUE
 NEW HOLLAND PA 17557-9301
 USA

Contract ID 0000000000000000000005244			Page 1 of 3	
Contract Dates 05/08/2018 to 04/10/2019		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW0192-Construction Equip			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
1	22101532 / Tracked Loaders and/or Accessories & Attachments New Holland 200 Series Compact Track Loaders (except C232) at 30% Percentage Discount New Holland C232 Compact Track Loader at 28% Percentage Discount Attachments and Accessories at 28-30% Percentage Discount (same as base unit when ordered with base unit). Options at 28-30% Percentage Discount Multiple Unit Discount: 1% for 2-3 units purchased 2% for 4-5 units purchased 3% for 6-9 units purchased 4% for 10+ units purchased	EA	0.00	0.00	0.00	0.00
2	22101528 / Wheel Loaders and/or Attachments & Accessories New Holland C Series Compact Wheel Loader at 28% Percentage Discount New Holland U80C Tractor Loader at 28% Percentage Discount Attachments and Accessories at 28% Percentage Discount (same as base unit when ordered with base unit). Options at 28% Percentage Discount Multiple Unit Discount: 1% for 2-3 units purchased 2% for 4-5 units purchased 3% for 6-9 units purchased 4% for 10+ units purchased	EA	0.00	0.00	0.00	0.00
3	25101600 / Telehandler and/or Attachments & Accessories New Holland LM Series Telehandler at 28% Percentage Discount Attachments and Accessories at 28% Percentage Discount (same as base unit when ordered with base unit). Options at 28% Percentage Discount Multiple Unit Discount: 1% for 2-5 units purchased 2% for 6+ units purchased	EA	0.00	0.00	0.00	0.00

Final = The price is final after adjustments
 Hard = Apply adjustments regardless of other adjustments
 Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature

CONTRACT

State of Oklahoma

Dispatch via Print

Supplier 0000325256
NEW HOLLAND AGRICULTURE
500 DILLER AVENUE
NEW HOLLAND PA 17557-9301
USA

Contract ID			Page
000000000000000000000005244			2 of 3
Contract Dates	Currency	Rate Type	Rate Date
05/08/2018 to 04/10/2019	USD	CRRNT	PO Date
Description:		Contract Maximum	
SW0192-Construction Equip		0.00	
Allow Open Item Reference			
TYPE: STATEWIDE			

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Order Amt	Maximum / Open Qty	Open Amt
4	22101509 / Backhoe and/or Attachments & Accessories New Holland C Series Loader Backhoe at 35% Percentage Discount Attachments and Accessories at 35% Percentage Discount (same as base unit when ordered with base unit). Options at 35% Percentage Discount Multiple Unit Discount: 1% for 2-3 units purchased 2% for 4-5 units purchased 3% for 6-9 units purchased 4% for 10+ units purchased	EA	0.00	0.00	0.00	0.00
5	22101529 / Skid Steer and/or Attachments & Accessories New Holland L213, L216 & L218 at 28% Percentage Discount New Holland L220 & L221 at 30% Percentage Discount New Holland L228 at 31% Percentage Discount New Holland L234 at 32% Percentage Discount Attachments and Accessories at 28-32% Percentage Discount (same as base unit when ordered with base unit). Options at 28-32% Percentage Discount Multiple Unit Discount: 1% for 2-3 units purchased 2% for 4-5 units purchased 3% for 6-9 units purchased 4% for 10+ units purchased	EA	0.00	0.00	0.00	0.00
6	22101526 / Track Excavator and/or Attachments & Accessories New Holland E17C, E26C, E33C, E37C at 25% Percentage Discount New Holland E57C & E60C at 28% Percentage Discount Attachments and Accessories at 25-28% Percentage Discount (same as base unit when ordered with base unit). Options at 25-28% Percentage Discount Multiple Unit Discount: 1% for 2-3 units purchased 2% for 4-5 units purchased 3% for 6-9 units purchased 4% for 10+ units purchased	EA	0.00	0.00	0.00	0.00

COMMENTS:

CNH Industrial America, LLC (New Holland Construction and Agriculture brands)
New Holland Point of Contact: Wayne Crow
Point of Contact Email: Wayne.Crow@newholland.com

Final = The price is final after adjustments
Hard = Apply adjustments regardless of other adjustments
Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature

[Signature]



Dispatch via Print

Authorized Signature



**OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT
CONSTRUCTION EQUIPMENT INCLUDING EQUIPMENT AND
WARRANTY WORK WITH REPLACEMENT PARTS**

Office of Management and Enterprise Services

Central Purchasing Division

5005 North Lincoln Boulevard

Oklahoma City, OK 73105

And

Clark Equipment Company


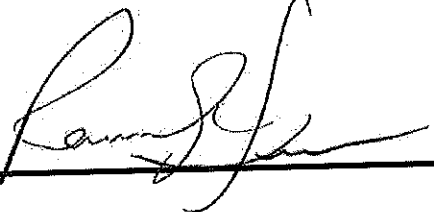
250 East Baton Drive

West Fargo, ND 58078

Master Agreement Number: OK-SW-192

The Contractor identified below is hereby notified that a contract is being awarded to the Contractor in connection with Solicitation No. OK-SW192, issued May 25, 2017.

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

STATE OF OKLAHOMA	CONTRACTOR
Ferris J. Barger, State Purchasing Director	Clark Equipment Company
By: 	By: 
Date: 6/4/18	Date: 6/01/2018
State Purchasing Director	Director, Government Accounts

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

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OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

SUMMARY

1. **Scope of Work Defined.** The purpose of this Master Agreement is to memorialize terms of the contract under which catalog discount and multi-unit discount options are provided for construction equipment and warranty work with replacement parts for all Participating Entities in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The objective is to obtain best value, and in some cases achieve more favorable pricing, than is obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities.
2. **Categories of Products Offered.** This Master Agreement will offer the following categories of products: Construction Equipment and Warranty Work with Replacement Parts.
Note: the Contractor does not presently offer motor graders, site dumpers, backhoes or dozers.
3. **Contract Documents and Master Agreement Order of Precedence.** Any Order placed under this Master Agreement is governed by and subject to the following contract documents, the terms of which are hereby incorporated:
 - A. Participating Entity's Participating Addendum ("PA");
 - B. Oklahoma NASPO ValuePoint Master Agreement;
 - i. Summary;
 - ii. General Terms, Conditions, and Instructions;
 - iii. Exhibit A, NASPO ValuePoint Terms and Conditions;
 - iv. Exhibit B, Scope of Work; and
 - v. Exhibit C, Pricing.
 - C. A Purchase Order issued against the Master Agreement;
 - D. Request for Proposal; and
 - E. Exhibit D, Contractor's Terms and Conditions Contained In Contractor's Response As Revised And Accepted By The Lead State.

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

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

GENERAL TERMS AND CONDITIONS

1. **Period of Performance.** The initial term of this Master Agreement is 1 (one) year with an option to renew for up to four (4) additional one-year periods. Renewal options are at the Lead State's discretion upon review of requirements of Participating Entities, current market conditions and Contractor performance.
2. **Contract Administrator.** The Lead State Contract Administrator identified below is the single point of contact in connection with this Master Agreement and all questions concerning the procurement process, contractual requirements, changes and any other questions that may arise related to this Master Agreement. The Lead State Contract Administrator designated by the State of Oklahoma, OMES Central Purchasing is:

Jennifer McCaulla, Statewide Initiatives Lead
State of Oklahoma, OMES Central Purchasing
5005 N. Lincoln Blvd., Suite 300
Oklahoma City, OK 73105
jennifer.mccaulla@omes.ok.gov
Phone: 405/521-4772
3. **Authorized Users.** Any Purchasing Entity, as defined herein, may make acquisitions under this Master Agreement.
4. **Certification of Non-Debarment.** Contractor certifies to the best of its knowledge and belief, that the Contractor and its principals or participants:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;
 - B. Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses listed above this certification; and
 - D. Have not with a three-year period preceding this application/proposal had one or more public (Federal, State or local) contracts terminated for cause or default. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its solicitation response.

5. **Insurance.** The Contractor agrees to maintain insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state at the prescribed levels set forth in Section 21 of Exhibit A, the NASPO ValuePoint Terms and Conditions.
6. **Governing Laws and Regulations.** The construction and effect of this Master Agreement is governed by the laws of the state of Oklahoma and venue for any claims or administrative or judicial action relating to such construction and effect including, but not limited to, the procurement process, evaluation and award shall be in Oklahoma County, Oklahoma.

The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in section 35 of the NASPO ValuePoint Terms and Conditions of this Exhibit.
7. **Cost, Prices, and Rates.** Prices and rates shall include all anticipated charges including, but not limited to, standard freight and delivery, cost of materials and product, transaction fees, overhead, profits, and other costs and expenses incidental to the Contractor's performance. Any travel costs must be included in the cost of the products and services offered under this Master Agreement. No line item billing for travel will be allowed under this Master Agreement.

Pricing will remain fixed for the initial term of this Master Agreement, which is one year. Any request for price or rate adjustment following the initial Master Agreement term is subject to pre-approval of the Lead State and shall be subject to other applicable restrictions with respect to the frequency or amount of such adjustment. Additional terms related to pricing are set forth in Exhibit A, Section 11.
8. **Oklahoma Open Records Act.** This Master Agreement and all proposal and other materials submitted in response to Request For Proposal SW#192 are the property of the State of Oklahoma and subject to the Oklahoma Open Records Act.
9. **Changes in Contractor Company Status, Equipment or Contact.** The Contractor shall notify the Lead State Contract Administrator of any changes in the company status, such as mergers, sell offs and changes in the contact information of the Contractor. The Contractor may add new Products to products available under this Master Agreement subject to the prior written approval of the Lead State. The price discount may not be decreased. The Contractor shall also provide prior written notice of any discontinued products or replacement models. The Contractor shall be available at all times during normal business hours for contact from Lead State Contract Administrator.
10. **Invoices.** In addition to requirements in an applicable Participating Addendum, to ensure prompt payment, the Contractor will provide necessary training for the dealer network to make sure all invoices include the following information:
 - A. Purchase order number if applicable;
 - B. Make, model, and VIN number of equipment;

- C. Name of Purchasing Entity;
 - D. Description of equipment purchased or warranty services performed and/or parts, material and supplies provided;
 - E. The Contractor's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered;
 - F. Name of company who provided the products/services; and
 - G. If requested by the Purchasing Entity for its accounting purposes, a copy of the current, dated Supplier's Price List showing the equipment price.
11. **Leasing or Alternative Financing Methods.** The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT A

NASPO VALUEPOINT TERMS AND CONDITIONS

1. **Master Agreement Order of Precedence.** The order of precedence of contract documents is set forth in Section 3 of the Summary above.
2. **Definitions.**
 - A. **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. Acceptance shall occur not later than thirty (30) calendar days after the date of delivery of the products to the Participating or Purchasing Entity.
 - B. **Contractor** means the person or entity delivering Products under the terms and conditions set forth in this Master Agreement.
 - C. **Embedded Software** means one or more software applications which permanently reside on a computing device.
 - D. **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.
 - E. **Lead State** means the State centrally administering any resulting Master Agreement(s).
 - F. **Master Agreement** means this agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.
 - G. **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 and the District of Columbia. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.
 - H. **Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

- I. **Participating Addendum** means a bilateral agreement executed by the Contractor and a Participating Entity incorporating this Master Agreement and any other terms and conditions, e.g. ordering procedures, specific to the Participating Entity.
- J. **Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.
- K. **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.
- L. **Purchasing Entity** means a state government (as well as the District of Columbia and U.S. territories) including a department, agency, institution and similar governmental entity thereof, an institution of higher education, city, county, district, or other political subdivision of a state and other eligible entities, subject to approval of the individual state procurement director and compliance with statutory and regulatory requirements,, that issues a Purchase Order and becomes financially committed to the purchase.
- M. **Resale** means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services.

3. **Intentionally Omitted.**

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 terms of this Master Agreement are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by a 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) used by the Purchasing Entity to place the Order.

- B. Use of this Master Agreement by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- C. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of a Participating Entity are limited to the Orders placed by departments or other state agencies and institutions having available funds. A Participating Entity incurs no financial obligations on behalf of any Purchasing Entity. 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. A Participating Addendum shall not be construed to amend the terms of 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; the Participating Entity must ensure it has the requisite procurement authority to execute a Participating Addendum.
- G. 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 participate in the Resale of 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 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. Within fifteen (15) days of execution of this Master Agreement, Contractor shall identify the person responsible for providing the mandatory usage reports. If the person providing the usage reports changes, Contractor will promptly notify the Lead State and NASPO ValuePoint.

In addition to other reports that may be required, 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://calculator.naspovaluepoint.org>. 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:
 - i. state;
 - ii. entity/customer type, e.g. local government, higher education, K12, non-profit;
 - iii. Purchasing Entity name;

- iv. Purchasing Entity bill-to and ship-to locations;
 - v. Purchasing Entity and Contractor Purchase Order identifier/number(s);
 - vi. Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices);
 - vii. Purchase Order date;
 - viii. Ship Date; and
 - ix. 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 set forth at Attachment A-1 and may be amended from time to time.
- 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. Contractor agrees 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. At a minimum, the Contractor agrees to participate in development of Ordering Instructions.
- C. 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.
- D. 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.

10. **Right to Publish.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior written approval for the release of any information that pertains to the potential work or activities covered by the Master Agreement. The Contractor shall not make any representations of NASPO Value Point'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 term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting

the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

- 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 which include the General Terms and Conditions, the NASPO ValuePoint Terms and Conditions, and the applicable Participating Addendum and will have the same rights and responsibilities for its 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 its 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 and shall have no right of setoff.
- 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 awarded companies 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 a Participating Addendum and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which awarded Contractors are solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, considering cost and other factors.
 - C.** Each Purchasing Entity will identify and utilize its own appropriate purchasing procedures 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 in compliance with the law of the Purchasing Entity.
 - E.** Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
 - F.** All Orders pursuant to this Master Agreement, at a minimum, shall include:
 - i.** The description and quantity of services or supplies being delivered;
 - ii.** The place and requested time of delivery;
 - iii.** A billing address;
 - iv.** The name, phone number, and address of the Purchasing Entity representative;
 - v.** The price per hour or other pricing elements consistent with this Master Agreement; and

- vi. The Master Agreement identifier.
 - G. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
 - H. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
 - I. Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.
14. **Intentionally Omitted.**
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 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 substantially 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 is a process to ascertain that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is applicable, this subsection applies to Products, 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 does not meet the standard of performance, the Purchasing Entity may, at its option:
 - i. declare Contractor to be in breach and terminate the Order;
 - ii. demand replacement Product from Contractor at no additional cost to Purchasing Entity; or
 - iii. 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 this section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met.

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 interest percentage is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments may be remitted by mail or electronic transfer or may be made via a State or political subdivision "Purchasing Card" with no additional charge.

18. **Warranty.** Notwithstanding any other provision of the Contract, the parties agree to the following provisions concerning the Contractor's warranty. The Contractor warrants for a period of one year from the date of Acceptance that:

- A. the Product performs according to all specific claims that the Contractor made in its response to the solicitation;
- B. the Product is suitable for the ordinary purposes for which such Product is used;
- C. the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment;
- D. the Product is designed and manufactured in a commercially reasonable manner; and
- E. the Product is free of defects.

Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

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.

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

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

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

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:

i. names the Participating States identified in the Request for Proposal as additional insureds;

ii. provides that written notice of cancellation shall be delivered in accordance with the policy provisions; and

iii. 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, result in this Master Agreement's termination or, at the sole option of any Participating Entity, 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 seven (7) 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:
 - i. any Purchasing Entity's records;
 - ii. personnel records; and
 - iii. 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:

- i. is or becomes (other than by disclosure by Contractor) publicly known;
- ii. is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement;

- iii. is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement;
 - iv. is obtained from a source other than Purchasing Entity without the obligation of confidentiality;
 - v. is disclosed with the written consent of Purchasing Entity; or
 - vi. 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. 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 or expiration 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 contract 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 will notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within ten (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 sufficient education, training, and experience.
27. **Independent Contractor.** The Contractor is an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, 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. **Cancellation.** Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and Accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.
29. **Force Majeure.** Neither party to this Master Agreement shall be held responsible for delay or default caused by unusually severe weather, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement, and a Participating Entity may terminate a Participating Addendum, after determining such delay or default will reasonably prevent successful performance of the Master Agreement or Participating Addendum, as applicable.
30. **Defaults and Remedies.**

- A. The occurrence of any of the following events shall be an event of default under this Master Agreement:
- i. Nonperformance of contractual requirements; or
 - ii. A material breach of any term or condition of this Master Agreement; or
 - iii. 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
 - iv. 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
 - v. 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:
- i. Exercise any remedy provided by law; and
 - ii. Terminate this Master Agreement and any related Contracts or portions thereof; and
 - iii. Impose liquidated damages as provided in this Master Agreement; and
 - iv. Suspend Contractor from being able to respond to future bid solicitations; and
 - v. Suspend Contractor's performance; and
 - vi. Withhold payment until the default is remedied.
- D. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in 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 this Master Agreement 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.
33. **Indemnification**
- A. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.
- B. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.
- C. The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
- i. Provided by the Contractor or the Contractor's subcontractor, subsidiary or affiliate;
 - ii. Specified by the Contractor to work with the Product;

- iii. Reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
 - iv. reasonably expected to be used in combination with such product, system or method.
- D. The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.
34. **No Waiver of Sovereign Immunity.** In no event shall this Master Agreement, any Participating Addendum 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 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. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum is solely and exclusively in the Purchasing Entity's State.
 - B. 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.

Field Name	Field Description
VENDOR	The awarded Contractor's name
VENDOR CONTRACT NUMBER	Lead State assigned contract number (using Lead State's numbering protocol)
STATE	State postal abbreviation code (Alaska = AK, Missouri = MO, etc.)
CUSTOMER TYPE (SEGMENT)	State Gov't, Education-K12, Education-HED, Local Gov't, Medical, Other - are acceptable segments. [determined by industrial practice for each contract - uniform for each contract]
BILL TO NAME	Customer (agency) Bill to name
BILL TO ADDRESS	Customer (agency) Bill to address
BILL TO CITY	Customer (agency) Bill to city
BILL TO ZIPCODE	Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]
SHIP TO NAME	Customer (agency) Ship to name
SHIP TO ADDRESS	Customer (agency) Ship to address
SHIP TO CITY	Customer (agency) Ship to city
SHIP TO ZIPCODE	Zip code in standard 5-4 format [standard 5 digits is acceptable, formatted as a zip code]
ORDER NUMBER	Vendor assigned order number
CUSTOMER PO NUMBER	Customer provided Purchase Order Number
CUSTOMER NUMBER	Vendor assigned account number for the purchasing entity
ORDER TYPE	Sales order, Credit/Return, Upgrade/Downgrade, etc. [determined by industrial practice for each contract - uniform for each contract]
PO DATE (ORDER DATE)	(mm/dd/ccyy)
SHIP DATE	(mm/dd/ccyy)
INVOICE DATE	(mm/dd/ccyy)
INVOICE NUMBER	Vendor assigned Invoice Number
PRODUCT NUMBER	Product number of purchased product
PRODUCT DESCRIPTION	Product description of purchased product
UNSPSC	Commodity-level code based on UNSPSC code rules (8 Digits)
LIST PRICE/MSRP/CATALOG PRICE	List Price - US Currency (\$99999.999) [determined by industrial practice for each contract - uniform for each contract]
NASPO ValuePoint PRICE	NASPO ValuePoint Price- US Currency (\$99999.999)
QUANTITY	Quantity Invoiced (99999.999)
TOTAL PRICE	Extended Price (unit price multiplied by the quantity invoiced) - US Currency (\$99999999.999)

NASPO ValuePoint ADMIN FEE		Administrative Fee based on Total Price - US Currency (\$999999.999)
VAR/Reseller/Distributor		If a VAR/Reseller/Distributor, name of VAR/Reseller/Distributor and state where located
Energy Star Compliant		Yes = 1 No = 2 Energy Star Does not Apply = 0
Optional		More information

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT B – SCOPE OF WORK

1. **Scope and General Information.** This Master Agreement provides a competitively bid contractual vehicle for Participating Entities to purchase construction equipment including equipment with warranty work and replacement parts. The Product line within scope of this Master Agreement and pricing offered at a "catalog discount" and a multi-unit discount is set forth at Attachment C-1 to Exhibit C hereto. Approved distributors through which a Purchasing Entity may purchase products and the distributor coverage area are set forth at Exhibit D hereto. Each Contractor shall ensure the Lead State Contract Administrator is provided with up to date information regarding the status of approved distributors. New distributors should be added by providing a replacement list of authorized distributors to the Lead State Contract Administrator. The Lead State Contract Administrator should be notified in writing, via email, of any distributors that should be removed from the list of approved distributors. Distributors may provide service nationally or locally. Each state represented by NASPO ValuePoint that chooses to participate in this Master Agreement independently has the option of deploying only resellers approved by the Participating Entity. The Participating Entity that chooses to exercise this option may define the process to add and remove resellers in its Participating Addendum.

2. **Motor Vehicle Licensing.** The Contractor certifies that all required Motor Vehicle Commission licenses are in place and current and copies of all such licenses, if requested, will be submitted with each Participating Addendum. Additional license requirements for Participating Entities will be addressed in each state's Participating Addendum.

The Contractor shall maintain all required motor vehicle licensing during the term of the contract and furnish copies at any time upon request by the Lead State Contract Administrator or a Purchasing Entity. Failure to adhere to this requirement may result in termination, in whole or in part, of this Master Agreement for cause. Contracts for motor vehicles to be sold may be made only with properly licensed Motor Vehicle Dealers.

3. **Warranty and Buy Back.** The Contractor shall correct ordering errors without further cost to the Purchasing Entity.

The Contractor agrees the Products shall be covered by all commercial warranties the Contractor provides for such products, and rights and remedies provided therein are in addition to and do not limit any rights afforded by any other clause of this Master Agreement. A copy of the Contractor's warranties applicable to its products is set forth at Exhibit D. If Contractor changes its warranty with respect to a Product, Contractor shall promptly provide a replacement copy to the Lead State Contract Administrator and clarify which Products are covered by the revised warranty. Contractor also agrees to provide a copy of the warranty applicable to replacement parts purchased. All equipment warranties shall start on the later of the date of delivery or the date of Acceptance and shall be for the full term of said warranty.

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

The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work. All persons utilized in the performance of this Master Agreement shall be authorized by the Contractor and be fully qualified to perform the warranty work required. Warranty work shall be performed by certified or trained or authorized service technicians.

All warranty work performed and parts/materials supplied shall meet original equipment manufacturer (OEM) warranty requirements. Equivalent substitutions must be approved in writing by the Purchasing Entity contact person prior to installation. Warranty work performed not meeting specifications or found to be defective, shall not be accepted. The Contractor shall be required to make repairs or corrections at no additional cost to the Purchasing Entity. Repairs made that are covered by a warranty shall not be paid for by the Purchasing Entity.

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

- A. name of Purchasing Entity and division, if applicable;
- B. make, model, and VIN of equipment; and
- C. control number of Purchasing Entity (Inventory number).

Repair facilities that will perform warranty work under this Master Agreement shall be identified as the Contractor's dealer network. As the manufacturer, the Contractor is responsible for insuring that the facilities are able to adhere to the contract requirements for warranty work performance.

Equipment that will remain in the Contractor's possession overnight and/or for extended periods shall be stored in a safe and secure location for protection from theft and environmental dangers. The Contractor shall be responsible for the proper care and custody of any such equipment in the Contractor's possession.

In connection with replacement parts sold to a Purchasing Entity, Contractor shall provide a copy of any applicable buy-back, trade-in or exchange policy and applicable warranty at the time of purchase.

4. **Quality of Parts.** Parts associated with products available under this Master Agreement shall be name brand, nationally advertised merchandise and equivalent substitutions may only occur with the prior written approval of the Purchasing Entity. After market repair, rebuilt or remanufactured parts must be equal to or exceed Contractor's OEM specifications. Repair parts must be packaged and distributed under the respective nationally known name brands and may be required to be OEM repair parts. Contractor agrees its dealers or distributors network shall provide a complete line of OEM parts for all models of equipment available from such dealer or distributor. Preservation, packaging,

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

5. **Delivery.** Delivery on parts is to be made within 30 calendar days and delivery of equipment shall be made within 120 calendar days after receipt of order unless other arrangements are made between the Purchasing Entity and the Contractor. Earlier deliveries are encouraged however there shall be no change in contract price or discount terms because of the earlier delivery. Some ordering entities will have the capacity to pick up equipment from the dealer.

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

Delivery shall be made in accordance with instructions on the Order from each Purchasing Entity. If there is a discrepancy between the Order and what is listed in this Master Agreement, the Contractor shall seek clarification from the Purchasing Entity and/or the Lead State Contract Administrator.

Delivery to a Purchasing Entity is to be Free On Board Destination (to the Destination stated in the Order) freight prepaid and added. Any allowable freight, shipping and handling costs and set-up fees paid by a Purchasing Entity are to be annotated on the quote/invoice as a separate line item. Quotes shall show the Contractor's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidental costs and the final price for each item delivered.

Allied and incidental items requested by a Purchasing Entity shall comply with its state or other government regulations. Allied equipment may only be sold in connection with the sale of an item within scope of this Master Agreement. Items must be clearly labeled on the Order or quote as allied.

Allied and incidental items are attachments, accessories, parts or bundles not manufactured by the Contractor that are requested by a Purchasing Entity to complete the purchase of equipment within scope of this Master Agreement (but not to substantially convert the Product).

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT C- PRICING

The pricing structure for this Master Agreement is a percentage discount off the Contractor's catalogue pricing and multi-unit discounts are offered, as reflected in the attached Attachment C-1 (prices and percentage discount). Additional terms related to pricing are set forth in the General Terms and Conditions and Exhibits A and B of this Master Agreement.

Contractor offers the following multi-discount:

Multiple Unit discount: 3% (In addition to the equipment discount) based on 6 Units purchased.

TRACKED LOADERS

CLARK EQUIPMENT COMPANY/REP: OK-SW-192

[illegible]

ATTACHMENT C-1 TO EXHIBIT C - PRICING AND PERCENTAGE DISCOUNTS

WHEEL LOADERS

CLARK EQUIPMENT COMPANY/RFP: OK-SW-192

Brand Name	Model	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	Percentage off discount %
Doosan	DL200-5 Standard Lift Wheel Loader	February, 2018	22%
Doosan	DL200-5 High Lift Wheel Loader	February, 2018	22%
Doosan	DL200TC-5 Tool Carrier Wheel Loader	February, 2018	22%
Doosan	DL220-5 Standard Lift Wheel Loader	February, 2018	22%
Doosan	DL220-5 Locking Differential Wheel Loader	February, 2018	22%
Doosan	DL220-5 High Lift Wheel Loader	February, 2018	22%
Doosan	DL220-5 High Lift w/ Locking Diff. Wheel Loader	February, 2018	22%
Doosan	DL250-5 Standard Lift Wheel Loader	February, 2018	22%
Doosan	DL250-5 Locking Differential Wheel Loader	February, 2018	22%
Doosan	DL250-5 High Lift Wheel Loader	February, 2018	22%
Doosan	DL250-5 High Lift w/ Locking Diff. Wheel Loader	February, 2018	22%
Doosan	DL250TC-5 Tool Carrier Wheel Loader	February, 2018	22%
Doosan	DL250TC-5 Locking Differential Wheel Loader	February, 2018	22%
Doosan	DL300-5 Standard Lift Wheel Loader	February, 2018	22%
Doosan	DL300-5 Locking Differential Wheel Loader	February, 2018	22%
Doosan	DL300-5 High Lift Wheel Loader	February, 2018	22%
Doosan	DL300-5 High Lift w/ Locking Diff. Wheel Loader	February, 2018	22%
Doosan	DL350-5 Standard Lift Wheel Loader	February, 2018	22%
Doosan	DL350-5 Locking Differential Wheel Loader	February, 2018	22%
Doosan	DL350-5 High Lift Wheel Loader	February, 2018	22%
Doosan	DL350-5 High Lift w/ Locking Diff. Wheel Loader	February, 2018	22%
Doosan	DL420-5 Standard Lift Wheel Loader	February, 2018	22%
Doosan	DL420-5 Locking Differential Wheel Loader	February, 2018	22%
Doosan	DL420-5 High Lift Wheel Loader	February, 2018	22%
Doosan	DL420-5 High Lift w/ Locking Diff. Wheel Loader	February, 2018	22%
Doosan	DL450-5 Standard Lift Wheel Loader	February, 2018	22%
Doosan	DL450-5 Locking Differential Wheel Loader	February, 2018	22%
Doosan	DL450-5 High Lift Wheel Loader	February, 2018	22%
Doosan	DL450-5 High Lift w/ Locking Diff. Wheel Loader	February, 2018	22%
Doosan	DL550-5 Standard Lift Wheel Loader	February, 2018	22%
Doosan	DL550-5 High Lift Wheel Loader	February, 2018	22%
Doosan	DL650-5 High Lift Wheel Loader	February, 2018	22%
Attachments/Accessories: 22 %			
Options: 22 % Trade-ins: Yes Available Not Available (Include any special conditions on a separate sheet)			
Multiple Unit discount: 3 % (in addition to the equipment discount) based on 6 Units purchased			

ATTACHMENT C-1 TO EXHIBIT C - PRICING AND PERCENTAGE DISCOUNTS

TRACK EXCAVATOR

CLARK EQUIPMENT COMPANY/RFP: OK-SW-192

Brand Name	Model	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	Percentage off discount %
Bobcat	418	January 1, 2018	30%
Bobcat	E20	January 1, 2018	30%
Bobcat	E26	January 1, 2018	30%
Bobcat	E30	January 1, 2018	30%
Bobcat	E32	January 1, 2018	30%
Bobcat	E32R	January 1, 2018	30%
Bobcat	E35	January 1, 2018	30%
Bobcat	E35R	January 1, 2018	30%
Bobcat	E42	January 1, 2018	30%
Bobcat	E45	January 1, 2018	30%
Bobcat	E50	January 1, 2018	30%
Bobcat	E55	January 1, 2018	30%
Bobcat	E63	January 1, 2018	30%
Bobcat	E85	January 1, 2018	30%
Doosan	DX140LC-5 No Front Excavator	February 2018	22%
Doosan	DX140LC-5 Standard Excavator	February 2018	22%
Doosan	DX140LC-5 Standard w/ Dozer Blade Excavator	February 2018	22%
Doosan	DX140LCR-5 Standard Excavator	February 2018	22%
Doosan	DX140LCR-5 Standard w/ Dozer Blade Excavator	February 2018	22%
Doosan	DX180LC-5 No Front Excavator	February 2018	22%
Doosan	DX180LC-5 Standard Excavator	February 2018	22%
Doosan	DX180LC-5 Long Arm Excavator	February 2018	22%
Doosan	DX180LC-5 Standard Excavator w/ Dozer Blade	February 2018	22%
Doosan	DX180LC-5 Narrow Track Excavator	February 2018	22%
Doosan	DX225LC-5 No Front Excavator	February 2018	22%
Doosan	DX225LC-5 Standard Excavator	February 2018	22%
Doosan	DX225LC-5 Long Arm Excavator	February 2018	22%
Doosan	DX225LC-5 Standard Excavator w/ Dozer Blade	February 2018	22%
Doosan	DX225LC-5 Super Long Reach Excavator	February 2018	22%
Doosan	DX225LCR-5 Standard Reduced Swing Excavator	February 2018	22%
Doosan	DX225LCR-5 Standard Excavator w/Dozer	February 2018	22%
Doosan	DX225LC-5 No Front Excavator	February 2018	22%
Doosan	DX225LC-5 Standard Excavator	February 2018	22%
Doosan	DX255LC-5 Long Arm Excavator	February 2018	22%
Doosan	DX300LC-5 No Front Excavator	February 2018	22%
Doosan	DX300LC-5 Standard Excavator	February 2018	22%
Doosan	DX300LC-5 Long Arm Excavator	February 2018	22%

Doosan	DX300L C-5 Super Long Reach Excavator	February, 2018	22%
Doosan	DX300L C-5 Material Handler	February, 2018	22%
Doosan	DX350L C-5 No Front Excavator	February, 2018	22%
Doosan	DX350L C-5 Standard Excavator	February, 2018	22%
Doosan	DX350L C-5 Long Arm Excavator	February, 2018	22%
Doosan	DX420L C-5 No Front Excavator	February, 2018	22%
Doosan	DX420L C-5 Standard Excavator	February, 2018	22%
Doosan	DX420L C-5 Long Arm Excavator	February, 2018	22%
Doosan	DX490L C-5 No Front Excavator	February, 2018	22%
Doosan	DX490L C-5 Standard Excavator	February, 2018	22%
Doosan	DX490L C-5 Long Arm Excavator	February, 2018	22%
Doosan	DX530L C-5 No Front Excavator	February, 2018	22%
Doosan	DX530L C-5 Standard Excavator	February, 2018	22%
Doosan	DX530L C-5 Long Arm Excavator	February, 2018	22%
Doosan	DX530L C-5 Super Long Reach Excavator	February, 2018	22%
For Bobcat Excavators			
Attachments/Accessories: 24 %			
Options: 30 % Trade-ins: Yes Available Not Available (include any special conditions on a separate sheet)			
Multiple Unit discount: 3 % (in addition to the equipment discount) based on 6 Units purchased			
For Doosan Excavators			
Attachments/Accessories: 22 %			
Options: 22 % Trade-ins: Yes Available Not Available (include any special conditions on a separate sheet)			
Multiple Unit discount: 3 % (in addition to the equipment discount) based on 6 Units purchased			

WHEELED EXCAVATORS

CLARK EQUIPMENT COMPANY/RFP: OK-SW-192

Brand Name	Model	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	Percentage off discount %
Doosan	DX140W-5 No Front Wheeled Ex F&R Outr.	February, 2018	22%
Doosan	DX140W-5 Mono Boom Frt. Dozer Rear Outr.	February, 2018	22%
Doosan	DX140W-5 Mono Boom Frt. & Rear Outr.	February, 2018	22%
Doosan	DX140W-5 Artic Boom Frt. Dozer & Rear Outr.	February, 2018	22%
Doosan	DX140W-5 Artic Boom Frt. & Rear Outr.	February, 2018	22%
Doosan	DX190W-5 No Front Wheeled Ex F&R Outr.	February, 2018	22%
Doosan	DX190W-5 Mono Boom Frt. Dozer Rear Outr.	February, 2018	22%
Doosan	DX190W-5 Mono Boom Frt. & Rear Outr.	February, 2018	22%
Doosan	DX190W-5 Artic Boom Frt. Dozer & Rear Outr.	February, 2018	22%
Doosan	DX190W-5 Artic Boom Frt. & Rear Outr.	February, 2018	22%
Doosan	DX210W-5 No Front Wheeled Ex F&R Outr.	February, 2018	22%
Doosan	DX210W-5 Mono Boom Frt. Dozer Rear Outr.	February, 2018	22%
Doosan	DX210W-5 Mono Boom Frt. & Rear Outr.	February, 2018	22%
Doosan	DX210W-5 Artic Boom Frt. Dozer & Rear Outr.	February, 2018	22%
Doosan	DX210W-5 Artic Boom Frt. & Rear Outr.	February, 2018	22%
Doosan	DX210W-5 Material Handler - No Attachment	February, 2018	22%
Attachments/Accessories: <u>22</u> %			
Options: <u>22</u> % Trade-ins: <u>Yes Available</u> Not Available (Include any special conditions on a separate sheet)			
Multiple Unit discount: <u>3</u> % (In addition to the equipment discount) based on <u>6</u> Units purchased			

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

**EXHIBIT D - CONTRACTOR'S TERMS AND CONDITIONS
CONTAINED IN CONTRACTOR'S RESPONSE
AS REVISED AND ACCEPTED BY THE LEAD STATE**

Approved distributors through which a Purchasing Entity may purchase products and the distributor coverage area is located at www.bobcat.com and www.doosanequipment.com.

Product information and specifications offered by Contractor hereunder are set forth at www.bobcat.com and www.doosanequipment.com.

The Contractor offers both a standard and an extended warranty. All warranty details for Bobcat Products are set forth at <https://www.bobcat.com/service-maintenance/warranty/standard>. All warranty details for Doosan Products are attached as Attachment D-1 hereto. For avoidance of doubt, terms related to warranty that are set forth elsewhere in this Master Agreement or a Participating Addendum shall take precedence over the Contractor warranty to the extent there is a conflict.

No other terms and conditions contained in Contractor's Bid are accepted by the Lead State for inclusion in the Contract.



Doosan Infracore Construction Equipment America

NEW DOOSAN ADT STANDARD PRODUCT WARRANTY

Clark Equipment Company dba Doosan Infracore Construction Equipment America (DICEA), through its dealer, warrants each new Doosan Articulated Dump Truck (herein referred to as the "Machine") sold to the initial user to be free from defects in material and workmanship for a period of twelve (12) months from the date of delivery to the initial user as set forth in the DICEA warranty registration records or two thousand (2,000) hours of operation, whichever occurs first. If any part of the Machine fails as a result of a defect in material and/or workmanship within the warranty period, a new part or repaired part at the option of DICEA will be provided free of charge for parts or labor except as otherwise provided herein by the nearest authorized DICEA dealer during normal business hours at the dealer's place of business. Travel time of mechanics and transportation of the Machine to the authorized DICEA dealer for warranty work are the responsibility of the owner. The owner shall provide DICEA or its authorized dealer with prompt written notice of the defect and allow reasonable time for repair or replacement. The owner must present proof of purchase and purchase date at the time of making a claim under this warranty.

The remedies provided in this warranty are exclusive. Correction of any defect in the manner and for the time period provided herein shall constitute fulfillment of all liabilities of DICEA for such defect.

This warranty does not apply to the following:

- (1) Damage or defects caused by accidents, misuse, neglect, natural calamity or improper maintenance.
- (2) Damage or defects caused by other than DICEA genuine parts and installing attachments to the Machine not authorized in writing by DICEA.
- (3) Changes, alterations or modifications to the Machine or any of its components/parts by other than DICEA authorized dealers, which in the sole judgment of DICEA affects the performance, stability or purpose for which it was manufactured.
- (4) Slight defects, which generally do not affect the stability or reliability of the Machine.
- (5) Maintenance such as but not limited to engine cleaning, replacement consumable parts, lubrication, brake adjustment, and other recommended maintenance procedures as defined in the Machine Operator and Maintenance Manual.
- (6) Consumable articles, such as but not limited to oil, grease, fan belt, batteries, gaskets, fuses, brake or clutch linings, fuel filter, tires, cables, carbon brushes, bulbs, glass, or other similar parts.
- (7) Wear items and other ground engaging components except for breakage as a result of a defect in material or workmanship.
- (8) Transporting or towing, loading or unloading charges related to the failed Machine to or from the nearest location as authorized by a DICEA dealer.
- (9) Cost of a rental or loaner equipment.
- (10) All labor related to diagnostics of any defective part or component.
- (11) Freight charges incurred as a result of shipment of the replacement warranty part or component to the registered user of the Machine.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS, EXCEPT THE WARRANTY OF TITLE. DICEA DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL DICEA OR THE AUTHORIZED DICEA DEALER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOSS OR INTERRUPTION OF BUSINESS, LOST PROFITS, OR LOSS OF MACHINE USE, WHETHER BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE OR OTHERWISE, EVEN IF DICEA OR THE AUTHORIZED DICEA DEALER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE REMEDIES OF THE INITIAL USER SET FORTH HEREIN ARE EXCLUSIVE AND THE TOTAL LIABILITY OF DICEA AND THE AUTHORIZED DICEA DEALER WITH RESPECT TO THE PRODUCTS AND SERVICES FURNISHED HEREUNDER SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT UPON WHICH SUCH LIABILITY IS BASED.



Doosan Infracore Construction Equipment America

NEW DOOSAN PRODUCT STANDARD WARRANTY

Clark Equipment Company, dba Doosan Infracore Construction Equipment America (DICEA) warrants the DOOSAN Hydraulic Excavator and Wheel Loader, hereinafter referred to as Machine to be free from defects in material and workmanship. If any part of the Machine fails as a result of a defect in material and/or workmanship within twelve (12) months or one thousand five hundred (1,500) hours, (whichever occurs first), from the first in service date as defined by DICEA warranty registration records, the failed part will be replaced free of charge with labor (per DICEA Labor Time Guide) by the nearest authorized DICEA dealer during normal business hours at the place of business thereof.

This warranty does not apply to the following:

- (1) Damage or defects caused by accident, misuse, negligence, natural calamity or improper maintenance.
- (2) Damage or defects caused by using other than Doosan Infracore Construction Equipment America (DICEA) genuine parts or installing attachments to equipment not authorized in writing by DICEA.
- (3) Changes, alterations or modifications to equipment or any of its components/parts by other than DICEA authorized dealers, which is the sole judgment of DICEA, which affects the performance, stability or purpose for which it was manufactured.
- (4) Slight defects, which generally do not affect the stability or reliability of the machine.
- (5) Maintenance such as but not limited to engine cleaning, replacement of consumable parts, lubrication, brake adjustment, and other recommended maintenance procedures as defined in the Machine Operator and Maintenance Manual, etc.
- (6) Consumable articles, such as but not limited to oil, grease, fan belt, batteries, gaskets, fuses, brake or clutch lining, fuel filter, tires, cables, carbon brushes, bulbs, glass, and other similar parts.
- (7) Wear items such as but not limited to cutting edges, bucket teeth, undercarriage components and other ground engaging components except for breakage as a result of a defect in material or workmanship.
- (8) Transportation or towing, loading or unloading charges related to the failed Machine to or from the nearest location of the authorized DICEA Dealer.
- (9) Cost of a rental or loaner equipment.
- (10) All Labor related to diagnostics of any defective part or component.
- (11) Freight charges incurred as a result of shipment of the replacement warranty part or component to the registered user of the machine.

This warranty is expressly in lieu of any other warranties, expressed or implied, including any warranty of merchantability or fitness for a particular purpose.

The liability of DICEA under this warranty is expressly limited to the provisions specified above and in no event shall DICEA incur any liability (including liability for general, special, incidental or consequential damages, economic or moral loss, arising out of any failure of Machine) which is not expressly assumed by DICEA under this warranty. In all matters DICEA's decision is final.

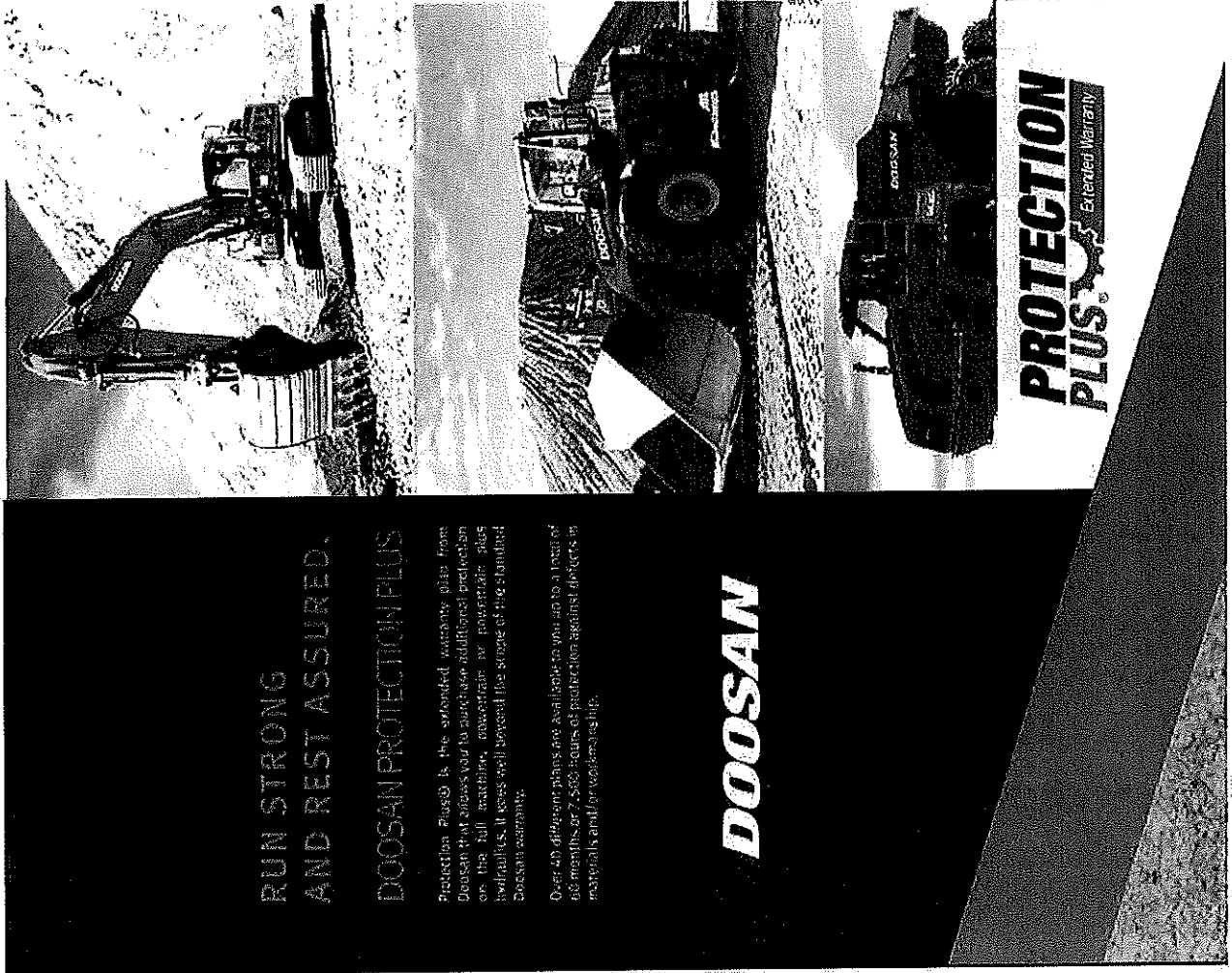
**RUN STRONG
AND REST ASSURED.**

DOOSAN PROTECTION PLUS

Protection Plus® is the extended warranty plan from Doosan that assures you to such use additional protection on the full machine, powertrain or hydraulic plus hydraulics. It goes well beyond the scope of the standard Doosan warranty.

Over 40 different plans are available to you up to a level of 60 months or 7,500 hours of protection against defects in materials and/or workmanship.

DOOSAN



DOOSAN

What's in it FOR YOU?

PEACE OF MIND:

For a small investment, you can protect your Doosan machine with additional warranty coverage that minimizes your repair costs. If machine issues do occur, you know in advance that you are covered, which allows you to avoid unplanned expenses. It not only gives you an extended sense of security and peace of mind, it makes good business sense.

RISK MANAGEMENT:

By providing a comfortable shield of protection against repairs due to failures in materials or workmanship, an extended warranty greatly decreases your exposure to financial risk.

NO DEDUCTIBLE:

Your Protection Plus policy pays for the full cost of any warrantable repair work (parts and labor), with no deductible required.

HIGHER RESALE VALUE:

If you sell the machine, any remaining Protection Plus coverage can be transferred to the new owner for a minimal fee. A machine with Protection Plus coverage – even if the policy may have expired – will likely be perceived by a potential purchaser as having added value because of the superior care and maintenance provided by the original owner – you.

SPEAKING FROM DOOSAN:

Doosan is confident in our products, and we stand behind them with the Protection Plus extended warranty, which is fully backed by Doosan. With Protection Plus coverage on your equipment, you can be as confident as we are in our products.



DOOSAN

About your PROTECTION PLUS COVERAGE

HOW DOES PROTECTION PLUS DIFFER FROM THE STANDARD DOOSAN WARRANTY?

Your new Doosan machine already includes a standard factory warranty of 12 months or 1,500 hours (2,000 hours for articulated dump trucks), whichever comes first. It's included at no extra cost. It's an assurance from us that your Doosan equipment will perform as promised, and it's backed by our decades of construction equipment manufacturing and leadership in the industry. Protection Plus goes a step further than the standard warranty, allowing you to purchase 24 to 60 total months, or 2,000 to 7,500 total hours of warranty protection for the powertrain, powertrain plus hydraulics, or the full machine.

Doosan Protection Plus provides an easy way to protect your cash flow from unplanned expenses and allows you an easy way to customize the coverage to fit your needs.

- Includes factory-backed parts and labor coverage by Doosan
- Coverage is honored at any authorized Doosan dealer
- \$0 deductible
- Protection Plus is transferable when you sell or trade your machine
- You may purchase Protection Plus up to 12 months after taking delivery of your Doosan machine.

WHEN DOES PROTECTION PLUS EXPIRE COMPARED TO A STANDARD WARRANTY?

Time periods include the original standard warranty of 12 months. For example, a 24-month Protection Plus plan provides an additional 12 months of coverage beyond the standard warranty's 12-month time period, for a total of 24 months.

WHICH DOOSAN MACHINES ARE COVERED BY PROTECTION PLUS?

Coverage includes all new, never-before-sold Doosan machines and machines purchased within 12 months.

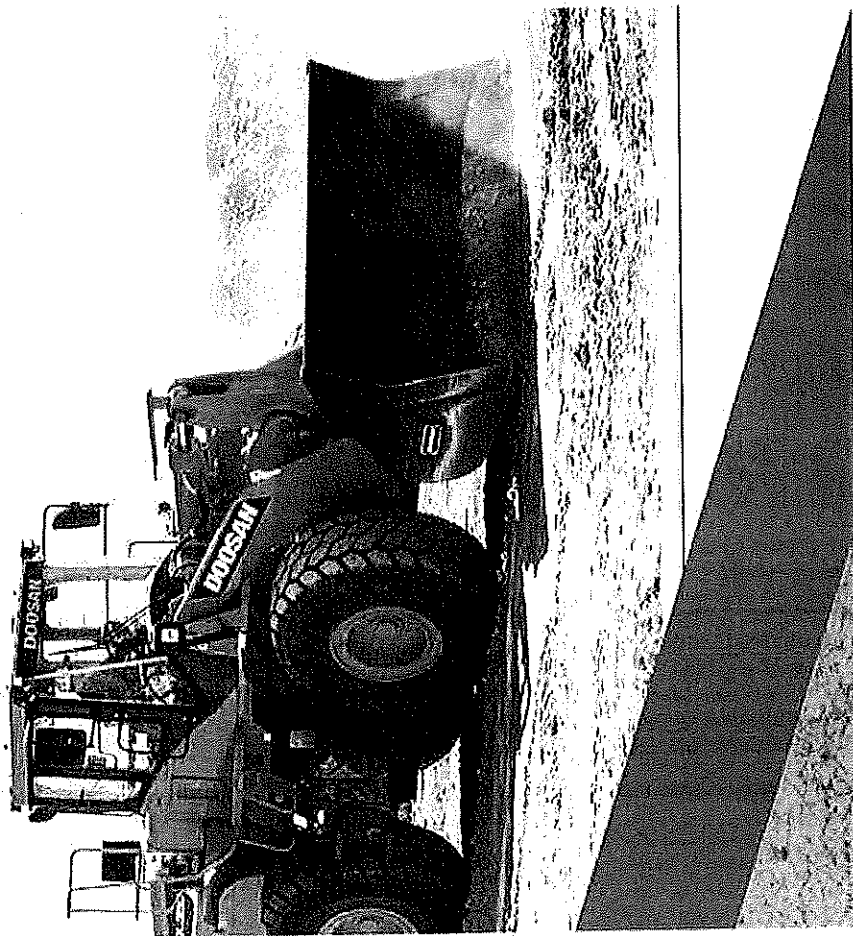
WHAT IS A PROTECTION PLUS FULL MACHINE WARRANTY?

A full machine warranty provides front-to-back coverage of your machine. It is an extension of our standard warranty, and offers the same level of protection. See what is included on the Full Coverage page.

WHAT ISN'T COVERED BY PROTECTION PLUS?

The Protection Plus extended warranty does NOT cover the following items:

- Attachments
- Maintenance items, such as oil, filters and batteries
- Wear items, such as tires or tracks
- Miscellaneous items, such as lamps and bulbs
- Rental and Downtime expense
- Freight charges
- Diagnostic/Troubleshooting time



DOOSAN

About your PROTECTION PLUS COVERAGE

HOW MUCH DOES PROTECTION PLUS COVERAGE COST?

The cost of Protection Plus varies both by machine type and length of coverage desired. Your Doosan dealer can provide a quote and advise you on the cost of the Protection Plus plan you are interested in.

WHO BACKS THE PROTECTION PLUS PROGRAM?

It's backed by Doosan and administered by the entire network of Doosan dealers. Service is provided only by qualified Doosan technicians.

WHO DO I CONTACT AND WHERE DO I GO TO GET extended WARRANTY SERVICE?

Simply contact the Doosan dealer nearest to you. A machine covered by Protection Plus can be serviced by any Doosan dealer in the U.S., Canada or Oceania.

WHAT WILL DOOSAN DO IF THE PRODUCT FAILS?

Doosan will repair or replace any part or component that fails because of defects in materials or workmanship.

WHICH MACHINE COMPONENTS ARE NOT COVERED BY PROTECTION PLUS?

Depending on whether you purchase a "full machine," "powertrain" or "powertrain plus hydraulics" plan, the components covered vary. Your Doosan dealer can review the differences in coverage with you at any time.

ARE THERE ANY CONDITIONS OR LIMITATIONS ON THE EXTENDED WARRANTY?

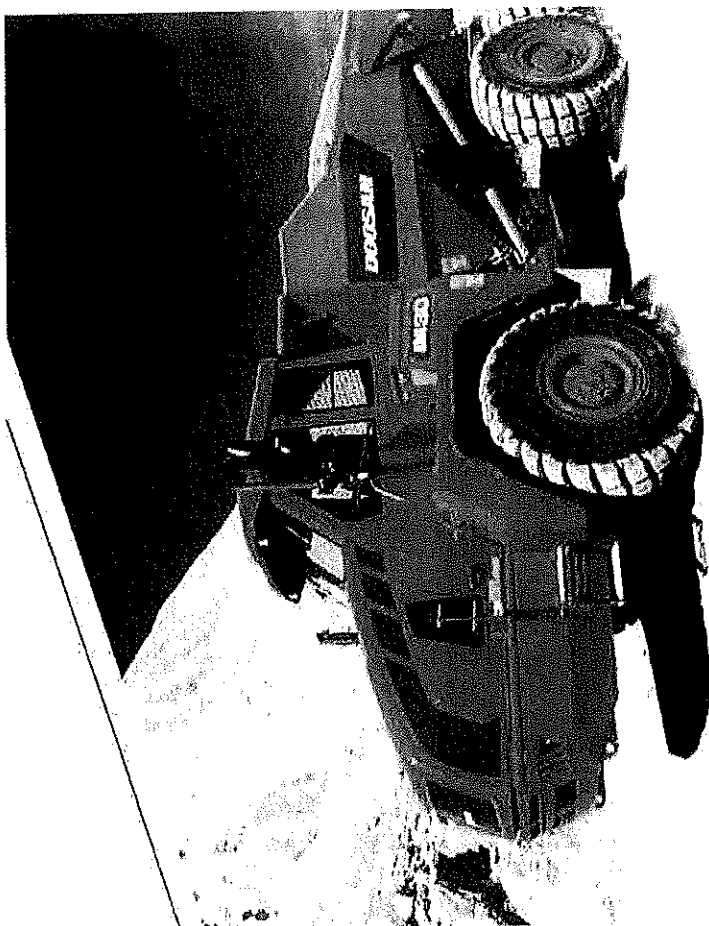
Protection Plus customers are required to perform maintenance on the covered machine at regular intervals. Also, Doosan will not be liable for any damage to the machine caused by the use of non-Doosan fluids or filters.

COVERAGE OPTIONS

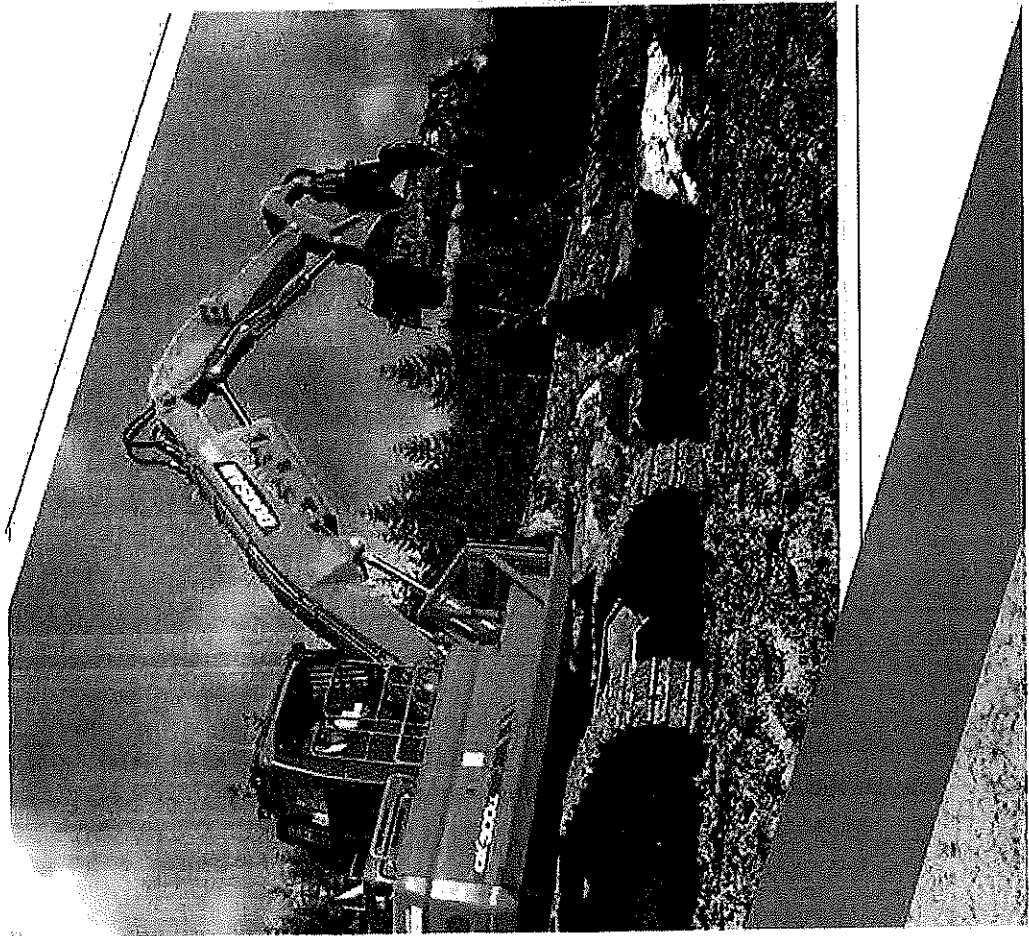
The Doosan PROTECTION PLUS extended warranty program offers you the following Powertrain, Powertrain + Hydraulics and Full plans beyond the terms of the standard warranty:

HOURS	24 MONTHS	36 MONTHS	48 MONTHS	60 MONTHS
2000	X	X	X	X
3000	X	X	X	X
4000	X	X	X	X
5000	X	X	X	X
6000	X	X	X	X
7500	X	X	X	X

For more information on coverage plans, pricing and benefits, work with your local Doosan dealer.



DOOSAN



What's Covered? POWERTRAIN COVERAGE

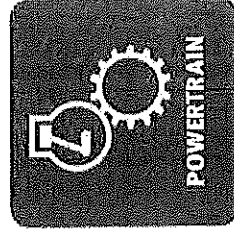
ENGINE:

- Camshaft
- Camshaft Bearings
- Camshaft Drive Gear, Charge Air Cooler
- Connecting Rods and Bearings
- Crankshaft Bearing and Gear
- Crankshaft Including Front and Rear Crankshaft Seals
- Cylinder Head / Head Gasket
- Cylinder Liners
- EGR System Manifold
- Electronic Engine Control Module
- Engine Block
- Front and Rear Engine Seals
- Front Damper
- Injection Pump and Gasket
- Injection Nozzles
- Intake and Exhaust Manifolds and Gaskets
- Oil Pan and Gasket
- Oil Pump
- Piston and Rings
- Pressure/Temperature Sensors & Sending Units
- Ring Gear and Flywheel
- Rocker Arm Cover and Gasket
- Thermostats Timing Gear Cover
- Turbocharger and Gaskets
- Valve Cover and Gasket
- Water Pump and Gasket

TRANSMISSION/DIFFERENTIAL/HYDROSTATICS

- Axle Housing
- Axles and Differentials
- Clutch Housing
- Control Valves For Propel and Swing Functions Only (Not Dig Functions)
- Driveshaft With Universal Joints
- Differential Housing
- Differential Pinion Gear / Ring Gear
- Drive Axle Hub
- Drive Shaft Support Bearing
- Electronic Control Valves
- Final Drive and Axles
- Final Drive Pinion
- Final Drive Planetary Gears
- Hydraulic Drive / Travel Motor
- Hydraulic Drive Pump
- Hydraulic Transmission Control Valves
- Hydrostatic/Hydraulic Pump Drives
- Hydrostatic Motor
- Hydrostatic Transmission Charge Pump
- Hydrostatic Transmission Pump
- Internal Transmission Control Linkage
- Planetary Gear Carrier

- Propel Motor, Pump, Brakes, and Control Valves
- Pump and Valve Controller
- Reverser With Control Valve
- Splitter Drive
- Swing Motor and Brake
- Swing Gearbox and Bearings
- Torque Converter
- Torque Converter Pump
- Transfer Drive
- Turntable Bearing
- Transmission Case
- Transmission Gear, Bearing, & Shaft
- Transmission Pump
- Travel Control Valve
- Travel & Swing Sections Only Or Main Control Valve
- Wet Steering Clutches
- Wet Steering Brakes



DOOSAN

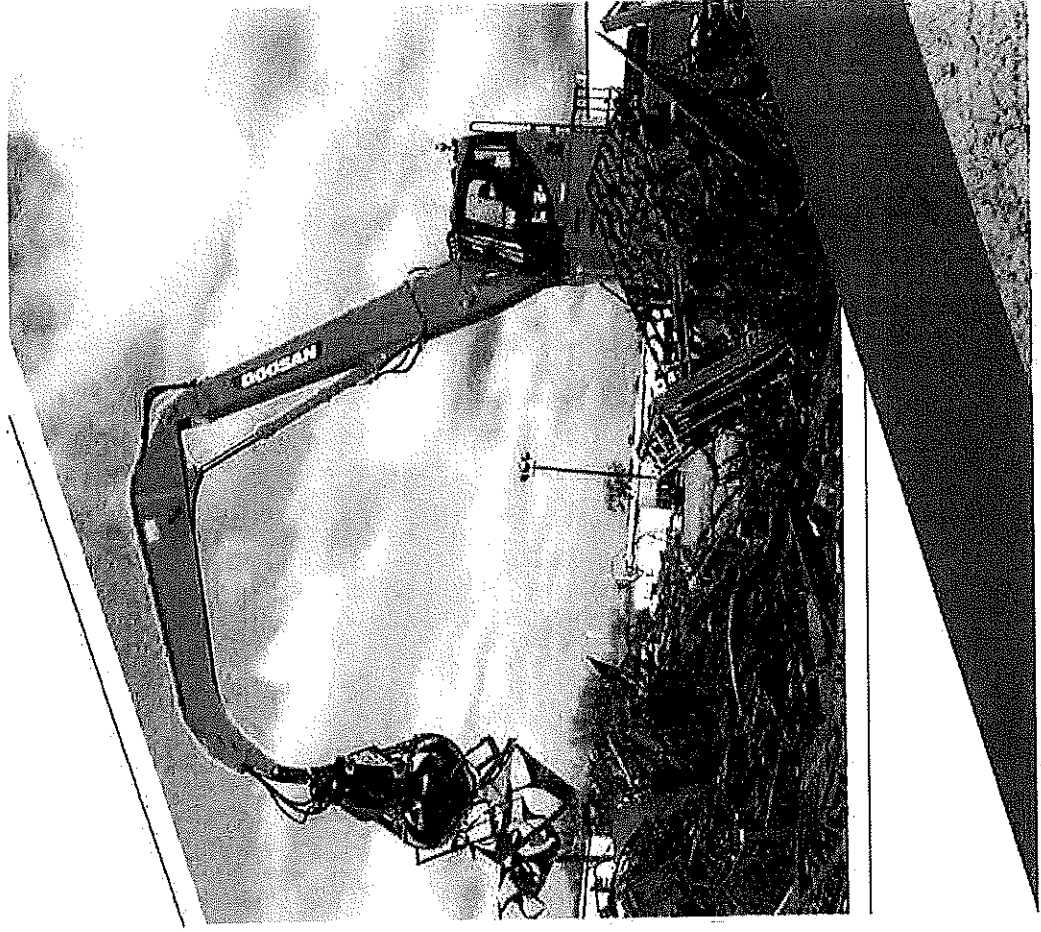
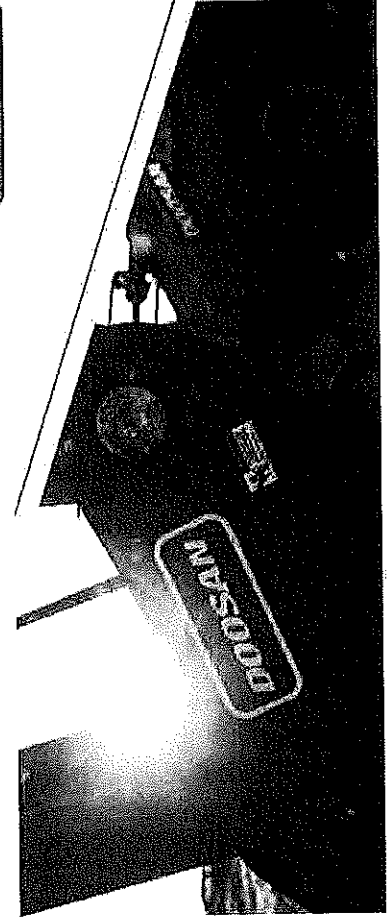
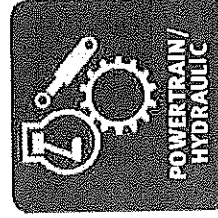
POWERTRAIN PLUS HYDRAULICS COVERAGE

All Components listed under Powertrain, plus the following components:

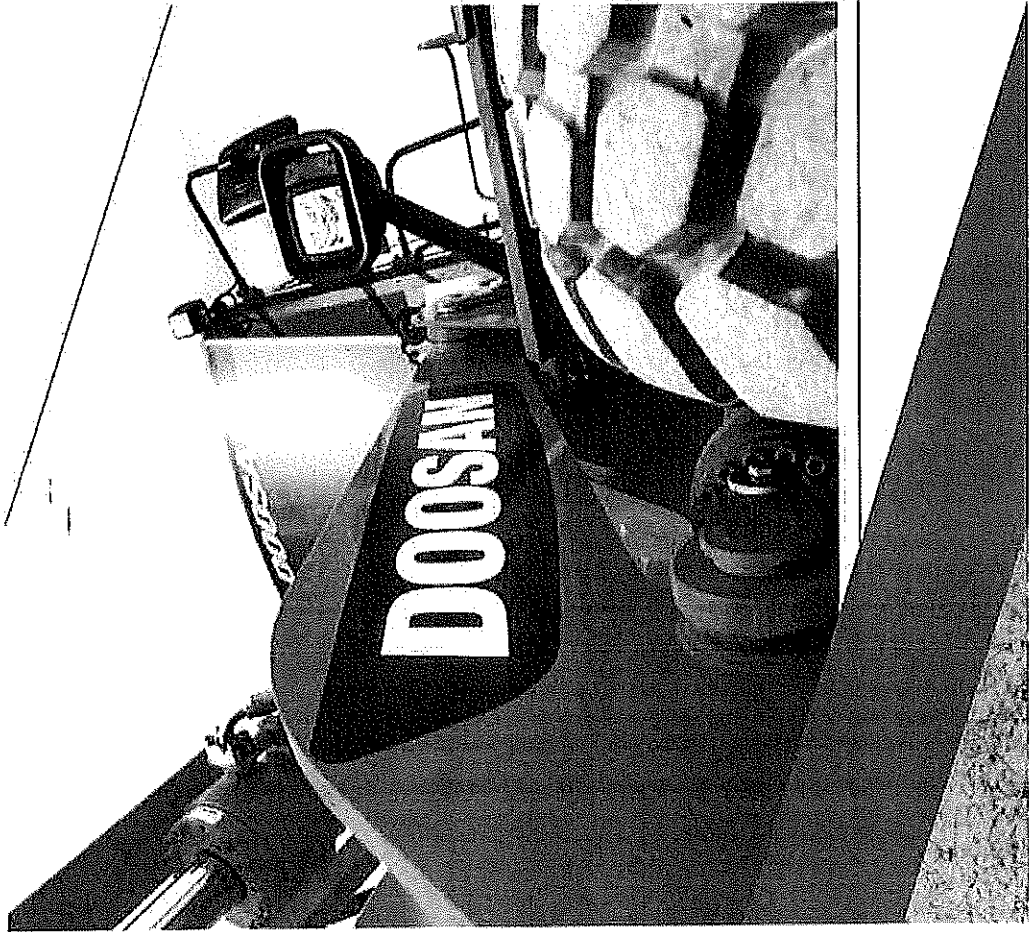
- Accumulator and Related Relief Valve
- Brake Accumulator
- Brake Pressure Sensor
- Brake Pump, Brake Valve
- Control and Load Holding Valves
- Cylinder Packing Kits
- Differential Lock Valve
- Fan Pumps and Motors
- Hydraulic Cylinders,
- Hydraulic Motors,
- Hydraulic Pumps
- Hydraulic Valves*
- Hydraulic Hoses and Pipes,
- Hydraulic Oil Cooler
- Hydraulic Reservoir
- Locking Pin Cylinder
- Pilot Controls
- Pressure Reducing Valves
- Steering Pump
- Steering Valves and Cylinders
- Unloading Valve

*Excludes: knobby, ripped, torn, cut or pinched failures of

Hydraulic hoses and pipes.



DOOSAN



FULL-MACHINE COVERAGE

All Components listed under Powertrain and Powertrain + Hydraulics, plus the following components:

ENGINE:

- Oil Filler Tubes
- Fuel Lines
- Fuel Transfer Pump and Gasket
- Filter Mount
- Pressure/Temperature Sensors and Sending Units
- Engine Mounts and Supports
- Pulleys
- Engine Speed Controls and Linkages
- Radiator
- Engine Oil Lines
- Water Pump
- Fuel Tank
- Fan, and Fan Drive
- Water Piping
- Air Intake Hose
- Engine Components Covered After Emissions Warranty
- Dpf
- Diesel Exhaust Fluid Tank and Dispensing System
- Cold Start Enrichment Systems
- Sensors, Solenoids & Wiring
- Harnesses Used In These Systems.

STEERING:

- Secondary Steering System Components
- Cross Relief Valve
- Priority Valve

BRAKES:

- Brake Pump
- Brake Valve
- Brake Accumulator
- Unloading Valve
- Pressure Reducing Valve

TRANSMISSION/DIFFERENTIAL/ FACTORY HEAT & AIR

- HYDROSTATIC***
 - Shift Control Linkage
 - Levers and Pedals
 - Control Rods
 - Sending Units and Sensors
 - Filler Tubes
 - Filter Screens
 - Oil Cooler
 - Accumulator and Related Relief Valves
 - Disconnect Levers and Handles
 - Differential Lock Valve and Associated Parts
 - Pneumatic Valves
 - Undercarriage Roller and Idler Seals and Bearings
 - Undercarriage Tensioner
- OTHER:**
 - Mainframe
 - Track Frames
 - Engine Frame
 - Loader Boom
 - Excavator Boom
 - Excavator Arm and Linkage
 - Bucket Linkage

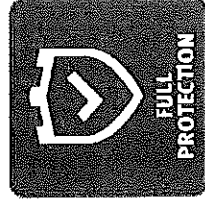
* Excludes Rubbed, Ripped, Torn, Cut Or Pinned Failures.

* Undercarriage Exclusions Sprockets, Tracks, Pads, Bolts, Chains

ELECTRICAL*:

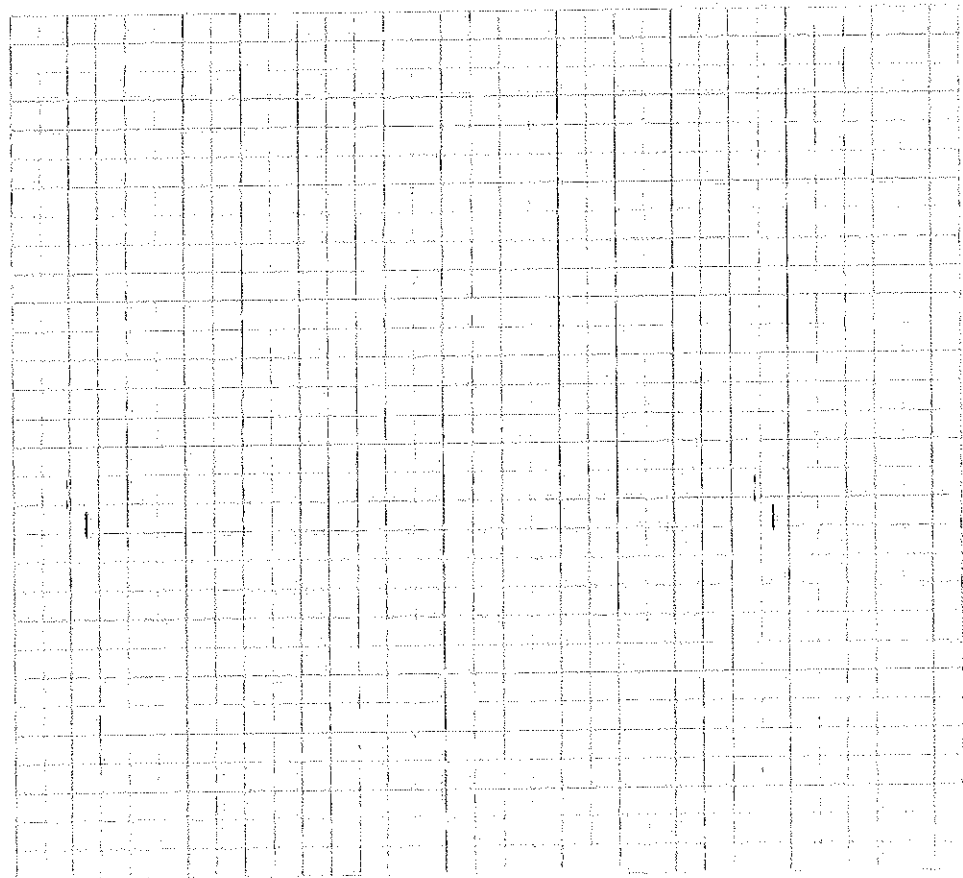
- Starter
- Starter Solenoid
- Solenoid Valves
- Alternator
- Voltage Regulator
- Instrument
- Gauges
- Indicators
- Sensors
- Switches
- Electronic Motors
- Horn
- Factory Installed Electronic Controllers
- Electronic Joystick

*Wiring Harnesses
* Excludes Rubbing, Chafing, Loose Or Corroded Connections

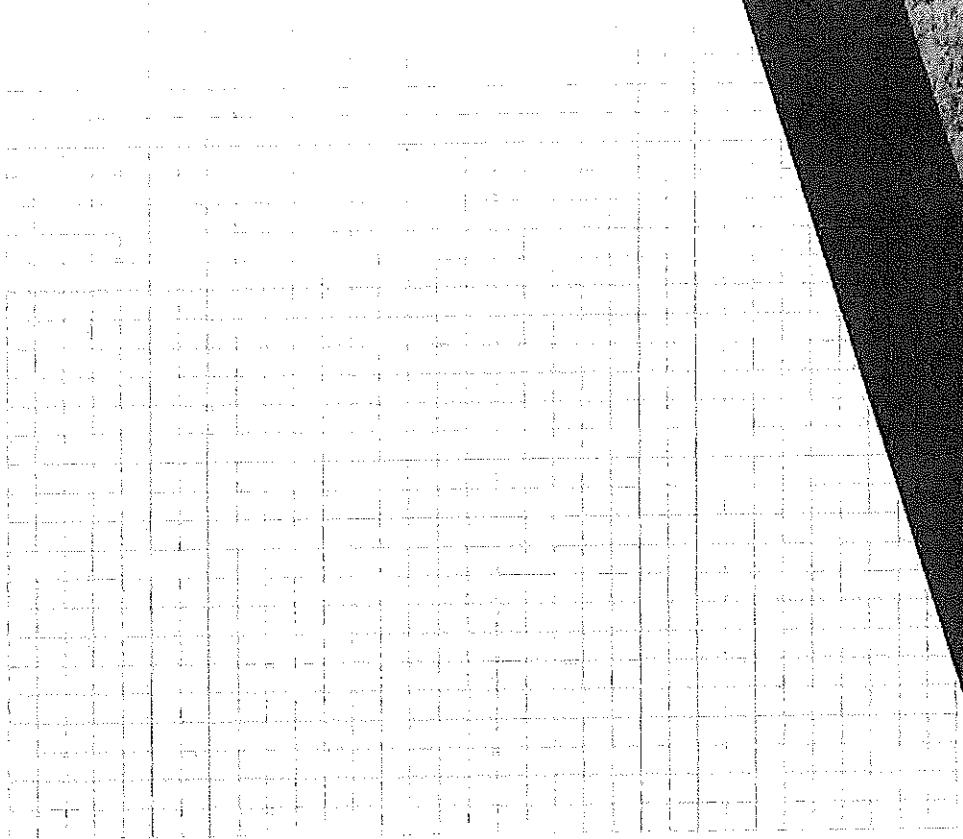


DOOSAN

NOTES



NOTES



PROTECTION PLUS[®] Extended Warranty

TERMS AND CONDITIONS

During the applicable period of the "Protection Plus Plan," the authorized Doosan dealer shall repair or replace, at the option of Doosan, without charge for parts and labor, any component of the Doosan machine which fails because of defects in material or workmanship except as otherwise provided below. The owner of the protected machine agrees to provide the dealer from which the Doosan machine was purchased with prompt written notice of any defects covered by the "Protection Plus Plan" and to allow a reasonable time for replacement or repair. Doosan may, at its option, request the return of failed parts to its factory.

Protection Plus does not cover extra expenses such as parts freight, cleanup, shop supplies, tools, diagnostic or troubleshooting time, loss of pay or other consequential matters. The owner also agrees that travel time of mechanics or transportation of the Doosan machine to the servicing dealer is not covered. The owner is responsible for the travel cost. The "Protection Plus Plan" does not cover tires, belts or other trade accessories or attachments not manufactured by Doosan. The owner shall rely solely on the warranty, if any, of the respective manufacturer's thereof. It does not cover the replacement of scheduled service items such as oil filters, gaskets and other high wear or normal replacement items, nor does it cover damages resulting from abuse, neglect, accidents, alterations, use of the Doosan machine with any accessory or attachment not approved by Doosan, air flow obstructions or failure to maintain or use the Doosan machine according to the instructions applicable to it. In order to ensure coverage under the "Protection Plus Plan," the owner must submit proof that maintenance intervals have been followed. It is the obligation of the owner to provide such verification when submitting warranty claims. In addition, Doosan will not be liable under the "Protection Plus Plan" for any defect or damage which is caused by the use of non-Doosan fluids or filters. Refer to the Operation & Maintenance manual and Parts manual for the correct Doosan fluids and filters.

THE "PROTECTION PLUS PLAN" IS IN LIEU OF ALL OTHER WARRANTIES. DOOSAN DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THE REMEDIES PROVIDED UNDER THE PLAN ARE EXCLUSIVE. IN NO EVENT SHALL DOOSAN OR THE AUTHORIZED DOOSAN DEALER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, LOSS OF INTERUPTION OF BUSINESS, LOST PROFITS, OR LOSS OF MACHINE USE, WHETHER BASED ON CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, STATUTE OR OTHERWISE, EVEN IF DOOSAN OR THE AUTHORIZED DOOSAN DEALER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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All rights reserved. 14AT162

ITEMS NOT COVERED UNDER PROTECTION PLUS[®] PLAN

MAINTENANCE

Protection Plus does not cover scheduled maintenance service items such as adjustments, oil filters, fuel filters, air filters, burners, fans, belts, controls.

RENTALS

Protection Plus does not cover downtime expense during repairs or the rental cost charges.

DAMAGE

Protection Plus does not cover failures caused by collisions, accidents, improper operation, transportation, storage, unapproved modification or use of unauthorized attachments.

EXTRA EXPENSES

Protection Plus does not cover extra expenses such as parts freight, cleanup, shop supplies, tools, diagnostic or troubleshooting time, loss of pay or other consequential matters.

ATTACHMENTS

Protection Plus does not cover any attachments that were purchased with the machine.

WEAR ITEMS

Protection Plus does not cover wear items such as tires, tracks, batteries, pins, bushings, shoes, sprockets, ground engagement tools, such as bucket teeth, cutting edges or any failure due to wear, or damage caused by wear.

MISCELLANEOUS ITEMS

Protection Plus does not cover items such as parts, cables, wires, cables, radio, video, components, exhaust, tracks, chains, fittings and parts, dealer handover, engines, seat or windows.

CONTRACT

State of Oklahoma

Dispatch via Print

Supplier 0000281099
CLARK EQUIPMENT COMPANY
PO BOX 6000
WEST FARGO ND 58078-6000
USA

Contract ID			Page
000000000000000000000005296			1 of 2
Contract Dates	Currency	Rate Type	Rate Date
06/21/2018 to 04/10/2019	USD	CRRNT	PO Date
Description:		Contract Maximum	
SW0192-Construction Equipment		0.00	
Allow Open Item Reference			
TYPE: STATEWIDE			

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
1	22101509 /	EA	0.00	0.00	0.00	0.00

Skid Steers
Bobcat - Skid Steers (Models S70, S450, S550, S570, S590, S595, S630, S650, S740, S770, S850, and A770) at 30% Percentage Discount

Attachments and Accessories at 24% Percentage Discount.
Options at 30% Percentage Discount, Trade-Ins Available

Multiple Unit Discount:
3% based on 6 Units purchased.

Contract Base Pricing	0.00000	EA	0001
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2	22101529 /	EA	0.00	0.00	0.00	0.00
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Bobcat - Track Excavators (Models 418, E20, E26, E32I, E32, E32R, E35I, E35, E35R, E42, E45, E50, E55, E63, E85) at 30% Percentage Discount.

Doosan - Track Excavators (Models DX140LC-5, DX160LC-5, DX180LC-d, DX225LC-5, DX300LC-5, DX350LC-5, DX420LC-5, DX490LC-5, DX530LC-5) at 22% Percentage Discount.

For Bobcat Excavators
Attachments and Accessories at 24% Percentage Discount.
Options at 30% Percentage Discount. Trade-Ins Available

Multiple Unit Discount:
3% based on 6 Units purchased.

For Doosan Excavators
Attachments and Accessories at 22% Percentage Discount.
Options at 22% Percentage Discount. Trade-Ins Available

Multiple Unit Discount:
3% based on 6 Units purchased.

Contract Base Pricing	0.00000	EA	0001
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3	22101525 /	EA	0.00	0.00	0.00	0.00
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Wheeled Excavators
Doosan - Wheeled Excavators (Models DX140W-5 No Front Wheeled Ex F&R Outr, DX140W-5 Mono Boom Frt. Dozer Rear Outr., DX140W-5 Mono Boom Frt. & Rear Outr., DX140W-5 Artic Boom Frt. Dozer & Rear Outr., DX140W-5 Artic Boom Frt. & Rear Outr., DX190W-5 No Front Wheeled Ex F&R Outr., DX190W-5 Mono Boom Frt. Dozer Rear Outr., DX190W-5 Mono Boom Frt. & Rear Outr., DX190W-5 Mono Boom Frt. & Rear Outr., DX190W-5 Artic Boom Frt. & Rear Outr., DX210W-5 No Front Wheeled Ex F&R Outr., DX210W-5 Mono Boom Frt. Dozer Rear Outr., DX210W-5 Mono Boom Frt. & Rear Outr., DX210W-5 Artic Boom Frt. Dozer & Rear Outr, DX210W-5 Artic Boom Frt. & Rear Outr, DX210W-5 Material Handler - No Attachment) at 22% Percentage Discount

Attachments and Accessories at 24% Percentage Discount.
Options at 22% Percentage Discount, Trade-Ins Available

Final = The price is final after adjustments
Hard = Apply adjustments regardless of other adjustments
Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature

[Signature]



CONTRACT

State of Oklahoma

Dispatch via Print

Supplier 0000281099
CLARK EQUIPMENT COMPANY
PO BOX 6000
WEST FARGO ND 58078-6000
USA

Contract ID 000000000000000000005296			Page 2 of 2	
Contract Dates 06/21/2018 to 04/10/2019		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW0192-Construction Equipment			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Multiple Unit Discount:
3% based on 6 Units purchased.

Contract Base Pricing		0.00000	EA	0001		
4	25101507 / Utility Work Machine Bobcat - Toolcat Utility Work Machines (Models 5600 and 5610) at 20% Percentage Discount		EA	0.00	0.00	0.00

Attachments and Accessories at 24% Percentage Discount.
Options at 20% Percentage Discount, Trade-Ins Available

Multiple Unit Discount:
3% based on 6 Units purchased.

Contract Base Pricing		0.00000	EA	0001		
5	22101532 / Mini Track Loader Bobcat - Mini Track Loaders (Models MT55 and MT85) at 20% Percentage Discount		EA	0.00	0.00	0.00

Attachments and Accessories at 24% Percentage Discount.
Options at 20% Percentage Discount, Trade-Ins Available

Multiple Unit Discount:
3% based on 6 Units purchased.

Contract Base Pricing		0.00000	EA	0001		
6	25101601 / Articulated Dump Truck Doosan - Articulated Dump Truck (Models DA30 and DA40) at 22% Percentage Discount		EA	0.00	0.00	0.00

Attachments and Accessories at 22% Percentage Discount.
Options at 22% Percentage Discount, Trade-Ins Available

Multiple Unit Discount:
3% based on 6 Units purchased.

Contract Base Pricing		0.00000	EA	0001		
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COMMENTS:

Clark Equipment Company (Bobcat and Doosan brands)
Clark Equipment Point of Contact: Randy Fuss
Point of Contact Email: Randy.Fuss@doosan.com
Point of Contact Phone Number: 701.241.8746

Contract Period: 06/04/2018 - 04/10/2019
Agreement Period: 06/04/2018 - 04/10/2023

Award based on OMES Solicitation OK-SW-192, where Oklahoma is the lead state for a NASPO ValuePoint Contract.

Final = The price is final after adjustments
Hard = Apply adjustments regardless of other adjustments
Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature



OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT CONSTRUCTION EQUIPMENT INCLUDING EQUIPMENT AND WARRANTY WORK WITH REPLACEMENT PARTS

Office of Management and Enterprise Services

Central Purchasing Division

5005 North Lincoln Boulevard

Oklahoma City, OK 73105

And

John Deere Construction Retail Sales


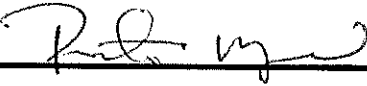
1515 5th Avenue

Moline, IL 61265

Master Agreement Number: OK-SW-192

The Contractor identified below is hereby notified that a contract is being awarded to the Contractor in connection with Solicitation No. OK-SW192, issued May 25, 2017.

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

STATE OF OKLAHOMA	CONTRACTOR
Ferris J. Barger, State Purchasing Director	John Deere Construction Retail Sales
By: 	By: 
Date: 25 May 2018	Date: 25 MAY 2018
State Purchasing Director	Title: CONTRACT ADMINISTRATOR

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

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OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

SUMMARY

1. **Scope of Work Defined.** The purpose of this Master Agreement is to memorialize terms of the contract under which catalog discount options are provided for construction equipment and warranty work with replacement parts for all Participating Entities in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The objective is to obtain best value, and in some cases achieve more favorable pricing, than is obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities.
2. **Categories of Products Offered.** This Master Agreement will offer the following categories of products: Construction Equipment and Warranty Work with Replacement Parts.
3. **Contract Documents and Master Agreement Order of Precedence.** Any Order placed under this Master Agreement is governed by and subject to the following contract documents, the terms of which are hereby incorporated:
 - A. Participating Entity's Participating Addendum ("PA");
 - B. Oklahoma NASPO ValuePoint Master Agreement;
 - i. Summary;
 - ii. General Terms, Conditions, and Instructions;
 - iii. Exhibit A, NASPO ValuePoint Terms and Conditions;
 - iv. Exhibit B, Scope of Work; and
 - v. Exhibit C, Price and Cost Proposal.
 - C. A Purchase Order issued against the Master Agreement;
 - D. Request for Proposal; and
 - E. Exhibit D, Contractor's Terms and Conditions Contained In Contractor's Response As Revised And Accepted By The Lead State.

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

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

GENERAL TERMS AND CONDITIONS

1. **Period of Performance.** The initial term of this Master Agreement is 1 (one) year with an option to renew for up to four (4) additional one-year periods. Renewal options are at the Lead State's discretion upon review of requirements of Participating Entities, current market conditions and Contractor performance.
2. **Contract Administrator.** The Lead State Contract Administrator identified below is the single point of contact in connection with this Master Agreement and all questions concerning the procurement process, contractual requirements, changes and any other questions that may arise related to this Master Agreement. The Lead State Contract Administrator designated by the State of Oklahoma, OMES Central Purchasing is:

Jennifer McCaulla, Statewide Initiatives Lead
State of Oklahoma, OMES Central Purchasing
5005 N. Lincoln Blvd., Suite 300
Oklahoma City, OK 73105
jennifer.mccaulla@omes.ok.gov
Phone: 405/521-4772
3. **Authorized Users.** Any Purchasing Entity, as defined herein, may make acquisitions under this Master Agreement.
4. **Certification of Non-Debarment.** Contractor certifies to the best of its knowledge and belief, that the Contractor and its principals or participants:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;
 - B. Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses listed above this certification; and
 - D. Have not with a three-year period preceding this application/proposal had one or more public (Federal, State or local) contracts terminated for cause or default. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its solicitation response.

5. **Insurance.** The Contractor agrees to maintain insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state at the prescribed levels set forth in Section 21 of Exhibit A, the NASPO ValuePoint Terms and Conditions.

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

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

7. **Cost, Prices, and Rates.** Prices and rates shall include all anticipated charges including, but not limited to, standard freight and delivery, cost of materials and product, transaction fees, overhead, profits, and other costs and expenses incidental to the Contractor's performance. Any travel costs must be included in the cost of the products and services offered under this Master Agreement. No line item billing for travel will be allowed under this Master Agreement.

Pricing will remain fixed for the initial term of this Master Agreement, which is one year. Any request for price or rate adjustment following the initial Master Agreement term is subject to pre-approval of the Lead State and shall be subject to other applicable restrictions with respect to the frequency or amount of such adjustment. Additional terms related to pricing are set forth in Exhibit A, Section 11.

8. **Oklahoma Open Records Act.** This Master Agreement and all proposal and other materials submitted in response to Request For Proposal SW#192 are the property of the State of Oklahoma and subject to the Oklahoma Open Records Act.

9. **Changes in Contractor Company Status, Equipment or Contact.** The Contractor shall notify the Lead State Contract Administrator of any changes in the company status, such as mergers, sell offs and changes in the contact information of the Contractor. The Contractor may add new Products to products available under this Master Agreement subject to the prior written approval of the Lead State. The price discount may not be decreased. The Contractor shall also provide prior written notice of any discontinued products or replacement models. The Contractor shall be available at all times during normal business hours for contact from Lead State Contract Administrator.

10. **Invoices.** In addition to requirements in an applicable Participating Addendum, to ensure prompt payment, the Contractor will provide necessary training for the dealer network to make sure all invoices include the following information:

- A. Purchase order number if applicable;
- B. Make, model, and VIN number of equipment;

- C. Name of Purchasing Entity;
- D. Description of equipment purchased or warranty services performed and/or parts, material and supplies provided;
- E. The Contractor's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered;
- F. Name of company who provided the products/services; and
- G. If requested by the Purchasing Entity for its accounting purposes, a copy of the current, dated Supplier's Price List showing the equipment price.

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

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT A

NASPO VALUEPOINT TERMS AND CONDITIONS

1. **Master Agreement Order of Precedence.** The order of precedence of contract documents is set forth in Section 3 of the Summary above.
2. **Definitions.**
 - A. **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. Acceptance shall occur not later than thirty (30) calendar days after the date of delivery of the products to the Participating or Purchasing Entity.
 - B. **Contractor** means the person or entity delivering Products under the terms and conditions set forth in this Master Agreement.
 - C. **Embedded Software** means one or more software applications which permanently reside on a computing device.
 - D. **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.
 - E. **Lead State** means the State centrally administering any resulting Master Agreement(s).
 - F. **Master Agreement** means this agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.
 - G. **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 and the District of Columbia. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.
 - H. **Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

- I. Participating Addendum** means a bilateral agreement executed by the Contractor and a Participating Entity incorporating this Master Agreement and any other terms and conditions, e.g. ordering procedures, specific to the Participating Entity.
- J. Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.
- K. 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.
- L. Purchasing Entity** means a state government (as well as the District of Columbia and U.S. territories) including a department, agency, institution and similar governmental entity thereof, an institution of higher education, city, county, district, or other political subdivision of a state and other eligible entities, subject to approval of the individual state procurement director and compliance with statutory and regulatory requirements,, that issues a Purchase Order and becomes financially committed to the purchase.
- M. Resale** means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services.

3. Intentionally Omitted.

- 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 terms of this Master Agreement are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by a 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) used by the Purchasing Entity to place the Order.

- B.** Use of this Master Agreement by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- C.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of a Participating Entity are limited to the Orders placed by departments or other state agencies and institutions having available funds. A Participating Entity incurs no financial obligations on behalf of any Purchasing Entity. 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.** A Participating Addendum shall not be construed to amend the terms of 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; the Participating Entity must ensure it has the requisite procurement authority to execute a Participating Addendum.
- G.** 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 participate in the Resale of 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 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. Within fifteen (15) days of execution of this Master Agreement, Contractor shall identify the person responsible for providing the mandatory usage reports. If the person providing the usage reports changes, Contractor will promptly notify the Lead State and NASPO ValuePoint.

In addition to other reports that may be required, 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://calculator.naspovaluepoint.org>. 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:
 - i.** state;
 - ii.** entity/customer type, e.g. local government, higher education, K12, non-profit;
 - iii.** Purchasing Entity name;

- iv. Purchasing Entity bill-to and ship-to locations;
- v. Purchasing Entity and Contractor Purchase Order identifier/number(s);
- vi. Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices);
- vii. Purchase Order date;
- viii. Ship Date; and
- ix. 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 set forth at Attachment A-1 and may be amended from time to time.

- 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. Contractor agrees 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. At a minimum, the Contractor agrees to participate in development of Ordering Instructions.
- C. 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.
- D. 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.

- 10. Right to Publish.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior written approval for the release of any information that pertains to the potential work or activities covered by the Master Agreement. The Contractor shall not make any representations of NASPO Value Point'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 term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting

the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

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 which include the General Terms and Conditions, the NASPO ValuePoint Terms and Conditions, and the applicable Participating Addendum and will have the same rights and responsibilities for its 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 its 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 and shall have no right of setoff.

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 awarded companies 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 a Participating Addendum and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which awarded Contractors are solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, considering cost and other factors.
- C. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedures 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 in compliance with the law of the Purchasing Entity.
- E. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
- F. All Orders pursuant to this Master Agreement, at a minimum, shall include:
 - i. The description and quantity of services or supplies being delivered;
 - ii. The place and requested time of delivery;
 - iii. A billing address;
 - iv. The name, phone number, and address of the Purchasing Entity representative;
 - v. The price per hour or other pricing elements consistent with this Master Agreement; and

vi. The Master Agreement identifier.

- G. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- H. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- I. Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

14. Intentionally Omitted.

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 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. Intentionally Omitted.
- E. Acceptance Testing is a process to ascertain that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is applicable, this subsection applies to Products, 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 does not meet the standard of performance, the Purchasing Entity may, at its option:
 - i. declare Contractor to be in breach and terminate the Order;
 - ii. demand replacement Product from Contractor at no additional cost to Purchasing Entity; or
 - iii. 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 this section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met.

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 interest percentage is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments may be remitted by mail or electronic transfer or may be made via a State or political subdivision "Purchasing Card" with no additional charge.

18. Warranty. Notwithstanding any other provision of the Contract, the parties agree to the following provisions concerning the Contractor's warranty. The Contractor warrants for a period of one year from the date of Acceptance that:

- A. the Product performs according to all specific claims that the Contractor made in its response to the solicitation;
- B. the Product is suitable for the ordinary purposes for which such Product is used;
- C. the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment;
- D. the Product is designed and manufactured in a commercially reasonable manner; and
- E. the Product is free of defects.

Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

19. Title of Product (Negotiated). 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 except for subscription-based application software, i.e., JDLink telematics, which may result in costs to the transferee. In such instance, Contractor may prorate the software costs and provide a refund to the transferor or apply amounts previously paid by the transferor for the remainder of a subscription term and thereafter charge a transferee entity for the subscription.

20. License of Pre-Existing Intellectual Property (Negotiated). Except for IP rights licensed under a separate written agreement between the parties that is mutually acceptable with respect to operations manuals, service manuals, installation manuals or other documentation related to products purchased under this agreement, no intellectual property (IP) rights are licensed or transferred under this purchase agreement for any products or services purchased by the state of Oklahoma, or its agents, under this agreement. Manuals are available for purchase on standard commercial terms and conditions at Deere's online technical publications bookstore.

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 written on an occurrence basis. The minimum acceptable limits shall be as indicated below:
- i.** Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate and
 - ii.** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- 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:
- i.** names the Participating States identified in the Request for Proposal as additional insureds;
 - ii.** provides that written notice of cancellation shall be delivered in accordance with the policy provisions; and
 - iii.** 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, result in this Master Agreement's termination or, at the sole option of any Participating Entity, 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 seven (7) 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:
- i. any Purchasing Entity's records;
 - ii. personnel records; and
 - iii. 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:

- i. is or becomes (other than by disclosure by Contractor) publicly known;
 - ii. is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement;
 - iii. is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement;
 - iv. is obtained from a source other than Purchasing Entity without the obligation of confidentiality;
 - v. is disclosed with the written consent of Purchasing Entity; or
 - vi. 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. 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 or expiration 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 contract 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 (Negotiated).** The Contractor will notify NASPO and 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 Contractor agrees to provide replacement key personnel having sufficient education, training, and experience.
27. **Independent Contractor.** The Contractor is an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, 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. **Cancellation.** Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and Accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.
29. **Force Majeure.** Neither party to this Master Agreement shall be held responsible for delay or default caused by unusually severe weather, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement, and a Participating Entity may terminate a Participating Addendum, after determining such delay or default will reasonably prevent successful performance of the Master Agreement or Participating Addendum, as applicable.

30. Defaults and Remedies.

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

 - i.** Nonperformance of contractual requirements; or
 - ii.** A material breach of any term or condition of this Master Agreement; or
 - iii.** 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
 - iv.** 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
 - v.** 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:

 - i.** Exercise any remedy provided by law; and
 - ii.** Terminate this Master Agreement and any related Contracts or portions thereof; and
 - iii.** Impose liquidated damages as provided in this Master Agreement; and
 - iv.** Suspend Contractor from being able to respond to future bid solicitations; and
 - v.** Suspend Contractor's performance; and
 - vi.** Withhold payment until the default is remedied.
- D.** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in 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 this Master Agreement 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.
- 33. Indemnification**
- A.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.
 - B.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.
 - C.** The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
 - i.** Provided by the Contractor or the Contractor's subcontractor, subsidiary or affiliate;
 - ii.** Specified by the Contractor to work with the Product;

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

34. No Waiver of Sovereign Immunity. In no event shall this Master Agreement, any Participating Addendum 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 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. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum is solely and exclusively in the Purchasing Entity's State.
- B. 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.

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT B – SCOPE OF WORK

1. **Scope and General Information.** This Master Agreement provides a competitively bid contractual vehicle for Participating Entities to purchase construction equipment including equipment with warranty work and replacement parts. The Product line within scope of this Master Agreement and pricing offered at a “catalog discount” is set forth at Attachment C-1. Approved distributors through which a Purchasing Entity may purchase products and the distributor coverage area are set forth in Exhibit D hereto. Each Contractor shall ensure the Lead State Contract Administrator is provided with up to date information regarding the status of approved distributors. New distributors should be added by providing a replacement list of authorized distributors to the Lead State Contract Administrator. The Lead State Contract Administrator should be notified in writing, via email, of any distributors that should be removed from the list of approved distributors. Distributors may provide service nationally or locally. Each state represented by NASPO ValuePoint that chooses to participate in this Master Agreement independently has the option of deploying only resellers approved by the Participating Entity. The Participating Entity that chooses to exercise this option may define the process to add and remove resellers in its Participating Addendum.

2. **Motor Vehicle Licensing.** The Contractor certifies that all required Motor Vehicle Commission licenses are in place and current and copies of all such licenses, if requested, will be submitted with each Participating Addendum. Additional license requirements for Participating Entities will be addressed in each state’s Participating Addendum.

The Contractor shall maintain all required motor vehicle licensing during the term of the contract and furnish copies at any time upon request by the Lead State Contract Administrator or a Purchasing Entity. Failure to adhere to this requirement may result in termination, in whole or in part, of this Master Agreement for cause. Contracts for motor vehicles to be sold may be made only with properly licensed Motor Vehicle Dealers.

3. **Warranty and Buy Back.** The Contractor shall correct ordering errors without further cost to the Purchasing Entity.

The Contractor agrees the Products shall be covered by all commercial warranties the Contractor provides for such products, and rights and remedies provided therein are in addition to and do not limit any rights afforded by any other clause of this Master Agreement. A copy of the Contractor’s warranties applicable to its products is set forth at Attachment D-1 to Exhibit D. If Contractor changes its warranty with respect to a Product, Contractor shall promptly provide a replacement copy to the Lead State Contract Administrator and clarify which Products are covered by the revised warranty. Contractor also agrees to provide a copy of the warranty applicable to replacement parts purchased. All equipment warranties shall start on the later of the date of delivery or the date of Acceptance and shall be for the full term of said warranty.

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

The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work. All persons utilized in the performance of this Master Agreement shall be authorized by the Contractor and be fully qualified to perform the warranty work required. Warranty work shall be performed by certified or trained or authorized service technicians.

All warranty work performed and parts/materials supplied shall meet original equipment manufacturer (OEM) warranty requirements. Equivalent substitutions must be approved in writing by the Purchasing Entity contact person prior to installation. Warranty work performed not meeting specifications or found to be defective, shall not be accepted. The Contractor shall be required to make repairs or corrections at no additional cost to the Purchasing Entity. Repairs made that are covered by a warranty shall not be paid for by the Purchasing Entity.

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

- A. name of Purchasing Entity and division, if applicable;
- B. make, model, and VIN of equipment; and
- C. control number of Purchasing Entity (Inventory number).

Repair facilities that will perform warranty work under this Master Agreement shall be identified as the Contractor's dealer network. As the manufacturer, the Contractor is responsible for insuring that the facilities are able to adhere to the contract requirements for warranty work performance.

Equipment that will remain in the Contractor's possession overnight and/or for extended periods shall be stored in a safe and secure location for protection from theft and environmental dangers. The Contractor shall be responsible for the proper care and custody of any such equipment in the Contractor's possession.

In connection with replacement parts sold to a Purchasing Entity, Contractor shall provide a copy of any applicable buy-back, trade-in or exchange policy and applicable warranty at the time of purchase.

4. **Quality of Parts.** Parts associated with products available under this Master Agreement shall be name brand, nationally advertised merchandise and equivalent substitutions may only occur with the prior written approval of the Purchasing Entity. After market repair, rebuilt or remanufactured parts must be equal to or exceed Contractor's OEM specifications. Repair parts must be packaged and distributed under the respective nationally known name brands and may be required to be OEM repair parts. Contractor agrees its dealers or distributors network shall provide a complete line of OEM parts for all models of equipment available from such dealer or distributor. Preservation, packaging,

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

- 5. Delivery.** Delivery on parts is to be made within 30 calendar days and delivery of equipment shall be made within 120 calendar days after receipt of order unless other arrangements are made between the Purchasing Entity and the Contractor. Earlier deliveries are encouraged however there shall be no change in contract price or discount terms because of the earlier delivery. Some ordering entities will have the capacity to pick up equipment from the dealer.

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

Delivery shall be made in accordance with instructions on the Order from each Purchasing Entity. If there is a discrepancy between the Order and what is listed in this Master Agreement, the Contractor shall seek clarification from the Purchasing Entity and/or the Lead State Contract Administrator.

Delivery to a Purchasing Entity is to be Free On Board Destination (to the Destination stated in the Order) freight prepaid and added. Any allowable freight, shipping and handling costs and set-up fees paid by a Purchasing Entity are to be annotated on the quote/invoice as a separate line item. Quotes shall show the Contractor's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidental costs and the final price for each item delivered.

Allied and incidental items requested by a Purchasing Entity shall comply with its state or other government regulations. Allied equipment may only be sold in connection with the sale of an item within scope of this Master Agreement. Items must be clearly labeled on the Order or quote as allied.

Allied and incidental items are attachments, accessories, parts or bundles not manufactured by the Contractor that are requested by a Purchasing Entity to complete the purchase of equipment within scope of this Master Agreement (but not to substantially convert the Product).

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT C- PRICE AND COST PROPOSAL

The pricing structure for this Master Agreement is a percentage discount off the Contractor's catalogue pricing as reflected in the attached Attachment C-1. Additional terms related to pricing are set forth in the General Terms and Conditions and Exhibits A and B of this Master Agreement.

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT D - CONTRACTOR'S TERMS AND CONDITIONS CONTAINED IN CONTRACTOR'S RESPONSE AS REVISED AND ACCEPTED BY THE LEAD STATE

Approved distributors through which a Purchasing Entity may purchase Products and the distributor coverage area is located at <https://dealerlocator.deere.com/servlet/country=US>.

Product information and specifications offered by Contractor hereunder are set forth at <https://www.deere.com/en/construction/> and a customer should select machine category, model and product brochure for specific information.

The Contractor's Standard Warranty applicable to its Products is set forth at Attachment D-1. For avoidance of doubt, terms related to warranty that are set forth elsewhere in this Master Agreement shall take precedence over the Standard Warranty to the extent there is a conflict.

No other terms and conditions contained in Contractor's Bid are accepted by the Lead State for inclusion in the Contract.

DOZERS

John Deere Construction Retail Sales/RFP: OK-SW-192

If you have different discounts for different sizes of equipment or options, you **WILL** have to list the items. If you need more space, attach sheets in the same format as this one.

[illegible]

TRACKED LOADERS

John Deere Construction Retail Sales/RFP: OK-SW-192

If you have different discounts for different sizes of equipment or options, you **WILL** have to list the items. If you need more space, attach sheets in the same format as this one.

Brand Name	Model		Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	Percentage off discount %
John Deere - Full Size		605K	1-Feb-2017	30
John Deere - Full Size		655K	1-Feb-2017	30
John Deere - Full Size		755K	1-Feb-2017	29
John Deere - Compact		317G	21-Apr-2017	33
John Deere - Compact		323E	21-Apr-2017	33
John Deere - Compact		331G	7-Jul-2017	33
John Deere - Compact		333G	7-Jul-2017	33
Attachments/Accessories: 20% (Only sold w/machine. Deere field kits (AT/KV...) and WoksitePro Attachments ONLY)				
Options: X% (same discount as machine, codes 9XXX only) Trade-ins: X Available				
Not Available (Include any special conditions on a separate sheet)				
Multiple Unit discount: X% (In addition to the equipment discount) based on X Units (Base Machines) purchased. (2-4 units 0%, 5-7 units 1%, 8-14 units 2%, 15-30 units 3%)				

ATTACHMENT C-2
WHEEL LOADERS

John Deere Construction Retail Sales/RFP: OK-SW-192

If you have different discounts for different sizes of equipment or options, you WILL have to list the items. If you need more space, attach sheets in the same format as this one.

Brand Name	Model	Price Book/Catalog Date of Manufacturer's Current Published Retail Price List	Percentage off discount %
John Deere - Full Size	344K	13-Jan-2017	35
John Deere - Full Size	444K	15-Jun-2017	41
John Deere - Full Size	524K II	1-Feb-2017	43
John Deere - Full Size	544K II	1-Feb-2017	43
John Deere - Full Size	624K II	7-Mar-2017	43
John Deere - Full Size	644K	15-Jun-2017	42
John Deere - Full Size	644K Hybrid	15-Jun-2017	42
John Deere - Full Size	724K	15-Jun-2017	43
John Deere - Full Size	744K II	7-Jul-2017	40
John Deere - Full Size	824K II	7-Jul-2017	40
John Deere - Full Size	844K III	19-May-2017	40
John Deere - Compact	204K	6-Jan-2017	28
John Deere - Compact	244K II	7-Jul-2017	28
John Deere - Compact	304K	11-Jul-2017	28
John Deere - Compact	324K	7-Jul-2017	28
Attachments/Accessories: 20 % (Only sold w/machine. Deere field kits (AT/KV...) and WoksitePro Attachments ONLY)			
Options: X % (same discount as machine, codes 9XXX only) Trade-ins: X Available Not Available (Include any special conditions on a separate sheet)			
Multiple Unit discount: X % (In addition to the equipment discount) based on X Units (Base Machines) purchased. (2-4 units 0%, 5-7 units 1%, 8-14 units 2%, 15-30 units 3%)			

John Deere Construction Retail Sales/RFP: OK-SW-192

[illegible]

John Deere Construction Retail Sales/RFP: OK-SW-192

[illegible]

SITE DUMPERS TRACK AND WHEELED, ARTICULATED DUMP, HAULER

If you have different discounts for different sizes of equipment or options, you **WILL** have to list the items. If you need more space, attach sheets in the same format as this one.

[illegible]

John Deere Construction Retail Sales/RFP: OK-SW-192

[illegible]

SKID STEERS

John Deere Construction Retail Sales/RFP: OK-SW-192

If you have different discounts for different sizes of equipment or options, you **WILL** have to list the items. If you need more space, attach sheets in the same format as this one.

[illegible]

ATTACHMENT C-8
TRACK EXCAVATORS
John Deere Construction Retail Sales/RFP: OK-SW-192

If you have different discounts for different sizes of equipment or options, you WILL have to list the items. If you need more space, attach sheets in the same format as this one.

Brand Name	Model	Price Book/Catalog Current Published Retail Price List	Date of Manufacturer's	Percentage off discount %
John Deere - Full Size	75G		15-Jun-17	34
John Deere - Full Size	85G		15-Jun-17	33
John Deere - Full Size	130G FT4		19-Apr-17	36
John Deere - Full Size	135G FT4		15-Jun-17	36
John Deere - Full Size	160G FT4		19-Apr-17	37
John Deere - Full Size	180G FT4		19-Apr-17	38
John Deere - Full Size	210G FT4		19-Apr-17	36
John Deere - Full Size	245G FT4		15-Jun-17	37
John Deere - Full Size	250G FT4		19-Apr-17	33
John Deere - Full Size	300G FT4		19-Apr-17	33
John Deere - Full Size	350G FT4		19-Apr-17	33
John Deere - Full Size	380G FT4		19-Apr-17	33
John Deere - Full Size	470G FT4		9-Jun-17	33
John Deere - Compact	17G		30-May-17	30
John Deere - Compact	26G		30-May-17	30
John Deere - Compact	30G		7-Jul-17	30
John Deere - Compact	35G		1-Feb-17	30
John Deere - Compact	50G		30-May-17	30
John Deere - Compact	60G		30-May-17	30
Attachments/Accessories: 20 ____% (Only sold w/machine. Deere field kits (AT/KV...) and WoksiePro Attachments ONLY)				
Options: ____X ____% (same discount as machine, codes 9XXX only) Trade-ins: ____X ____Available ____Not Available (Include any special conditions on a separate sheet)				
Multiple Unit discount: ____X ____% (In addition to the equipment discount) based on ____X ____Units (Base Machines) purchased. (2-4 units 0%, 5-7 units 1%, 8-14 units 2%, 15-30 units 3%)				

John Deere Construction Retail Sales/RFP: OK-SW-192

If you have different discounts for different sizes of equipment or options, you **WILL** have to list the items. If you need more space, attach sheets in the same format as this one.

[illegible]



CONTRACT

State of Oklahoma

Dispatch via Print

Supplier 0000253425
 JOHN DEERE CONSTRUCTION RETAIL SALES
 1515 5TH AVE
 MOLINE IL 61265-1367
 USA

Contract ID 000000000000000000005273			Page 1 of 4	
Contract Dates 05/30/2018 to 04/10/2019		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW0192-Construction Equipment			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
1	22101532 / Tracked Loaders John Deere - Full Size Track Loaders (Models 605K and 655K) at 30% Percentage Discount John Deere - Full Size Track Loaders (Model 755K) at 29% Percentage Discount John Deere - Compact Track Loaders (Models 317G, 323E, 331G, and 333G) at 33% Percentage Discount Attachments and Accessories at 20% Percentage Discount (Only sold w/machine. Deere field kits (AT/KV...) and WoksitePro Attachments ONLY). Options at same Percentage Discount as machine. Codes 9XXX only Multiple Unit Discount: 1% for 5-7 units purchased 2% for 8-14 units purchased 3% for 15-30 units purchased	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		
2	22101528 / Wheel Loaders John Deere - Full Size Wheel Loaders (Model 344K) at 35% Percentage Discount John Deere - Full Size Wheel Loaders (Model 444K) at 41% Percentage Discount John Deere - Full Size Wheel Loaders (Models 524K II, 544K II, 624K II, and 724K) at 43% Percentage Discount John Deere - Full Size Wheel Loaders (Models 644K and 644K Hybrid) at 42% Percentage Discount John Deere - Full Size Wheel Loaders (Models 744K II, 824K II, and 844K II) at 40% Percentage Discount John Deere - Compact Wheel Loaders (Models 204K, 244K II, 304K, 324K) at 28% Percentage Discount Attachments and Accessories at 20% Percentage Discount (Only sold w/machine. Deere field kits (AT/KV...) and WoksitePro Attachments ONLY). Options at same Percentage Discount as machine. Codes 9XXX only Multiple Unit Discount: 1% for 5-7 units purchased 2% for 8-14 units purchased 3% for 15-30 units purchased	EA	1.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		

Final = The price is final after adjustments
 Hard = Apply adjustments regardless of other adjustments
 Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature



CONTRACT

State of Oklahoma

Dispatch via Print

Supplier 0000253425
 JOHN DEERE CONSTRUCTION RETAIL SALES
 1515 5TH AVE
 MOLINE IL 61265-1367
 USA

Contract ID 0000000000000000000000005273			Page 2 of 4	
Contract Dates 05/30/2018 to 04/10/2019		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW0192-Construction Equipment			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
3	22101502 / Motor Graders John Deere - Full Size Motor Graders (Models 620G, 622G, 670G, and 672G) at 42% Percentage Discount John Deere - Full Size Motor Graders (Models 770G and 772G) at 45% Percentage Discount John Deere - Full Size Motor Graders (Models 870G and 872G) at 44% Percentage Discount	EA	1.00	0.00	0.00	0.00
<p>Attachments and Accessories at 20% Percentage Discount (Only sold w/machine. Deere field kits (AT/KV...) and WoksitePro Attachments ONLY). Options at same Percentage Discount as machine. Codes 9XXX only</p> <p>Multiple Unit Discount: 1% for 5-7 units purchased 2% for 8-14 units purchased 3% for 15-30 units purchased</p>						
	Contract Base Pricing	0.00000	EA	0001		
4	22101500 / Site Dumpers John Deere - Full Size Site Dumpers (Models 260E, 310E, 370E and 410E) at 30% Percentage Discount	EA	1.00	0.00	0.00	0.00
<p>Attachments and Accessories at 20% Percentage Discount (Only sold w/machine. Deere field kits (AT/KV...) and WoksitePro Attachments ONLY). Options at same Percentage Discount as machine. Codes 9XXX only</p> <p>Multiple Unit Discount: 1% for 5-7 units purchased 2% for 8-14 units purchased 3% for 15-30 units purchased</p>						
	Contract Base Pricing	0.00000	EA	0001		
5	22101500 / Backhoes John Deere - Full Size Backhoes (Models 310L EP, 310SL, 310SL HL and 315SL) at 47% Percentage Discount John Deere - Full Size Backhoes (Models 410L and 710L) at 43% Percentage Discount John Deere - Full Size Backhoes (Models 210L EP Tractor/Landscape Loader and 210L Tractor/Landscape Loader) at 39% Percentage Discount	EA	1.00	0.00	0.00	0.00
<p>Attachments and Accessories at 20% Percentage Discount (Only sold w/machine. Deere field kits (AT/KV...) and WoksitePro Attachments ONLY). Options at same Percentage Discount as machine. Codes 9XXX only</p> <p>Multiple Unit Discount: 1% for 5-7 units purchased 2% for 8-14 units purchased 3% for 15-30 units purchased</p>						

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Authorized Signature



CONTRACT

State of Oklahoma

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Supplier 0000253425
 JOHN DEERE CONSTRUCTION RETAIL SALES
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 MOLINE IL 61265-1367
 USA

Contract ID 000000000000000000000005273			Page 4 of 4	
Contract Dates 05/30/2018 to 04/10/2019		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW0192-Construction Equipment			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
	John Deere - Full Size Dozer (Models 450K, 550K and 650K) at 29% Percentage Discount					
	John Deere - Full Size Dozer (Models 700K, 750K and 850K) at 30% Percentage Discount					
	John Deere - Full Size Dozer (Models 950K and 1050K) at 31% Percentage Discount					
	Attachments and Accessories at 20% Percentage Discount (Only sold w/machine. Deere field kits (AT/KV...) and WoksitePro Attachments ONLY). Options at same Percentage Discount as machine. Codes 9XXX only					
	Multiple Unit Discount: 1% for 5-7 units purchased 2% for 8-14 units purchased 3% for 15-30 units purchased					
	Contract Base Pricing	0.00000	EA	0001		

COMMENTS:

John Deere Construction Retail Sales (John Deere brand)
 John Deere Point of Contact: Richard Murga
 Point of Contact Email: MurgaRichard@JohnDeere.com
 Point of Contact Phone Number: 309-765-3358

Contract Period: 05/30/2018 - 04/10/2019
 Agreement Period: 05/30/2018 - 04/10/2023

Award based on OMES Solicitation OK-SW-192, where Oklahoma is the lead state for a NASPO ValuePoint Contract.

Final = The price is final after adjustments
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Authorized Signature



OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT CONSTRUCTION EQUIPMENT INCLUDING EQUIPMENT AND WARRANTY WORK WITH REPLACEMENT PARTS

Office of Management and Enterprise Services

Central Purchasing Division

5005 North Lincoln Boulevard

Oklahoma City, OK 73105

And

CNH Industrial America LLC d/b/a CASE Construction

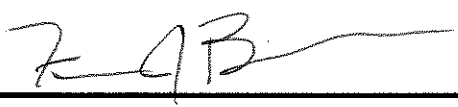

621 State Street

Racine, WI 53402

Master Agreement Number: OK-SW-192

The Contractor identified below is hereby notified that a contract is being awarded to the Contractor in connection with Solicitation No. OK-SW192, issued May 25, 2017.

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

STATE OF OKLAHOMA	CONTRACTOR
Ferris J. Barger, State Purchasing Director By: 	CNH Industrial America LLC d/b/a CASE Construction  By:
Date: 7-13-18	Date: 7-11-18
State Purchasing Director	Title: Government Sales

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

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OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

SUMMARY

1. **Scope of Work Defined.** The purpose of this Master Agreement is to memorialize terms of the contract under which catalog discount and multi-unit discount options are provided for construction equipment and warranty work with replacement parts for all Participating Entities in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The objective is to obtain best value, and in some cases achieve more favorable pricing, than is obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities.
2. **Categories of Products Offered.** This Master Agreement will offer the following categories of products: Construction Equipment and Warranty Work with Replacement Parts.
Note: the Contractor does not presently offer telehandlers or site dumpers.
3. **Contract Documents and Master Agreement Order of Precedence.** Any Order placed under this Master Agreement is governed by and subject to the following contract documents, the terms of which are hereby incorporated:
 - A. Participating Entity's Participating Addendum ("PA");
 - B. Oklahoma NASPO ValuePoint Master Agreement;
 - i. Summary;
 - ii. General Terms, Conditions, and Instructions;
 - iii. Exhibit A, NASPO ValuePoint Terms and Conditions;
 - iv. Exhibit B, Scope of Work; and
 - v. Exhibit C, Pricing.
 - C. A Purchase Order issued against the Master Agreement;
 - D. Request for Proposal; and
 - E. Exhibit D, Contractor's Terms and Conditions Contained In Contractor's Response As Revised And Accepted By The Lead State.

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

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

GENERAL TERMS AND CONDITIONS

1. **Period of Performance.** The initial term of this Master Agreement is 1 (one) year with an option to renew for up to four (4) additional one-year periods. Renewal options are at the Lead State's discretion upon review of requirements of Participating Entities, current market conditions and Contractor performance.
2. **Contract Administrator.** The Lead State Contract Administrator identified below is the single point of contact in connection with this Master Agreement and all questions concerning the procurement process, contractual requirements, changes and any other questions that may arise related to this Master Agreement. The Lead State Contract Administrator designated by the State of Oklahoma, OMES Central Purchasing is:

Jennifer McCaulla, Statewide Initiatives Lead
State of Oklahoma, OMES Central Purchasing
5005 N. Lincoln Blvd., Suite 300
Oklahoma City, OK 73105
jennifer.mccaulla@omes.ok.gov
Phone: 405/521-4772
3. **Authorized Users.** Any Purchasing Entity, as defined herein, may make acquisitions under this Master Agreement.
4. **Certification of Non-Debarment.** Contractor certifies to the best of its knowledge and belief, that the Contractor and its principals or participants:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;
 - B. Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
 - C. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses listed above this certification; and
 - D. Have not with a three-year period preceding this application/proposal had one or more public (Federal, State or local) contracts terminated for cause or default. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its solicitation response.

5. **Insurance.** The Contractor agrees to maintain insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state at the prescribed levels set forth in Section 21 of Exhibit A, the NASPO ValuePoint Terms and Conditions.

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

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

7. **Cost, Prices, and Rates.** Prices and rates shall include all anticipated charges including, but not limited to, standard freight and delivery, cost of materials and product, transaction fees, overhead, profits, and other costs and expenses incidental to the Contractor's performance. Any travel costs must be included in the cost of the products and services offered under this Master Agreement. No line item billing for travel will be allowed under this Master Agreement.

Pricing will remain fixed for the initial term of this Master Agreement, which is one year. Any request for price or rate adjustment following the initial Master Agreement term is subject to pre-approval of the Lead State and shall be subject to other applicable restrictions with respect to the frequency or amount of such adjustment. Additional terms related to pricing are set forth in Exhibit A, Section 11.

8. **Oklahoma Open Records Act.** This Master Agreement and all proposal and other materials submitted in response to Request For Proposal SW#192 are the property of the State of Oklahoma and subject to the Oklahoma Open Records Act.

9. **Changes in Contractor Company Status, Equipment or Contact.** The Contractor shall notify the Lead State Contract Administrator of any changes in the company status, such as mergers, sell offs and changes in the contact information of the Contractor. The Contractor may add new Products to products available under this Master Agreement subject to the prior written approval of the Lead State. The price discount may not be decreased. The Contractor shall also provide prior written notice of any discontinued products or replacement models. The Contractor shall be available at all times during normal business hours for contact from Lead State Contract Administrator.

10. **Invoices.** In addition to requirements in an applicable Participating Addendum, to ensure prompt payment, the Contractor will provide necessary training for the dealer network to make sure all invoices include the following information:

- A. Purchase order number if applicable;
- B. Make, model, and VIN number of equipment;

- C. Name of Purchasing Entity;
- D. Description of equipment purchased or warranty services performed and/or parts, material and supplies provided;
- E. The Contractor's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered;
- F. Name of company who provided the products/services; and
- G. If requested by the Purchasing Entity for its accounting purposes, a copy of the current, dated Supplier's Price List showing the equipment price.

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

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT A

NASPO VALUEPOINT TERMS AND CONDITIONS

1. **Master Agreement Order of Precedence.** The order of precedence of contract documents is set forth in Section 3 of the Summary above.
2. **Definitions.**
 - A. **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. Acceptance shall occur not later than thirty (30) calendar days after the date of delivery of the products to the Participating or Purchasing Entity.
 - B. **Contractor** means the person or entity delivering Products under the terms and conditions set forth in this Master Agreement.
 - C. **Embedded Software** means one or more software applications which permanently reside on a computing device.
 - D. **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.
 - E. **Lead State** means the State centrally administering any resulting Master Agreement(s).
 - F. **Master Agreement** means this agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.
 - G. **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 and the District of Columbia. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.
 - H. **Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

- I. Participating Addendum** means a bilateral agreement executed by the Contractor and a Participating Entity incorporating this Master Agreement and any other terms and conditions, e.g. ordering procedures, specific to the Participating Entity.
- J. Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.
- K. 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.
- L. Purchasing Entity** means a state government (as well as the District of Columbia and U.S. territories) including a department, agency, institution and similar governmental entity thereof, an institution of higher education, city, county, district, or other political subdivision of a state and other eligible entities, subject to approval of the individual state procurement director and compliance with statutory and regulatory requirements,, that issues a Purchase Order and becomes financially committed to the purchase.
- M. Resale** means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services.

3. Intentionally Omitted.

- 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 terms of this Master Agreement are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by a 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) used by the Purchasing Entity to place the Order.

- B.** Use of this Master Agreement by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- C.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of a Participating Entity are limited to the Orders placed by departments or other state agencies and institutions having available funds. A Participating Entity incurs no financial obligations on behalf of any Purchasing Entity. 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.** A Participating Addendum shall not be construed to amend the terms of 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; the Participating Entity must ensure it has the requisite procurement authority to execute a Participating Addendum.
- G.** 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 participate in the Resale of 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 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. Within fifteen (15) days of execution of this Master Agreement, Contractor shall identify the person responsible for providing the mandatory usage reports. If the person providing the usage reports changes, Contractor will promptly notify the Lead State and NASPO ValuePoint.

In addition to other reports that may be required, 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://calculator.naspovaluepoint.org>. 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:
 - i.** state;
 - ii.** entity/customer type, e.g. local government, higher education, K12, non-profit;
 - iii.** Purchasing Entity name;

- iv. Purchasing Entity bill-to and ship-to locations;
- v. Purchasing Entity and Contractor Purchase Order identifier/number(s);
- vi. Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices);
- vii. Purchase Order date;
- viii. Ship Date; and
- ix. 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 set forth at Attachment A-1 and may be amended from time to time.

- 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. Contractor agrees 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. At a minimum, the Contractor agrees to participate in development of Ordering Instructions.
- C. 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.
- D. 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.

- 10. Right to Publish.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior written approval for the release of any information that pertains to the potential work or activities covered by the Master Agreement. The Contractor shall not make any representations of NASPO Value Point'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 term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting

the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

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 which include the General Terms and Conditions, the NASPO ValuePoint Terms and Conditions, and the applicable Participating Addendum and will have the same rights and responsibilities for its 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 its 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 and shall have no right of setoff.

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 awarded companies 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 a Participating Addendum and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which awarded Contractors are solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, considering cost and other factors.
- C. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedures 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 in compliance with the law of the Purchasing Entity.
- E. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
- F. All Orders pursuant to this Master Agreement, at a minimum, shall include:
 - i. The description and quantity of services or supplies being delivered;
 - ii. The place and requested time of delivery;
 - iii. A billing address;
 - iv. The name, phone number, and address of the Purchasing Entity representative;
 - v. The price per hour or other pricing elements consistent with this Master Agreement; and

vi. The Master Agreement identifier.

- G. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- H. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- I. Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

14. Intentionally Omitted.

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 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 substantially 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 is a process to ascertain that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is applicable, this subsection applies to Products, 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 does not meet the standard of performance, the Purchasing Entity may, at its option:
 - i. declare Contractor to be in breach and terminate the Order;
 - ii. demand replacement Product from Contractor at no additional cost to Purchasing Entity; or
 - iii. 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 this section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met.

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 interest percentage is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments may be remitted by mail or electronic transfer or may be made via a State or political subdivision "Purchasing Card" with no additional charge.

18. Warranty. Notwithstanding any other provision of the Contract, the parties agree to the following provisions concerning the Contractor's warranty. The Contractor warrants for a period of one year from the date of Acceptance that:

- A. the Product performs according to all specific claims that the Contractor made in its response to the solicitation;
- B. the Product is suitable for the ordinary purposes for which such Product is used;
- C. the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment;
- D. the Product is designed and manufactured in a commercially reasonable manner; and
- E. the Product is free of defects.

Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

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.

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 written on an occurrence basis. The minimum acceptable limits shall be as indicated below:
 - i.** Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate and
 - ii.** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
 - 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:
 - i.** names the Participating States identified in the Request for Proposal as additional insureds;
 - ii.** provides that written notice of cancellation shall be delivered in accordance with the policy provisions; and
 - iii.** 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, result in this Master Agreement's termination or, at the sole option of any Participating Entity, 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 seven (7) 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:
 - i. any Purchasing Entity's records;
 - ii. personnel records; and
 - iii. 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:

- i. is or becomes (other than by disclosure by Contractor) publicly known;
- ii. is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement;

- iii. is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement;
 - iv. is obtained from a source other than Purchasing Entity without the obligation of confidentiality;
 - v. is disclosed with the written consent of Purchasing Entity; or
 - vi. 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. 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 or expiration 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 contract 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 this Master Agreement in writing within ten (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 sufficient education, training, and experience.
27. **Independent Contractor.** The Contractor is an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, 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. **Cancellation.** Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and Accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.
29. **Force Majeure.** Neither party to this Master Agreement shall be held responsible for delay or default caused by unusually severe weather, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement, and a Participating Entity may terminate a Participating Addendum, after determining such delay or default will reasonably prevent successful performance of the Master Agreement or Participating Addendum, as applicable.
30. **Defaults and Remedies.**

- A.** The occurrence of any of the following events shall be an event of default under this Master Agreement:
- i.** Nonperformance of contractual requirements; or
 - ii.** A material breach of any term or condition of this Master Agreement; or
 - iii.** 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
 - iv.** 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
 - v.** 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:
- i.** Exercise any remedy provided by law; and
 - ii.** Terminate this Master Agreement and any related Contracts or portions thereof; and
 - iii.** Impose liquidated damages as provided in this Master Agreement; and
 - iv.** Suspend Contractor from being able to respond to future bid solicitations; and
 - v.** Suspend Contractor's performance; and
 - vi.** Withhold payment until the default is remedied.
- D.** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in 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 this Master Agreement 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.
- 33. Indemnification**
- A.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.
- B.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.
- C.** The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
- i.** Provided by the Contractor or the Contractor's subcontractor, subsidiary or affiliate;
 - ii.** Specified by the Contractor to work with the Product;

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

34. No Waiver of Sovereign Immunity. In no event shall this Master Agreement, any Participating Addendum 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 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. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum is solely and exclusively in the Purchasing Entity's State.
- B. 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.

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT B – SCOPE OF WORK

1. **Scope and General Information.** This Master Agreement provides a competitively bid contractual vehicle for Participating Entities to purchase construction equipment including equipment with warranty work and replacement parts. The Product line within scope of this Master Agreement and pricing offered at a “catalog discount” and includes a multi-unit discount. Pricing and the percentage discount are set forth at Attachments C-1 and C-2 to Exhibit C hereto. Approved distributors through which a Purchasing Entity may purchase products and the distributor coverage area are set forth in Attachment D-1 to Exhibit D hereto. Each Contractor shall ensure the Lead State Contract Administrator is provided with up to date information regarding the status of approved distributors. New distributors should be added by providing a replacement list of authorized distributors to the Lead State Contract Administrator. The Lead State Contract Administrator should be notified in writing, via email, of any distributors that should be removed from the list of approved distributors. Distributors may provide service nationally or locally. Each state represented by NASPO ValuePoint that chooses to participate in this Master Agreement independently has the option of deploying only resellers approved by the Participating Entity. The Participating Entity that chooses to exercise this option may define the process to add and remove resellers in its Participating Addendum.
2. **Motor Vehicle Licensing.** The Contractor certifies that all required Motor Vehicle Commission licenses are in place and current and copies of all such licenses, if requested, will be submitted with each Participating Addendum. Additional license requirements for Participating Entities will be addressed in each state’s Participating Addendum.

The Contractor shall maintain all required motor vehicle licensing during the term of the contract and furnish copies at any time upon request by the Lead State Contract Administrator or a Purchasing Entity. Failure to adhere to this requirement may result in termination, in whole or in part, of this Master Agreement for cause. Contracts for motor vehicles to be sold may be made only with properly licensed Motor Vehicle Dealers.

3. **Warranty and Buy Back.** The Contractor shall correct ordering errors without further cost to the Purchasing Entity.

The Contractor agrees the Products shall be covered by all commercial warranties the Contractor provides for such products, and rights and remedies provided therein are in addition to and do not limit any rights afforded by any other clause of this Master Agreement. A copy of the Contractor’s warranties applicable to its products is set forth at Attachment D-2 to Exhibit D. If Contractor changes its warranty with respect to a Product, Contractor shall promptly provide a replacement copy to the Lead State Contract Administrator and clarify which Products are covered by the revised warranty. Contractor also agrees to provide a copy of the warranty applicable to replacement parts purchased. All equipment warranties shall start on the later of the date of delivery or the date of Acceptance and shall be for the full term of said warranty.

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

The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work. All persons utilized in the performance of this Master Agreement shall be authorized by the Contractor and be fully qualified to perform the warranty work required. Warranty work shall be performed by certified or trained or authorized service technicians.

All warranty work performed and parts/materials supplied shall meet original equipment manufacturer (OEM) warranty requirements. Equivalent substitutions must be approved in writing by the Purchasing Entity contact person prior to installation. Warranty work performed not meeting specifications or found to be defective, shall not be accepted. The Contractor shall be required to make repairs or corrections at no additional cost to the Purchasing Entity. Repairs made that are covered by a warranty shall not be paid for by the Purchasing Entity.

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

- A. name of Purchasing Entity and division, if applicable;
- B. make, model, and VIN of equipment; and
- C. control number of Purchasing Entity (Inventory number).

Repair facilities that will perform warranty work under this Master Agreement shall be identified as the Contractor's dealer network. As the manufacturer, the Contractor is responsible for insuring that the facilities are able to adhere to the contract requirements for warranty work performance.

Equipment that will remain in the Contractor's possession overnight and/or for extended periods shall be stored in a safe and secure location for protection from theft and environmental dangers. The Contractor shall be responsible for the proper care and custody of any such equipment in the Contractor's possession.

In connection with replacement parts sold to a Purchasing Entity, Contractor shall provide a copy of any applicable buy-back, trade-in or exchange policy and applicable warranty at the time of purchase.

4. **Quality of Parts.** Parts associated with products available under this Master Agreement shall be name brand, nationally advertised merchandise and equivalent substitutions may only occur with the prior written approval of the Purchasing Entity. After market repair, rebuilt or remanufactured parts must be equal to or exceed Contractor's OEM specifications. Repair parts must be packaged and distributed under the respective nationally known name brands and may be required to be OEM repair parts. Contractor agrees its dealers or distributors network shall provide a complete line of OEM parts for all models of equipment available from such dealer or distributor. Preservation, packaging,

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

5. **Delivery.** Delivery on parts is to be made within 30 calendar days and delivery of equipment shall be made within 120 calendar days after receipt of order unless other arrangements are made between the Purchasing Entity and the Contractor. Earlier deliveries are encouraged however there shall be no change in contract price or discount terms because of the earlier delivery. Some ordering entities will have the capacity to pick up equipment from the dealer.

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

Delivery shall be made in accordance with instructions on the Order from each Purchasing Entity. If there is a discrepancy between the Order and what is listed in this Master Agreement, the Contractor shall seek clarification from the Purchasing Entity and/or the Lead State Contract Administrator.

Delivery to a Purchasing Entity is to be Free On Board Destination (to the Destination stated in the Order) freight prepaid and added. Any allowable freight, shipping and handling costs and set-up fees paid by a Purchasing Entity are to be annotated on the quote/invoice as a separate line item. Quotes shall show the Contractor's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidental costs and the final price for each item delivered.

Allied and incidental items requested by a Purchasing Entity shall comply with its state or other government regulations. Allied equipment may only be sold in connection with the sale of an item within scope of this Master Agreement. Items must be clearly labeled on the Order or quote as allied.

Allied and incidental items are attachments, accessories, parts or bundles not manufactured by the Contractor that are requested by a Purchasing Entity to complete the purchase of equipment within scope of this Master Agreement (but not to substantially convert the Product).

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT C - PRICING

The pricing structure for this Master Agreement is a percentage discount off the Contractor's catalogue pricing and multi-unit discounts are offered, as reflected in the attached Attachments C-1 (prices) and C-2 (percentage discount). Additional terms related to pricing are set forth in the General Terms and Conditions and Exhibits A and B of this Master Agreement.

Contractor offers the following multi-unit discounts:

Multiple Unit discount: 1% (In addition to the equipment discount) based on 2 – 3 Units purchased

Multiple Unit discount: 2% (In addition to the equipment discount) based on 4 -5 Units purchased

Multiple Unit discount: 3% (In addition to the equipment discount) based on 6-9 Units purchased

Multiple Unit discount: 4% (In addition to the equipment discount) based on 10+ Units purchased

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT– D - CONTRACTOR’S TERMS AND CONDITIONS CONTAINED IN CONTRACTOR’S RESPONSE AS REVISED AND ACCEPTED BY THE LEAD STATE

Approved distributors through which a Purchasing Entity may purchase products and the distributor coverage area is located at Attachment D-1.

Product information and specifications offered by Contractor hereunder are set forth at <https://www.casece.com/northamerica/en-us/products/backhoe-loaders/overview/models/580n-ep>.

The Contractor’s Base Warranty, and the CASE Protection Plan for an extended warranty, is applicable to lightweight equipment. Heavy equipment is covered by the CASE ProCare warranty. All warranty details are set forth at Attachment D-2. For avoidance of doubt, terms related to warranty that are set forth elsewhere in this Master Agreement or a Participating Addendum shall take precedence over the Contractor warranty to the extent there is a conflict.

No other terms and conditions contained in Contractor’s Bid are accepted by the Lead State for inclusion in the Contract.



CONTRACT

State of Oklahoma

Dispatch via Print

Supplier 0000325256
 NEW HOLLAND AGRICULTURE
 500 DILLER AVENUE
 NEW HOLLAND PA 17557-9301
 USA

Contract ID 0000000000000000000000005244			Page 1 of 6	
Contract Dates 05/08/2018 to 04/10/2019		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW0192-Construction Equip			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
1	22101532 / Tracked Loaders and/or Accessories & Attachments New Holland 200 Series Compact Track Loaders (except C232) at 30% Percentage Discount New Holland C232 Compact Track Loader at 28% Percentage Discount Attachments and Accessories at 28-30% Percentage Discount (same as base unit when ordered with base unit). Options at 28-30% Percentage Discount Multiple Unit Discount: 1% for 2-3 units purchased 2% for 4-5 units purchased 3% for 6-9 units purchased 4% for 10+ units purchased CASE Construction Track Loaders (Models 570N EP and TR270 T4F) at 36% Percentage Discount CASE Construction Track Loaders (Model TR310 T4F) at 33% Percentage Discount CASE Construction Track Loaders (Models TV370 T4F, TR340 T4F and TV380 T4F) at 34% Percentage Discount Attachments and Accessories at 33-36% Percentage Discount (same as base unit when ordered with base unit). Options at 33-36% Percentage Discount Multiple Unit Discount: 1% for 2-3 units purchased 2% for 4-5 units purchased 3% for 6-9 units purchased 4% for 10+ units purchased	EA	0.00	0.00	0.00	0.00
	Contract Base Pricing		0.00000	EA		0001
2	22101528 / Wheel Loaders and/or Attachments & Accessories New Holland C Series Compact Wheel Loader at 28% Percentage Discount New Holland U80C Tractor Loader at 28% Percentage Discount Attachments and Accessories at 28% Percentage Discount (same as base unit when ordered with base unit). Options at 28% Percentage Discount Multiple Unit Discount: 1% for 2-3 units purchased 2% for 4-5 units purchased 3% for 6-9 units purchased 4% for 10+ units purchased CASE Construction Wheel Loaders (Model 21FT4 FINAL) at 36% Percentage Discount CASE Construction Wheel Loaders (Models 121FT4 FINAL, 221FT4 FINAL and 321FT4 FINAL) at 39% Percentage Discount	EA	0.00	0.00	0.00	0.00

Final = The price is final after adjustments
 Hard = Apply adjustments regardless of other adjustments
 Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature



CONTRACT

State of Oklahoma

Dispatch via Print

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NEW HOLLAND AGRICULTURE
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NEW HOLLAND PA 17557-9301
USA

Contract ID 0000000000000000000000005244			Page 3 of 6	
Contract Dates 05/08/2018 to 04/10/2019		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW0192-Construction Equip			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

1% for 2-3 units purchased
2% for 4-5 units purchased
3% for 6-9 units purchased
4% for 10+ units purchased

Contract Base Pricing	0.00000	EA	0001			
5 22101529 /		EA	0.00	0.00	0.00	0.00

Skid Steer and/or Attachments & Accessories
New Holland L213, L216 & L218 at 28% Percentage Discount
New Holland L220 & L221 at 30% Percentage Discount
New Holland L228 at 31% Percentage Discount
New Holland L234 at 32% Percentage Discount

Attachments and Accessories at 28-32% Percentage Discount (same as base unit when ordered with base unit).
Options at 28-32% Percentage Discount

Multiple Unit Discount:
1% for 2-3 units purchased
2% for 4-5 units purchased
3% for 6-9 units purchased
4% for 10+ units purchased

CASE Construction Skid Steer (Models SR130 T4F and SR160 T4F) at 28% Percentage Discount
CASE Construction Skid Steer (Models SR175 T4F and SV185 T4F) at 30% Percentage Discount
CASE Construction Skid Steer (Models SR210 T4F and SR270 T4F) at 31% Percentage Discount
CASE Construction Skid Steer (Models SV280 TF4 and SV340 T4F) at 32% Percentage Discount

Attachments and Accessories at 28-32% Percentage Discount (same as base unit when ordered with base unit).
Options at 28-32% Percentage Discount

Multiple Unit Discount:
1% for 2-3 units purchased
2% for 4-5 units purchased
3% for 6-9 units purchased
4% for 10+ units purchased

Contract Base Pricing	0.00000	EA	0001			
6 22101526 /		EA	0.00	0.00	0.00	0.00

Track Excavator and/or Attachments & Accessories

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State of Oklahoma

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NEW HOLLAND AGRICULTURE
500 DILLER AVENUE
NEW HOLLAND PA 17557-9301
USA

Contract ID			Page	
000000000000000000000005244			4 of 6	
Contract Dates		Currency	Rate Type	Rate Date
05/08/2018 to 04/10/2019		USD	CRRNT	PO Date
Description:			Contract Maximum	
SW0192-Construction Equip			0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
	New Holland E17C, E26C, E33C, E37C at 25% Percentage Discount New Holland E57C & E60C at 28% Percentage Discount Attachments and Accessories at 25-28% Percentage Discount (same as base unit when ordered with base unit). Options at 25-28% Percentage Discount Multiple Unit Discount: 1% for 2-3 units purchased 2% for 4-5 units purchased 3% for 6-9 units purchased 4% for 10+ units purchased CASE Construction Tracked Excavators (Model CX17C) at 29% Percentage Discount CASE Construction Tracked Excavators (Model CX26C) at 30% Percentage Discount CASE Construction Tracked Excavators (Models CX33C and CX37C) at 31% Percentage Discount CASE Construction Tracked Excavators (Models CX57C and CX60C) at 34% Percentage Discount CASE Construction Tracked Excavators (Models CX75C and CX80C) at 35% Percentage Discount CASE Construction Tracked Excavators (Models CX130D, CX145D, CX160D, CX210D, CX245D, CX250D, CX290D, CX300D, CX350D and CX490D) at 39% Percentage Discount CASE Construction Tracked Excavators (Models CX500D, CX700B, CX800B and CX750D) at 37% Percentage Discount Attachments and Accessories at 29-39% Percentage Discount (same as base unit when ordered with base unit). Options at 29-39% Percentage Discount Multiple Unit Discount: 1% for 2-3 units purchased 2% for 4-5 units purchased 3% for 6-9 units purchased 4% for 10+ units purchased					
	Contract Base Pricing		0.00000	EA	0001	
7	22101502 / Motor Grader and/or Attachments & Accessories	EA	0.00	0.00	0.00	0.00

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Authorized Signature



CONTRACT

State of Oklahoma

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NEW HOLLAND AGRICULTURE
500 DILLER AVENUE
NEW HOLLAND PA 17557-9301
USA

Contract ID 0000000000000000000000005244			Page 5 of 6	
Contract Dates 05/08/2018 to 04/10/2019		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW0192-Construction Equip			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

Contract Lines:

Line #	Cat CD / Item ID / Item Desc	UOM	Minimum Order Qty	Amt	Maximum / Open Qty	Amt
	CASE Construction Motor Graders (Models 865B & AWD and 885B & AWD) at 45% Percentage Discount					
	Attachments and Accessories at 45% Percentage Discount (same as base unit when ordered with base unit).					
	Options at 45% Percentage Discount					
	Multiple Unit Discount: 1% for 2-3 units purchased 2% for 4-5 units purchased 3% for 6-9 units purchased 4% for 10+ units purchased					
	Contract Base Pricing	0.00000	EA	0001		
8	22101522 / Dozer and/or Attachments & Accessories CASE Construction Dozers (Model 650L) at 36% Percentage Discount CASE Construction Dozers (Models 750M T4F and 2050M T4F) at 39% Percentage Discount CASE Construction Dozers (Model 850M T4F) at 42% Percentage Discount CASE Construction Dozers (Model 1150M T4F) at 40% Percentage Discount CASE Construction Dozers (Model 2050M T4F) at 43% Percentage Discount Attachments and Accessories at 36-43% Percentage Discount (same as base unit when ordered with base unit). Options at 36-43% Percentage Discount Multiple Unit Discount: 1% for 2-3 units purchased 2% for 4-5 units purchased 3% for 6-9 units purchased 4% for 10+ units purchased	EA	0.00	0.00	0.00	0.00
	Contract Base Pricing	0.00000	EA	0001		

COMMENTS:

CNH Industrial America, LLC (New Holland Construction and Agriculture brands)
New Holland Point of Contact: Wayne Crow
Point of Contact Email: Wayne.Crow@newholland.com
Point of Contact Phone Number: 717-355-1683

Contract Period: 04/11/2018 - 04/10/2019
Agreement Period: 04/11/2018 - 04/10/2023

Award based on OMES Solicitation OK-SW-192, where Oklahoma is the lead state for a NASPO ValuePoint Contract.

Pricing - Attachment C - New Holland

SAM-CNH Industrial America, LLC

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State of Oklahoma

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USA

Contract ID 0000000000000000000000005244			Page 6 of 6	
Contract Dates 05/08/2018 to 04/10/2019		Currency USD	Rate Type CRRNT	Rate Date PO Date
Description: SW0192-Construction Equip			Contract Maximum 0.00	
Allow Open Item Reference				
TYPE: STATEWIDE				

Tax Exempt? Y Tax Exempt ID:736017987

CNH Industrial America, LLC (CASE Construction brand)
CASE Construction Point of Contact: Tony Simpson
Point of Contact Email: Tony.Simpson@casece.com
Point of Contact Phone Number: 262-636-6576

Contract Period: 07/13/2018 - 04/10/2019
Agreement Period: 07/13/2018 - 04/10/2023

Final = The price is final after adjustments
Hard = Apply adjustments regardless of other adjustments
Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature



**The State of Oklahoma
OMES Central Purchasing**

In conjunction with



Request for Proposals

**Oklahoma Solicitation Number
OK-SW192**

**NASPO ValuePoint Master Agreement
for Construction Equipment**

May 25, 2017

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RFP Administrative Information

RFP Title:	New Construction Equipment
RFP Project Description: (See Section 1.1)	The State of Oklahoma in conjunction with NASPO ValuePoint, is seeking Contractor(s) for a contract for New Construction Equipment . Only Manufacturers of equipment with dealer networks are asked to respond
RFP Lead: (See Section 1.2)	Joyce Leivas OMES Central Purchasing 5005 N. Lincoln Blvd. STE 300 Oklahoma City, OK 73105 Joyce.Leivas@omes.ok.gov 405/521-2479
Submit sealed proposal (if submitting manually): MANUAL PROPOSALS MUST BE RECEIVED AT THE PHYSICAL ADDRESS DESIGNATED FOR COURIER SERVICE AND TIME/DATE STAMPED PRIOR TO THE CLOSING DATE AND TIME. One original hard copy and 7 electronic copies(cd, flash drive, dvd) are to be submitted as stated above, in a sealed container. (See Section 2.10)	Address for Courier: OMES Central Purchasing 5005 N. Lincoln Blvd. STE 300 Oklahoma City, OK 73105 Address for US Mail: OMES Central Purchasing 5005 N. Lincoln Blvd. STE 300 Oklahoma City, OK 73105
Pre-Proposal Conference: Pre-Proposal Conference Location:	06/01/2017 @ 1:00 PM-2:00 PM Pacific Time 3:00 PM-4:00 PM Central Time.(Webinar/Conference Call Vendor will email Joyce.Leivas@omes.ok.gov for the call in information.
Deadline to Receive Questions:	June 14, 2017
Question & Answers:	All questions, including those about Terms and Conditions, must be submitted via email only to Joyce.Leivas@omes.ok.gov Questions must be submitted by the deadline.
RFP Closing Date:	July 6 2017 @ 3:00 PM Central Standard Time
RFP Opening Date:	July 6, 2017
Initial Term of Contract and Renewals: (See Attachment A, Section 3)	This Contract is for Date of Award through one year with the option to renew for up to four (4) additional one year periods. See also Section 3 of the NASPO ValuePoint Master Terms and conditions (Attachment A). The State may extend the term of this contract for up to 180 days if mutually agreed upon by both parties in writing.

REQUEST FOR PROPOSALS

Construction Equipment

Solicitation # OK-SW192

Section 1: NASPO ValuePoint Solicitation - General Information

1.1. Purpose

The State of Oklahoma, Office of Management and Enterprise Services, Central Purchasing, in furtherance of the NASPO ValuePoint Cooperative Purchasing Program, is requesting proposals from manufacturers of new construction equipment. The purpose of this Request for Proposals (RFP) is to establish Master Agreements with qualified manufacturers to provide new construction equipment through dealer networks for all Participating States.

The objective of this RFP is to obtain collective volume purchasing by all government entities through the NASPO ValuePoint Cooperative Purchasing Program, which not only creates more favorable pricing than is obtained by individual government entities, but also saves on administrative costs associated with soliciting and awarding contracts.

The Master Agreement(s) resulting from this procurement may be used 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 individual state procurement director and compliance with local statutory and regulatory provisions. The initial term of the master agreement shall be from the date of award through one (1) year with option to renew for up to four (4) additional one year periods. See also Section 3 of the NASPO ValuePoint Master Terms and Conditions (Attachment A).

It is anticipated that this RFP may result in Master Agreement awards to multiple contractors, at the Lead State's discretion.

The purpose of this competitive solicitation is to develop a "catalog discount" contract to provide for equipment to be made available for purchase. Only Manufacturer Suppliers with dealer networks in all states using the contract are asked to bid directly on the contract. The contract will be a multiple award contract for both equipment and warranty work with replacement parts.

Only complete responses will be considered for award. Although price is an important factor in the award process, because the contract will be made available to all of the states and territories of the United States, all information provided concerning the Manufacturer's ability to comply with the contract and provide for all of the requirements will be a significant factor in the award process.

1.2. Lead State, Solicitation Number and Lead State Contract Administrator

The State of Oklahoma, OMES Central Purchasing is the Lead State and issuing office for this document and all subsequent amendments relating to it. The reference number for the transaction is Solicitation # OK-SW192. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

The Lead State Contract Administrator identified below is the single point of contact during this procurement process. Offerors and interested persons shall direct to the Lead State Contract Administrator all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, changes, clarifications, and protests, the award process, and any other questions that may arise related to this solicitation and the resulting Master Agreement. The Lead State Contract Administrator designated by the State of Oklahoma, OMES Central Purchasing is:

Joyce Leivas, Contracting Officer
State of Oklahoma, OMES Central Purchasing
5005 N. Lincoln Blvd., STE 300
Oklahoma City, OK 73105
Joyce.Leivas@omes.ok.gov
Phone: 405-521-2479

1.3 Schedule of Events

Solicitation Release:	May 25, 2017
Question Deadline:	June 14, 2017
Closing Date and Time:	July 6, 2017
Anticipated Award Date:	TBD

All times are **Central time** unless indicated otherwise.

1.4. Definitions

The following definitions apply to this solicitation. Attachment A also contains definitions of terms used in this solicitation and the NASPO ValuePoint Master Agreement Terms and Conditions.

Best Value: A concept relating to requirements and Contractor selection criteria or other factors for a particular transaction that is established by the Lead State to ensure that its business needs and goals are effectively met and that the Lead State obtains the best value.

Lead State: The State conducting this solicitation and centrally administering any

resulting Master Agreement. The State of Oklahoma is the Lead State for this procurement.

Local Government/Political Subdivision: a local government is a city, county, school districts, city and county, district, university or other local government body or corporation empowered to expend public funds.

Master Agreement (MA): The underlying agreement executed by and between the Lead State and the Supplier(s).

MSRP: Manufacturer's Suggested Retail Price.

Offeror means the company or firm who submits a proposal in response to this RFP.

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

Participating State: A member of NASPO VALUEPOINT who has indicated its intent to participate by signing an Intent to Contract, or who subsequently signs a Participating Addendum where required, or another state authorized by NASPO VALUEPOINT to be a party to the resulting Master Agreement through the execution of a Participating Addendum.

Proposal: The official written response submitted by an Offeror in response to this RFP.

Sourcing Team: An independent committee comprised of a majority of State officers or employees established to evaluate and score proposals submitted in response to this RFP.

"Request for Proposal" or "RFP". The entire solicitation document, including all parts, sections, exhibits, attachments, and amendments.

1.5. NASPO ValuePoint Background Information

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.

1.6. Participating States

In addition to the Lead State conducting this solicitation, the following Participating States have requested to be named in this RFP as potential users of the resulting Master Agreement: Hawaii, Montana, New Jersey, Oregon, South Dakota, Virginia, Nebraska, Florida.

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. State-specific terms and conditions are included in Attachments H-L.

1.7. Anticipated Usage

Attachment G contains the historical usage data from the previous contract and anticipated usage from additional states who have indicated an interest in participating. No minimum or maximum level of sales volume is guaranteed or implied.

Section 2: Solicitation Requirements, Information and Instructions to Offerors

2.1. RFP Question and Answer Process

All questions, including those about Terms and Conditions, must be submitted in writing, via email, to the Contract Administrator listed on the RFP. Questions must be submitted by the question deadline date and time shown in Section 1.3 (Schedule of Events). Answers will be given via the State of Oklahoma Solicitation site as soon as possible.

The Lead State may refuse to answer questions received after the deadline to receive questions.

The identity of prospective Offerors will not be published with the answers, but the text of questions will be restated, so Offerors are cautioned about including context in questions that may reveal the source of questions.

2.2. RFP Amendments

Formal changes to this RFP, including, but not limited to contractual terms and procurement requirements shall only be changed via formal written amendments issued by the Lead State.

If an Amendment to this RFP is issued, the Offeror shall acknowledge receipt of any/all amendments to solicitations by signing and returning the solicitation amendment(s). Amendment acknowledgement(s) may be submitted with the Proposal or may be forwarded separately. If forwarded separately, amendment acknowledgement(s) must contain the solicitation number and response due date and time on the front of the envelope. The Lead State must receive the amendment acknowledgement(s) by the response due date and time specified for receipt of Proposals for the Proposal to be deemed responsive. Failure to acknowledge solicitation amendments may be grounds for rejection.

The Lead State accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor the State of Oklahoma Solicitation Site to obtain RFP amendments or other information relating to the RFP.

2.3. Pre-Proposal Conference

The Pre-Proposal conference will be held on 06/01/2017 at 1:00PM-2:00PM Pacific, 3:00PM-4:00PM Central time. The conference will be a conference call/webinar. Offerors will email Joyce.Leivas@omes.ok.gov for the information to join the call.

2.4. Proposal Due Date

Proposals must be received by the posted closing date and time as described in the Schedule of Events in Section 1.3 of this RFP. Proposals received after the deadline will be late and rejected.

2.5. Cancellation of Procurement

This RFP may be cancelled at any time prior to award of the Master Agreement(s) if the Lead State determines such action to be in the collective best interest of Participating States.

2.6. Governing Laws and Regulations

This procurement is conducted by the State of Oklahoma, OMES Central Purchasing, in accordance with the Statutes and Rules of the State of Oklahoma.

This procurement shall be governed by the regulations and laws of the State of Oklahoma. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in the State of Oklahoma. The provisions governing choice of law and venue for issues arising after award and during contract performance

are specified in Section 35 of the NASPO ValuePoint Master Agreement Terms and Conditions in Attachment A.

2.7. Firm Offers

Responses to this RFP, including proposed costs, will be considered firm for 180 business days after the proposal due date, without exception.

2.8. Right to Accept All or Portion of Proposal

Unless otherwise specified in the solicitation, the Lead State may accept any item or combination of items as specified in the solicitation or of any proposal unless the Offeror expressly restricts an item or combination of items in its Proposal and conditions its response on receiving all items for which it provided a proposal. In the event that the Offeror so restricts its Proposal, the Lead State may consider the Offeror's restriction and evaluate whether the award on such basis will result in the best value to the Lead State and the NASPO ValuePoint program. The Lead State may otherwise determine at its sole discretion that such restriction is non-responsive and render the Offeror ineligible for further evaluation.

2.9. Proposal Content and Format Requirements

Proposals must be detailed and concise. Each Proposal must be labeled and organized in a manner that is congruent with the requirements and terminology used in this RFP and must include a point by point response, structured in form and reference to the RFP, addressing all requirements and the Scope of Work elements.

2.10. Proposal Submission Instructions

Proposals must be received by the posted closing date and time. Proposals received after the closing date and time will be late and rejected.

You may mail or drop off your response to the State of Oklahoma, OMES Central Purchasing, 5005 N. Lincoln Blvd., STE 300, Oklahoma City, OK 73105.

An Offeror shall submit to the Lead State Contract Administrator one (1) original hard copy and seven (7) electronic copies of the Proposal including all required supporting information and documents on or before the closing date and time. Proposers shall submit one (1) original Proposal marked "MASTER." Envelopes, packages or boxes containing the original and the copies must be clearly labeled and submitted in a sealed envelope, package, or box bearing the following information:

- ☒ Name of Proposer
- ☒ RFP Number
- ☒ Closing Date and Time

If discrepancies are found between the copies, or between the original hard copy and electronic copies, the original hard copy will provide the basis for resolving discrepancies. Each electronic copy must be submitted on a separate CD ROM, DVD

or USB flash drive and must be in searchable PDF or MS-WORD 2003 or later format. Documents requiring signature must be signed and scanned, however, no other scanned documents will be accepted.

Proposers are solely responsible for ensuring that their Proposals are received by the Lead State in accordance with these solicitation requirements, before the closing date and time, and at the place specified on the cover sheet of this RFP. The Lead State shall not be responsible for any delays in mail or by common carriers or by transmission errors or delays or mistaken delivery. Proposal deliveries made to another location other than to the address identified on the cover sheet of this RFP will be considered non-responsive unless re-delivery is made to the address identified on the cover sheet of this RFP before the closing date and time. **Proposals may NOT be submitted by facsimile or email.**

2.11 Required Format

All Proposals must be submitted in the following format. Detailed information on submitting each of these sections is provided in later sections of this RFP.

1. **Administrative Forms.** The Lead State's Administrative forms (Attachment D), completed and signed.
2. **Executive Summary.** The one or two page executive summary is to briefly describe the Offeror's Proposal. This summary should highlight the major features of the Proposal. It must indicate any requirements that cannot be met by the Offeror. The Lead State should be able to determine the essence of the Proposal by reading the executive summary.
3. **Technical Response.** This section should constitute the technical response of the Proposal and must contain at least the following information:
 - A. A specific point-by-point response, in the order listed, to each requirement in the RFP and scope of work (Attachment B).
4. **Cost Proposal.** Cost will be evaluated independently from the technical proposal. Please enumerate all costs on the attached Cost Proposal Forms (Attachment C).
5. **Usage Fee and Reporting Plan.** The detailed plan for meeting the Usage Fee and Reporting requirements of this RFP. This plan should provide a comprehensive description of how the Offeror plans to collect and deliver the data and fees required by NASPO ValuePoint and Participating States.
6. **Approved Distributors.** Contracts will exclusively be awarded to manufacturers. Offerors should include on the provided form (Attachment E) the requested information for all authorized distributors.

2.12. Ownership or Disposition of Proposals and Other Materials Submitted

All Proposals and other materials submitted in response to this RFP shall be the property of the State of Oklahoma and subject to the Oklahoma Public Open Records

Act.

2.13. Confidential or Proprietary Information

Financial or proprietary information submitted by an Offeror may be designated by the Purchasing Director as confidential and the procurement entity may reject all requests to disclose information designated as confidential pursuant to 62 O.S. (2012) § 34.11.1(H)(2) and 74 O.S. (2011) § 85.10. Offerors claiming any portion of their Proposal as proprietary or confidential must specifically identify what documents or portions of documents they consider confidential and identify applicable law supporting their claim of confidentiality. The State Purchasing Director shall make the final decision as to whether the documentation or information is confidential pursuant to 74 O.S. § 85.10. Otherwise, documents and information an Offeror submits as part of or in connection with a Proposal are public records and subject to disclosure after contract award or the solicitation is cancelled.

Offerors should be aware that marking any portion of a Proposal as “confidential”, “proprietary” or “trade secret” may exclude it from evaluation or consideration for award. In the event that a limited amount of confidential and proprietary information is deemed necessary by the Offeror to respond to solicitation, any such information must be included in a separate section of the Offeror’s Proposal response clearly marked as “CONFIDENTIAL AND PROPRIETARY INFORMATION”. Do not incorporate confidential and proprietary information throughout the Proposal response. Rather, provide a reference in the Proposal response directing the reader to the CONFIDENTIAL AND PROPRIETARY INFORMATION section. Elements of the Proposal that define the contractual requirements, such as approaches to the statement of work, prices, and schedule, may not be marked as confidential and proprietary. Proposals not complying with these instructions for identification and segregation of confidential and proprietary information may be rejected.

Information included in the CONFIDENTIAL AND PROPRIETARY INFORMATION section of an Offeror’s Proposal is not automatically accepted and protected. All information identified in the CONFIDENTIAL AND PROPRIETARY INFORMATION section will be subject to review by the Lead State in accordance with the procedures prescribed by the Lead State’s open records statute, freedom of information act, or similar law.

Redacted Proposal Response

In the event that an Offeror includes a CONFIDENTIAL AND PROPRIETARY INFORMATION section in their Proposal response, an electronic redacted copy of the offeror’s Proposal (as accepted) must be submitted with the final Proposal (e.g. a best and final offer) or as otherwise directed by the Lead State. Offeror acknowledges that any information in the redacted copy of their Proposal response will be made public.

2.14. Offeror Exceptions to Terms and Conditions

The Lead State discourages exceptions to contract terms and conditions in the RFP, attached Participating Entity terms and conditions (if any), and the NASPO ValuePoint Master Agreement Terms and Conditions. Exceptions may cause a Proposal to be rejected as nonresponsive when, in the sole judgment of the Lead State (and its evaluation team), the Proposal appears to be conditioned on the exception or correction of what is deemed to be a deficiency or unacceptable exception would require a substantial Proposal rewrite to correct.

Offerors should identify or seek to clarify any problems with contract language or any other document contained within this RFP through their written inquiries about the RFP using the process in Section 2.1.

Moreover, Offerors are cautioned that award may be made on receipt of initial Proposals without clarification or an opportunity for discussion, and the nature of exceptions would be evaluated. Further, the nature of exceptions will be considered in the competitive range determination if one is conducted. In the sole discretion of the Lead State, exceptions may be evaluated to determine the extent to which the alternative language or approach proposed is unreasonable, additional risk to Participating States, is judged to inhibit achieving the objectives of the RFP, or whose ambiguity makes evaluation difficult and a fair resolution (available to all Offerors) impractical, given the timeframe for the RFP. Exceptions may result in a Proposal being rejected as non-responsive and the Lead State is under no obligation to consider exceptions.

2.15 Certification of Non-Debarment

By submitting a Proposal in response to this solicitation, the prospective primary participant and any subcontractor certifies, to the best of their knowledge and belief, that they and their principals or participants:

Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;

Have not within a three-year period preceding this Proposal been convicted of or pled guilty or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated above; and

Have not within a three-year period preceding this Proposal had one or more public

(Federal, State, or local) contracts terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its solicitation response. Additionally, where the prospective primary participant is unable to certify to any of the statements in this certification, the Lead State reserves the right to deem the Offeror's proposal non-responsive.

Section 3: Evaluation and Award

3.1. Right to Waive Minor Irregularities

"Minor irregularity", "minor deficiency" or "minor informality" means an immaterial defect in a Proposal or variation in a Proposal from the exact requirements of a solicitation that may be corrected or waived without prejudice to other Offerors. A minor irregularity, minor deficiency or informality does not affect the price, quantity, quality, delivery or conformance to specifications and is negligible in comparison to the total cost or scope of the acquisition.

The State Purchasing Director may waive minor irregularities, deficiencies or informalities in a Proposal if the State Purchasing Director determines the irregularities, deficiencies or informalities do not prejudice the rights of other Offerors, or are not a cause for Proposal rejection.

3.2 Discussions With Offerors.

The Lead State reserves the right to award on receipt of initial Proposals without an opportunity for discussion or Proposal revision, so Offerors are encouraged to submit their most favorable Proposal at the time established for receipt of Proposals. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of Proposals. In conducting discussions, there shall be no disclosure of any information derived from Proposals submitted by competing Offerors.

In accordance with Oklahoma Statutes, 74 O.S. § 85.5, the State of Oklahoma reserves the right to negotiate with one, selected, all or none of the Offerors responding to this solicitation to obtain the best value for the Lead State. Negotiations could entail discussions on products, services, pricing, contract terminology or any other issues that mitigate the Lead State's risks. The Lead State will consider all issues negotiable and not artificially constrained by internal corporate policies. Negotiation may be with one or more Offerors, for any and all items in the Offeror's Proposal.

Firms that contend that they lack flexibility because of their corporate policy on a particular negotiation item may face a significant disadvantage and may not be considered. If such negotiations are conducted, the following conditions shall apply:

Negotiations may be conducted in person, in writing, or by telephone.

Negotiations will only be conducted with Offerors' that submitted potentially acceptable Proposals. The State reserves the right to limit negotiations to those Proposals that received the highest rankings during the initial evaluation phase.

Terms, conditions, prices, methodology, or other features of the Offeror's Proposal may be subject to negotiations and subsequent revision. As part of the negotiations, the Offeror may be required to submit supporting financial, pricing, and other data in order to allow a detailed evaluation of the feasibility, reasonableness, and acceptability of the Proposal.

The mandatory requirements of the RFP shall not be negotiable and shall remain unchanged unless the Lead State determines that a change in such requirements is in the best interest of the Lead State.

3.3. Award of Master Agreement(s)

Award shall be made to the Offeror(s) whose Proposal is the most advantageous to the Lead State and Participating States, taking into consideration price and the other evaluation factors set forth in this RFP.

3.4 Evaluation Process

In the initial phase of the evaluation process, the Lead State will review all proposals timely received. Unacceptable proposals will be eliminated from further consideration. The Lead State and Sourcing Team will use a pass/fail and weighted score methodology of selection with both objective and subjective criteria.

Award of Master Agreement resulting from this RFP may be made to multiple Suppliers in accordance with the method identified within this section. The Lead State reserves the right to award on receipt of initial proposals without an opportunity for discussion or proposal revision, so Suppliers are encouraged to submit their most favorable proposal at the time established for receipt of proposals.

A multi-state Sourcing Team will be responsible for the review and evaluation of Proposals in accordance with the process described in the RFP. The Lead State may engage additional qualified individuals during the process to assist in the Evaluation Team in understanding technical, financial, legal, contractual, or program matters.

The evaluation process is designed to award the contract resulting from this RFP to the Supplier deemed to be the most responsive and responsible concerning mandatory pass/fail requirements outlined in the Technical Requirements.

The Supplier agrees to provide the Lead State with sufficient information to allow the Lead State to confirm the Supplier's ability to perform successfully under the Master Agreement if requested.

Criteria For Evaluation (In no order of importance)

Evaluation Category	Maximum Points Possible
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Technical/administrative	30% 300 points
Management and Leadership	30% 300 points
Cost	30% 300 points
References	10% 100 points

3.5. Notice of Intent to Award

After a final selection is made, the Lead State will issue an intent-to-award announcement on its electronic procurement system. Proposal files are public records and available for review at the offices of the Lead State by appointment.

3.6. Protest

You may reference the lead state's procedures for a supplier's protest at the following of link provided below.

260:115-3-19. Supplier's Protest

https://apps.ok.gov/dcs/searchdocs/app/manage_documents.php?id=1341

3.7. Formalization of the Master Agreement

The Lead State reserves the right during contract negotiation of the Master Agreement to adjust terms and conditions that would not (in the Lead State's judgment) have a material effect on price, schedule, scope of work, or risk to the Lead State and Participating States, with materiality defined in terms of the effect on the evaluation and award. The Lead State reserves the right to accept contract or pricing changes that are more favorable to the Lead State.

If no Master Agreement is reached with the apparent awardee, the Lead State may negotiate with other Offerors or elect to make no award under this RFP.

3.8. NASPO ValuePoint Master Agreement Statement of Compliance

NASPO ValuePoint Master Agreement(s) resulting from this RFP will constitute the final agreement except for negotiated terms and conditions specific to a Participating Entity's Participating Addendum.

The Master Agreement will include, but not be limited to, the NASPO ValuePoint Standard Terms and Conditions in Attachment A and Lead State specific terms and conditions required to execute a Master Agreement, Scope of Work, Attachment B to this Solicitation, and selected portions of the Offeror's Proposal.

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 A. 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 A).

3.9. Insurance

To be eligible for award, the Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state at the prescribed levels set forth in Section 21 of the NASPO ValuePoint Master Agreement Terms and Conditions. Describe your insurance or plans to obtain insurance satisfying the requirements in Section 21.

4.3. NASPO ValuePoint Administrative Fee and Reporting Requirements

To be eligible for award, the Offeror agrees to pay a NASPO ValuePoint administrative fee as specified in Section 6 of the NASPO ValuePoint Master Agreement Terms and Conditions. Moreover, specific summary and detailed usage reporting requirements are prescribed by Section 7 of the NASPO ValuePoint Master Agreement Terms and Conditions. In addition to this administrative fee, participating states may also have an administrative fee that will be addressed in the participating addendums.

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

4.4. NASPO ValuePoint eMarket Center

To be eligible for award, the Offeror 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 Attachment A, Section 9, NASPO ValuePoint Master Agreement Terms and Conditions for the prescribed requirements.

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

4.5 Lead State Terms and Conditions.

Refer to Attachment H for the Lead State specific Terms and Conditions that will be required and will govern the Oklahoma Participating Addendum.

4.6 Participating State Terms and Conditions.

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

they may be required to negotiate these additional terms and conditions when executing a Participating Addendum.

4.7 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:

- a. Briefly describe how you intend 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 you integrate the CPO's permission into your 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 your method of promoting agreements of this nature, how would you clarify any questions regarding the scope of the agreement with respect to any potential order?
- d. How will your company 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 do you see in working with NASPO ValuePoint staff in this way?

4.8 Scope of Work

Offerors shall demonstrate in their Proposal how they meet or exceed the requirements of each section of the Scope of Work in Attachment B. Offerors shall show each requirement and its response in their Proposal.

Section 5: Price and Cost Proposal

Cost proposals will be evaluated independent of the technical evaluation.

Any travel costs must be included in the cost of the products and services being bid. No billing for travel will be allowed under this contract.

State Agencies located in the Lead State are exempt from federal excise taxes and, State sales, use, and excise taxes. Political subdivisions located in the Lead State are exempt from federal excise taxes. No payment will be made for any taxes levied on the Offeror's or any Subcontractor's employee's wages. The tax rules with respect to other

Participating Entities may vary and are expected to be addressed in the Participating Addenda.

Section 6: Usage Fee and Reporting Plan

Offerors shall include in their proposal a detailed plan for meeting the usage fee and reporting requirements of NASPO ValuePoint and Participating States. All information within the plan must be kept current, with NASPO ValuePoint and the Lead State Contract Administrator being notified of any changes to the usage fee and reporting plan immediately.

The plan shall include, but not be limited to, the following components:

Offerors shall identify the person responsible for providing the mandatory usage reports.

Offerors shall identify the method and frequency in which usage data will be collected from authorized distributors.

Offerors shall identify the method by which usage fees will be distributed to NASPO ValuePoint and applicable Participating States.

Offerors shall identify the method in which up to date information will be provided to NASPO ValuePoint and the Lead State Contract Administrator.



Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

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

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement;
- (4) The Scope of Work, Attachment B to the RFP;
- (5) The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
- (6) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

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

2. Definitions

Acceptance 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 terms “Products, supplies and services”, and “products and services” are used interchangeably in this RFP and 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, that 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 is for one year. This Master Agreement may be extended beyond the original contract period for four additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

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 individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of Participating 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 the 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; (5) Purchasing Entity and Contractor Purchase Order identifier/number(s); (6) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (7) Purchase Order date; (8) Ship Date; (9) 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 Attachment F.

c. Reportable sales for the summary sales data report and detailed sales data report include 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., doing business as JAGGAER, 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 term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

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 to 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. RESERVED Shipping and Delivery.

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

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

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

c. Contractor shall pay premiums on all insurance policies. 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 that 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 seven (7) 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. Cancellation

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

29. Force Majeure

Neither party to this Master Agreement shall be held responsible for delay or default

caused by unusually severe weather, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

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 otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in 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 shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

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

(1) The Contractor's obligations under this section shall not extend to any combination

of the Product with any other product, system or method, unless the Product, system or method is:

- (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
- (b) specified by the Contractor to work with the Product; or
- (c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
- (d) It would be reasonably expected to use the Product in combination with such product, system or method.

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

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.

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

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

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

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

(a) Hosted Catalog. By providing a hosted catalog, the Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to SciQuest, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data once per quarter 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 quarter. 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 offerings 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 contractand

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

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

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

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

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

h. UNSPSC Requirements: Contractor shall support use of the United Nations Standard

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

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

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

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

(March 2016)

Attachment B: Scope of Work

B.1 Scope

The State of Oklahoma Office of Management and Enterprise Services, Central Purchasing Division, in furtherance with the NASPO Value Point Cooperative Purchasing Program is charged with developing contracts for all Purchasing Entities to use that have been competitively solicited for the best possible pricing, or percentage discount off pricing, based on high volume purchasing.

The purpose of this competitive solicitation is to develop a “catalog discount” contract to provide for equipment to be made available for purchase. Only Manufacturer Suppliers with dealer networks in all states using the contract are asked to bid directly on the contract. The contract will be a multiple award contract for both equipment and warranty work with replacement parts.

It has been determined that the best pricing structure for this type of contract is a simple “percentage off” of the most current dated Supplier’s suggested government or commercial catalog or price list.

Only complete responses will be considered for award. Although price is an important factor in the award process, because the contract will be made available to all of the states and territories of the United States, all information provided concerning the Manufacturer’s ability to comply with the contract and provide for all of the requirements will be a significant factor in the award process.

B.2. Manufacturer as Supplier

Suppliers may offer any brand for which they are a manufacturer.

Suppliers must provide a complete Microsoft Excel spreadsheet listing of all dealers or authorized representatives within the U.S. and U.S. Territories with their response to this solicitation. After award, each State or U.S. Territory’s Participating Addendum will have a listing of the dealers or authorized representatives located within their State.

B.3. Licensing

Sales of motor vehicles are subject to state Motor Vehicle Statutes. Supplier certifies by submission of a response that all required Motor Vehicle Commission licenses are in place and current, and that copies of all such licenses, if requested, will be submitted with the states’ participating addendums.

License requirements for states participating in the contract will be addressed in each state’s participating addendum.

It is the Supplier’s responsibility to keep all required Motor Vehicle licensing current during the term of the contract and to furnish copies at any time upon request by the contract administrator. If the Supplier does not maintain current licensing, Central Purchasing may immediately terminate the contract upon discovery of the expiration of the license. Contracts for motor vehicles to be sold may be made only with properly licensed Motor Vehicle Dealers.

B.4. Warranty-Equipment/Options/Accessories/Attachments

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

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

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

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

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

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

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

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

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

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

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

B.6. Quality of Parts

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

Equivalent substitutions must be approved by the agency contact person.

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

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

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

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

B.7. Warranty/Buy Back

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

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

B.8. Repair Facilities

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

B.9. Ordering

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

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

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

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

Example: List price is \$17,199, and the discount is 23% and the trade-in is \$6,000. $\$17,199 - 23\% = \$13,243.23$. $\$13,243 - \$6000 = \$7,243.23$, final price.

The purchasing entity is responsible for being familiar with all of the contract terms and conditions.

Supplier shall furnish any required Safety Data Sheets or a composite concentration list prior to contract award, with the product invoice, or at the request of the Purchasing Entity.

Suppliers shall provide catalogs and current price lists at no charge upon purchasing entity or Contracting Officer's request. A copy of the catalog pricing page or price list IS to be made available to the purchaser for their accounting divisions.

All equipment shall be delivered with one copy of the operator's manual, and an illustrated repair parts manual or list. If other manuals are required by the Purchasing Entity, they shall be offered at the discount offered in the price attachment.

Changes in Supplier Contact

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

B.10. Invoices

To ensure prompt payment, the Supplier will provide necessary training for the dealer network to make sure the invoice shall include the following information:

Purchase order number if applicable.

Make, model, and VIN number of equipment. Name of Purchasing Entity.

Description of equipment purchased or warranty services performed and/or parts, material and supplies provided.

The Supplier's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered.

The copy of the current, dated Supplier's Price List showing the price of the equipment if requested by the ordering party for their accounting purposes.

Name of company who provided the products/services.

B.11 Leasing or Alternative Financing Methods.

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

B.11.1 Lease Purchases in the State of Oklahoma.

COUNTY

For County Purchases within the State of Oklahoma: When the method of payment will be in the form of a Lease Purchase by a county, making a purchase by using the statewide contract pricing, the Management Services Division of the State Auditor and Inspectors (SAI) Office has encouraged the use of an approved agreement form, Lease Purchase of Equipment Form 120B, as well as a Full Warranty Lease form, developed by their office. The State Auditor and Inspectors Office, through its Constitutional Authority, Article VI, Section 19, establishes accounting procedures and forms and provides assistance to counties and other forms of local government. Link to the forms listed on the State Auditor Website:

https://www.sai.ok.gov/publications_forms/county_clerk.php?action=showform&formdiv=5

For those Purchasing Entities subject to the Oklahoma Bond Oversight and Reform Act: 62 O.S, Section 695.1 et seq., the Council of Bond Oversight reviews and must approve any request for financing by a State Purchasing Entity. (All state and local Purchasing Entities) The State Bond Advisor's Office serves as staff to the Council of Bond Oversight. See Chapter 10. Administration of the Oklahoma Bond Oversight and Reform Act (Administrative Rules) Link to the Council of Bond Oversight Website: https://www.ok.gov/bondadvisor/Bond_Oversight/index.html

Lease Purchase Rates may be adjusted during the contract period. All lease purchase agreements established by using prices obtained from Suppliers listed as a participant in this competitively bid statewide contract shall be included in the total sales reported by the Suppliers.

Purchasing entities purchasing under this contract shall provide their accounting offices with a pricing sheet. This pricing sheet will clearly state the Price Book/Catalog Number and Date. This sheet shall be attached to the quote provided by the Supplier. The quote will reference the contract number being used for the purchase. All set up charges, testing, and freight charges shall be included in the total price less discount offered.

B.12. Prompt Payment Discounts

Prompt payment discounts will not be considered in the evaluation of offers. However, any discount offered will be annotated on the award and may be taken if payment is made within the discount period.

B.13. Delivery

Delivery of equipment shall be made within 120 calendar days after receipt of order unless other arrangements are made between the ordering party and the Supplier. Earlier deliveries are encouraged however there shall be no change in contract price or discount terms because of the earlier delivery.

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

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

Delivery on parts is to be made within 30 days.

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

Some ordering entities will have the capacity to pick up their equipment from the dealer.

B.14. Training

Supplier shall provide information for all training opportunities for the equipment being purchased, including CDs, DVDs, in house, orientation type training, maintenance, and operator.

B.15. Price Adjustments

Since manufacturers update their pricing throughout the year, there will be no pre-determined price adjustment time period for this contract however the discounts provided by the Supplier can be increased during the Contract period at any time.

The Contract price shall be the most current Suppliers Manufacturer's Suggested Retail Price (MSRP) in effect at the time the order is placed less the discount percentage offered. Supplier Price lists will be that price list published by the supplier.

Supplier shall notify the contracting officer at least 30 days before a price adjustment will occur with a request to update the pricing documents.

Suppliers are to include information concerning their trade-in and buyback policy.

Suppliers please include with your response any special incentives such as seasonal specials that may be offered to the Purchasing Entities of this Contract.

B.17. Allowable Charges

Freight/Shipping/Set-up Fees.

Freight from the Supplier to the dealer network locations within the lower 48 states or to the nearest port for Alaska and Hawaii shall not be paid by the Purchasing Entity. Please provide freight costs policy guidelines for your dealers, whether it is a set rate per loaded mile or the dealer is allowed to set the rate.

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

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

Quotes shall show the Supplier's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered.

Allied and incidental items requested by Purchasing Entities shall comply with their state or other government regulations. Allied equipment may only be sold in connection with the sale of a contract item. Items must be clearly labeled on the purchase order or quote as Allied.

Allied and incidental items are attachments, accessories, parts or bundles not manufactured by the contract Supplier that are requested by the Purchasing Entities to complete the purchase of equipment awarded on contract but not substantially convert the product.

Unpublished or non-contract options required to complete a product ordered but not convert a product to where it competes with a product item awarded to another supplier.

B.18. New Products

New Products may be added to the contract as they are introduced by a Supplier however the discount cannot be lowered throughout the Contract period.

B.19. Discontinued Products

Suppliers are to notify the Contracting Officer of any changes in their schedule of equipment such as

discontinued products or replacement models.

This Solicitation contains the State of Oklahoma terms and conditions, NASPO ValuePoint terms and conditions and EMarket information, as well as the terms and conditions of those states that have expressed an interest in an intent to participate in the contract. Please carefully read it and use the checklist to make sure you have included everything that has been asked for.

B.20 PRICE

NASPO VALUEPOINT is requesting pricing for new construction equipment. The pricing matrix is a percentage off the Supplier's Suggested Retail Price. Suppliers can submit actual pricing schedules for their equipment though, with the percentage discount already figured, as long as the Supplier list price is stated first, then the discount, then the final discount price. You will have to keep it updated as pricing changes occur.

If you have products that can be fueled by means other than gas or diesel fuel, and that are considered environmentally friendly, please include them in your response.

Suppliers responding must include a listing of current Distributors/Dealers for the entire area to be covered. Including the name of business, Address, contact names, phone numbers and/or email addresses and websites. Please use Microsoft Excel as the format. After award, States will be executing Participating Addendums and at that time you will provide a listing of your dealer network contact information for each participating state or territory.

Suppliers must submit specifications and a website where the entire product line offered can be viewed, as well as options available. Please submit these specifications on a cd or flash drive. It is preferred that Suppliers have a website where Purchasing Entities can go and view the products.

Supplier shall provide brochures and descriptive literature to those Purchasing Entities upon request and the Contracting Officer responsible for the maintenance of the contract. The Supplier will be required to notify the Contracting Officer when there are price increases and an explanation of what has prompted the increase as well as documentation to support the price increase

The Pricing forms are on a Microsoft Excel Spreadsheet.

B.21 Administrative and Technical Response Requirements

Technical

The Suppliers who are awarded a Contract are expected to be financially capable of the production of all of the equipment that will be ordered. As a part of the process in subjectively evaluating your company's qualifications to provide equipment in a timely manner upon ordering, please answer **all** of the the following questions **completely** on **separate** pages, retaining the numbering system.

1. How many years has your company been in the new Construction equipment producing industry? _____ years.
2. Has your company ever filed for Bankruptcy? Yes_____ No_____

3. During each the past 5 years what is your average dollar amount of sales in the United States?
2011 \$_____ 2012 \$_____ 2013 \$_____ 2014 \$_____ 2015 \$_____
 4. How long does it take to produce a typical piece of equipment (base model, not special order)?
_____ months.
- Are all of your most popular products (base model, not special order) maintained in inventory?
Yes_____ No_____
5. Have you ever had a recall situation for any of your equipment? Yes_____ No_____ and if yes, approximately how much of a negative impact in a dollar amount was it to the company to repair/replace the equipment? \$_____.
 6. Do you, the manufacturer, or your dealers in your network offer any value-added incentives to purchase such as seasonal sales? Yes_____ No_____, and if so how would you incorporate special sale situations in the contract?

Management and Leadership

Since the dealers are the ones the Purchasing Entities will be buying the equipment and parts from, as well as setting up and delivering the equipment and performing warranty work and maintenance, information given about your relationship with them is vital when evaluating your response. Please answer completely on a separate page, retaining the numbering system.

1. Is your dealer network in every state in the U.S. and U.S. properties? Yes_____ No_____ If no, where are you lacking coverage?
2. Describe how your dealers are chosen?
3. Describe the type of training is mandatory for the dealers to retain their ability to sell your equipment?
4. Are your dealers considered employees or independently owned businesses? Employees_____ Independently owned_____.
5. Are the dealers visited by a regional/district managerial employee of the Supplier on a regular basis? (i.e. auditing, inspection of premises, reporting procedures) If the dealers are independently owned businesses, describe how sales are made and to whom payment is made when the contract is part of a cooperative and who provides the required usage reports. If payment is made to a dealer on your behalf, how is that addressed in your company's policies? Yes_____ No_____. If yes, please include in your response the discounts on your extended warranties?
6. Will you offer discounts on your extended warranties? Yes_____ No_____. If yes, please include in your response the types of the extended warranties and the terms, if No, still include the types and terms of your extended warranty plans.
7. Do you offer green options for hydraulic fluids? Yes_____ No_____. If yes, please provide the specifications for the fluid.
8. The roll out of a contract that has the capacity to serve every state in the United States as well as U.S. Territories is going to have to be well planned. What will you do to introduce this contract to the Purchasing Entities? Please attach your plan on how to make sure this contract is well-advertised, including any marketing ideas samples you may have.
9. Please list cooperative contracts you presently hold and state if they impede your ability to participate in other cooperative contracts.

References

As part of the selection process, the Reference form must be sent to 3 of your clients, filled out, and returned to the Supplier to submit with your response. Failure to provide the completed Reference forms will cause the response to be considered **non-responsive** and it will not be considered for

award. The references are a valuable tool in the evaluation of your response. The past performance evaluation will assess the Supplier's record of providing services of a similar nature.

For evaluation purposes only the Supplier will provide the price, based on the most current Supplier's List Price, less the discount to be offered, of the following types of equipment as a **sampling** of what is offered: This is just for the evaluation.

Skid Steer loader, minimum specifications, basic common model requested: Wheeled Skid Steer Rated Operating load standard of between 1,675 and 2,100 (pounds) _____pounds.

Tipping Load of between 3,475 and 4,200 (pounds) _____pounds.

Dump reach max height in inches between 31.75" and 35". _____inches.

Automatic Engine Shutdown

Operating Weight of between 6,250 and 7,500 (pounds) _____pounds.

Brand: _____ Model # _____ Current Supplier List Price:

\$ _____ Less Discount Offered: _____ % = Price: \$ _____.

Tracked (Crawler) Excavator. Basic most common model:

Operating weight (without ripper) of between 35,000 and 53,000 (pounds) _____pounds.

Track shoe width between 21.50" and 35" _____inches.

Height to top of cab. Between 9.50' and 11.50' _____feet.

Blade width between 11' and 14', _____feet.

Blade capacity in cubic yards between 4 and 6 yards. _____cubic yards.

Brand: _____ Model # _____ Current Supplier List Price:

\$ _____ Less Discount Offered: _____ % = Price. \$ _____.

Motor Grader. Basic common model:

Operating weight in pounds between 35,500 and 45,000 pounds. _____pounds.

Moldboard length in feet between 11.50' and 15'. _____feet.

Overall length in feet and inches between 27' and 29'8". _____feet _____inches.

Blade lift above ground in inches between 17.50" and 19.50". _____feet _____inches.

Brand: _____ Model # _____ Current Supplier List Price:

\$ _____ Less Discount Offered: _____ % = Price. \$ _____.

In addition, if the evaluation team deems it necessary, a cost comparison of other equipment will be used during the evaluation process with points being awarded low to high.

Attachments H-L: Lead State and Additional Participating States' Terms and Conditions

Some States listed in Section 1.6 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. State-specific terms and conditions are included in Attachments H-L.

State of Oklahoma ATTACHMENT H
Office of Management and Enterprise Services

STATE OF OKLAHOMA
ADDITIONAL
TERMS AND CONDITIONS
SPECIFIC TO
OKLAHOMA-BASED TRANSACTIONS

1. Definitions

Acquisition

The term (“Acquisition”) means items, products, materials, supplies, services, and equipment a state agency acquires by purchase, lease purchase, lease with option to purchase, or rental pursuant to the Oklahoma Central Purchasing Act.

Addendum or Addenda

The term (“Addendum or Addenda”) means a document used to effect a contract change or modification to the Participating Addendum.

Effective Date

The term (“Effective Date”) means the date this Participating Addendum was executed by both parties.

2. Participating Addendum Modification

The terms of this Participating Addendum shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the State Purchasing Director.

3. Choice of Law

Any claims, disputes, or litigation relating to the Participating Addendum, including the execution, interpretation, performance, or enforcement of the Participating Addendum shall be governed by the laws of the State of Oklahoma.

4. Choice of Venue

Venue for any action, claim, dispute or litigation relating in any way to the Participating Addendum shall be in Oklahoma County, State of Oklahoma.

5. Supplier Registration

In order to receive payments from the State of Oklahoma, suppliers must be registered. The vendor registration process can be completed electronically through the OMES website at the following link: <https://www.ok.gov/dcs/vendors/index.php>.

6. Non-Assignment

For Oklahoma Participating Entities and/or Purchasing Entities, Contractor shall provide written notice of any proposed assignment, subcontract, transfer, sublet, or delegation to the State of Oklahoma under the notice provisions contained herein (the "Notice"). The Notice shall include (i) the entity name, (ii) to the extent applicable, the employee name(s), and (iii) the nature of the products or services to be provided and/or performed by the proposed assignee, delegate, sublessee, or subcontractor. Contractor shall not assign, sell, transfer, subcontract, or sublet rights, or delegate responsibilities under the Participating Addendum to a Non-Affiliate without prior written approval of the State of Oklahoma. More specifically, with respect to subcontractors, prior to a subcontractor being utilized by Contractor in connection with provision of the products or services within its obligations herein, Contractor shall obtain written approval of the State of Oklahoma of such subcontractor, which approval shall be within the sole and absolute discretion of the applicable Participating Entity and/or Purchasing Entity. The applicable Participating Entity and/or Purchasing Entity further reserves the right to revoke approval of a subcontractor in instances of poor performance or misconduct, or for other similar reasons. Notwithstanding anything to the contrary herein, if Contractor is permitted to utilize subcontractors in support of the Master Agreement or this Participating Addendum, Contractor shall remain solely responsible for its obligations under the terms of the Master Agreement and this Participating Addendum and for its acts and omissions and those of its agents, employees and permitted subcontractors.

7. Indemnification

In connection with indemnification under the contract, when an Oklahoma state agency is a named defendant in any filed or threatened lawsuit, the defense of the Oklahoma state agency shall be coordinated by the Attorney General of Oklahoma or, in the alternative, the Attorney General of Oklahoma may authorize the Vendor to control the defense and any related settlement negotiations; provided, however, Contractor shall not agree to any settlement of claims against the Oklahoma state agency without obtaining advance written concurrence from the State Attorney General. If the Attorney General of Oklahoma does not authorize sole control of the defense and settlement negotiations to Contractor, Contractor shall have authorization to equally participate in any proceeding related to the indemnity obligation under the contract and shall remain responsible to indemnify the Oklahoma state agency.

8. Payment

As applicable, Oklahoma Participating Entities and/or Purchasing Entities and Contractor shall comply with applicable Oklahoma law with respect to invoicing and making payments hereunder. Invoices are to be paid in arrears after products have been delivered and accepted or services provided and accepted pursuant to 74 O.S. § 85.44(B). Payment by Oklahoma Participating Entities and/or Purchasing Entities shall be due NET 45 days after a proper invoice is received and the goods have been delivered and accepted or services provided and accepted. Any applicable late fees or interest incurred after forty-five (45) days of nonpayment shall be paid only in accordance with 62 O.S. § 34.72. Invoices shall contain the purchase order number. Failure to provide a proper invoice may result in delay of processing the invoice for payment.

Prompt pay discounts will be offered to the Participating Entity and/or Purchasing Entity with the first discount being offered when payment is made no less than ten (10) days after the receipt of invoice. Additional discounts will be offered when payment is made at different five (5) day increments, e.g. payment made fifteen (15), twenty (20), twenty-five (25), etc. days after receipt of invoice.

If Participating Entity and/or Purchasing Entity finds that an overpayment or underpayment has been made to Contractor, the Participating Entity and/or Purchasing Entity may adjust any subsequent payments to Contractor under the Contract to correct the account. A written explanation of the adjustment will be issued to Contractor by the Participating Entity and/or Purchasing Entity.

9. Audits and Records Clause

For Oklahoma-based transactions, as used in this clause, “records” includes invoices, statements of work, purchase order records, and such other relevant documents, regardless of whether such items are in written form, in the form of computer data, or in any other form. By accepting any purchase order from any Purchasing Entity hereunder, Contractor acknowledges and agrees that any pertinent state or federal agency shall have the right to examine and audit all records relevant to execution and performance of this Participating Addendum.

Contractor is required to retain records relative to the Participating Addendum for the duration of the Participating Addendum and for a period of seven (7) years following completion and/or termination of this Participating Addendum. If an audit, litigation, or other action involving such records is started before the end of such seven-year period, the records are required to be maintained for two (2) years from the date that all issues relating to or arising out of the action are resolved, or until the end of such seven (7) year retention period, whichever is later.

Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse Purchasing Entities for any overpayments inconsistent with the terms of the contract or orders or underpayment of fees found as a result of the examination of the Contractor’s records.

10. Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The Contractor certifies that the Contractor and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal, state or local department or agency;
- B. Have not within a three-year period preceding the Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) contract; for violation of federal or state antitrust statutes; commission of embezzlement, theft, forgery, bribery, falsification or destruction of records; making false statements or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of the foregoing offenses enumerated in this certification; and
- D. Have not within a three-year period preceding this Contract had one or more public (federal, state or local) contracts terminated for cause or default.

If the Contractor cannot certify this statement, attach a written explanation for review by the State.

11. Pricing

Pursuant to 68 O.S. § 1404, 68 O.S. § 1352, and 68 O.S. § 1356, Purchasing Entities under the Contract that are Oklahoma state agencies are exempt from the assessment of State sales, use, and excise taxes. Further, such Purchasing Entities and Purchasing Entities that are political subdivisions of the State of Oklahoma are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Purchasing Entities will provide Contractor with a tax exemption certificate upon request. Any taxes of any nature whatsoever payable by the Contractor shall not be reimbursed by the Participating Entity or the Purchasing Entity.

In accordance with 74 O.S. § 85.40, all travel expenses to be incurred by the Contractor in the performance of the Participating Addendum shall be included in the total price/ amount.

The price to the Customer under the Contract shall include and Contractor shall prepay all shipping, packaging, delivery and handling fees. All Product deliveries will be Free on Board Purchasing Entity's Destination. No additional fees shall be charged to the Purchasing Entity for standard shipping and handling. If the Purchasing Entity requests expedited or special delivery, Purchasing Entity may be responsible for any charges for expedited or special delivery.

12. Type of Contract

This is a firm fixed price contract for indefinite delivery and indefinite quantity for the supplies/services specified. Contractor and Participating Entity and/or Purchasing Entity are free to enter into similar agreements

13. Termination for Cause

The State may terminate the Participating Addendum in whole or in part in the event (i) it has provided Contractor with written notice of material breach, and (ii) Contractor fails to cure such material breach within thirty (30) days of receipt of written notice.

The State may terminate the Participating Addendum in whole or in part immediately without a thirty (30) day written notice to Contractor, only if Contractor's material breach is reasonably determined (i) to be an impediment to the function of the State and detrimental to the State, (ii) when conditions preclude the thirty (30) day notice.

14. Termination for Convenience

The State may terminate the Participating Addendum, in whole or in part, for convenience if it is determined that termination is in the State's best interest. The State shall deliver to the Contractor a written notice of termination for convenience specifying the terms and effective date of termination. The Participating Addendum termination date shall be a minimum of thirty (30) days from the date the notice of termination is issued by the State.

15. Open Records

Contractor acknowledges that all State agencies and certain other Oklahoma Purchasing Entities are subject to the Oklahoma Open Records Act. Contractor also acknowledges that such Purchasing Entities will comply with the Oklahoma Open Records Act and with all opinions of the Oklahoma Attorney General concerning this Act. Except for a provision of the contract or Participating Addendum specifically designated as confidential in a writing executed by both parties or a provision protected from disclosure in the Open Records Act, no contract or Participating Addendum provision is confidential information and, therefore, any provision is subject to disclosure under the Open Records Act.

16. Default

For Oklahoma-based transactions, in the event a Purchasing Entity fails to make a payment to the Contractor for Products delivered, accepted, and properly invoiced, after forty-five calendar days, the Contractor may, upon five business days advance written notice to the State Purchasing Director and the Purchasing Entity's purchasing official, suspend additional shipments of Product or provision of services to such Purchasing Entity until such time as reasonable arrangements have been made and assurances given by such Purchasing Entity for current and future contract payments. This provision shall not affect any other Oklahoma Purchasing Entities' rights and purchases under this Participating Addendum and shall be solely applicable to the Purchasing Entity who has failed to make a payment after forty-five calendar days.

17. Non-Appropriation Clause

With respect to all Oklahoma-based transactions and all Oklahoma-based Purchasing Entities, Purchasing Entity may terminate any order if funds sufficient to pay its obligations under this Participating Addendum or any purchase order made under this Participating Addendum are not appropriated by the applicable state legislature, federal government or other appropriate government entity or received from an intended third party funding source. In the event of such insufficiency, Purchasing Entity shall provide ten (10) calendar days' written notice of intent to terminate. Notwithstanding the foregoing, if a Purchasing Entity issues an order and has accepted the products and/or services under such order, the Purchasing Entity shall be obligated to pay for such products and/or services. In the event of termination of an order as provided in the foregoing, neither the Participating Entity nor the Purchasing Entity shall be considered to be in default or breach under the Participating Addendum nor under the contract, nor shall it be liable for any further payments ordinarily due under, with respect to, related to, or arising out of such order, nor shall it be liable for any damages or any other amounts which are caused by or associated with such termination.

18. Contract Usage Reporting Requirements

Reports shall provide the total amount sold to all political entities that include but are not limited to Oklahoma State Agencies, Counties, Cities, Schools, and Municipalities

Reports shall be submitted quarterly regardless of quantity.

Usage reports shall be sent electronically to Strategic.Sourcing@omes.ok.gov within 45 calendar days upon completion of performance quarter cited below:

January 1 through March 31

April 1 through June 30

July 1 through September 30

October 1 through December 31

19. Compliance with Applicable Laws

As long as Contractor has an obligation under the terms of the Contract and in connection with performance of its obligations, the Contractor shall comply with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:

A. Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. § 81.

B. Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738,

and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;

- C. Prospective participant requirements set at 45 C.F.R. part 76 in connection with debarment, suspension and other responsibility matters;
- D. 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
- E. Anti-Lobbying Law set forth at 31 U.S.C. § 1325 and as implemented at 45 C.F.R. part 93;
- F. Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Circular A-133 with approval and work paper examination rights of the applicable procuring entity;
- G. Be compliant with the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. § 1312, and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. § 1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at www.dhs.gov/E-Verify; and
- H. Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- I. The Contractor shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- J. The Contractor shall inform its employees, agents, and proposed subcontractors, if applicable, who provide Products or perform Services under the Contract of the Contractor's obligations under the Contract and shall require compliance accordingly. At the request of the State, Contractor shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.
- K. As applicable, Contractor agrees to comply with Governor's Executive Order 2012- 01, effective August 06, 2012, which prohibits the use of any tobacco product on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.

20.

21. Contract Management Fee

Pursuant to 74 O.S. § 85.33, the Central Purchasing Division of the State of Oklahoma imposes and

Contractor agrees to pay a contract management fee in the sum of one (1) % of the combined total quarterly expenditures from Oklahoma under this Participating Addendum. This contract management fee is to be noted on the quarterly "Contract Usage Report" and paid by the Contractor, to Central Purchasing within 30 calendar days from the completion of the quarterly reporting period. The contract management fee check should be sent to:

Office of Management and Enterprise Services

Attention: Accounts Receivable

5005 N. Lincoln Boulevard, Suite 200

Oklahoma City, OK 73105

21. Employment Relationship

This Participating Addendum does not create an employment relationship. Individuals performing Services required by the Contract are not employees of the State of Oklahoma or any Oklahoma Purchasing Entity. Contractor's employees shall not be considered employees of the State nor of any Purchasing Entity for any purpose, and accordingly shall not be eligible for rights or benefits accruing to such employees.

22. Publicity

Contractor acknowledges and agrees that the existence of the Master Agreement, this Participating Addendum or any Acquisition thereunder is not in any way an endorsement by the State of Oklahoma or any Oklahoma Purchasing Entity of Contractor, the Products or the Services and shall not be so construed by Contractor in any advertising or publicity materials. Contractor agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Master Agreement or this Participating Addendum wherein the name of the State or any Purchasing Entity is mentioned or language used from which the connection of the State or any Purchasing Entity therewith may, in the State's judgment, be inferred or implied as an endorsement. Contractor further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices without obtaining the prior written approval of the State.

23. Oklahoma Contact

The point of contact for this Participating Addendum shall be:

Joyce Leivas

SW Initiatives Contracting Officer

OMES/Central Purchasing

State of Oklahoma

405-521-2479

joyce.leivas@omes.ok.gov



State of Oklahoma
Attachment D-1

Certification for Competitive
Bid and/or Contract
(Non-Collusion Certification)

NOTE: A certification shall be included with any competitive bid and/or contract exceeding \$5,000.00 submitted to the State for goods or services.

Agency Name: n/a Agency Number: n/a

Solicitation or Purchase Order #: OK-SW-192 Construction Equipment

Supplier Legal Name: _____

SECTION I [74 O.S. § 85.22]:

A. For purposes of competitive bid,

1. I am the duly authorized agent of the above named bidder submitting the competitive bid herewith, for the purpose of certifying the facts pertaining to the existence of collusion among bidders and between bidders and state officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in return for special consideration in the letting of any contract pursuant to said bid;
2. I am fully aware of the facts and circumstances surrounding the making of the bid to which this statement is attached and have been personally and directly involved in the proceedings leading to the submission of such bid; and
3. Neither the bidder nor anyone subject to the bidder's direction or control has been a party:
 - a. to any collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding,
 - b. to any collusion with any state official or employee as to quantity, quality or price in the prospective contract, or as to any other terms of such prospective contract, nor
 - c. in any discussions between bidders and any state official concerning exchange of money or other thing of value for special consideration in the letting of a contract, nor
 - d. to any collusion with any state agency or political subdivision official or employee as to create a sole-source acquisition in contradiction to Section 85.45j.1. of this title.

B. I certify, if awarded the contract, whether competitively bid or not, neither the contractor nor anyone subject to the contractor's direction or control has paid, given or donated or agreed to pay, give or donate to any officer or employee of the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this contract herein.

SECTION II [74 O.S. § 85.42]:

For the purpose of a contract for services, the supplier also certifies that no person who has been involved in any manner in the development of this contract while employed by the State of Oklahoma shall be employed by the supplier to fulfill any of the services provided for under said contract.

The undersigned, duly authorized agent for the above named supplier, by signing below acknowledges this certification statement is executed for the purposes of:

☐ the competitive bid attached herewith and contract, if awarded to said supplier;

OR

☐ the contract attached herewith, which was not competitively bid and awarded by the agency pursuant to applicable Oklahoma statutes.

Supplier Authorized Signature

Certified This Date

Printed Name

Title

Phone Number

Email

Fax Number



"Certification for Competitive Bid and Contract" **MUST** be submitted along with the response to the Solicitation.

1. **RE: Solicitation #** OK-SW-192 Construction Equipment

2. **Bidder General Information:**

FEI / SSN : _____ Supplier ID: _____

Company Name: _____

3. **Bidder Contact Information:**

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Name: _____

Contact Title: _____

Phone #: _____ Fax #: _____

Email: _____ Website: _____

4. **Oklahoma Sales Tax Permit¹:**

☐ YES – Permit #: _____

☐ NO – Exempt pursuant to Oklahoma Laws or Rules – Attach an explanation of exemption

5. **Registration with the Oklahoma Secretary of State:**

☐ YES - Filing Number: _____ attach copy of Certificate of Good Standing.

☐ NO - Prior to the contract award, the successful bidder will be required to register with the Secretary of State or must attach a signed statement that provides specific details supporting the exemption the supplier is claiming (www.sos.ok.gov or 405-521-3911).

6. **Workers' Compensation Insurance Coverage:**

Bidder is required to provide with the bid a certificate of insurance showing proof of compliance with the Oklahoma Workers' Compensation Act.

☐ YES – Include a certificate of insurance with the bid

☐ NO - Attach a signed statement that provides specific details supporting the exemption you are claiming from the Workers' Compensation Act (Note: Pursuant to Attorney General Opinion #07-8, the exemption from 85 O.S. 2011, § 311 applies only to employers who are natural persons, such as sole proprietors, and does not apply to employers who are entities created by law, including but not limited to corporations, partnerships and limited liability companies.)²

Authorized Signature

Date

Printed Name

Title

¹ For frequently asked questions concerning Oklahoma Sales Tax Permit, see <http://www.tax.ok.gov/faq/fagbussales.html>

² For frequently asked questions concerning workers' compensation insurance, see <http://www.ok.gov/oid/faqs.html#c221>

ATTACHMENT G PAST USAGE DATA

SW192 Construction Equipment Spend Fiscal Year 2016-Oklahoma

Oklahoma: Total Political subdivisions and Higher Ed: \$31,316,444.74

Oklahoma: Total State Agencies: \$3,316,444.74

Oklahoma: Total Non-Affiliates: \$29,358.02

Nebraska Annual State Spend: \$2,429,298.00

Florida Annual State Spend: \$3,538,452.00 Annual Political Subdivision Spend: \$950,000.

South Dakota Estimated Volume: \$35,000,000.00

Attachment D-3 Past Performance Verification

Supplier is to have this filled out by 3 separate government contract clients and returned with their response to the solicitation. Failure to submit this for 3 clients will result in your response not being considered. (pass/fail)

Name:	_____	Date:	_____
	<i>(Name and title)</i>		
Phone:	_____	Fax:	_____
Subject: Past Performance Survey of:	_____		
	<i>(Name of Vendor requesting verification)</i>		

The State of Oklahoma is collecting past performance information on prospective vendors. The information will be used to assist the State in the selection of vendors for NASPO ValuePoint OK-SW-192 Construction Equipment. Rate each of the criteria on a scale of 1 to 5. Please rate each of the criteria to the best of your knowledge. If you do not have sufficient knowledge of past performance in a particular area, leave it blank.

Exceptional	(5)	Best-in-class performance. Performance met all contract requirements and exceeded several to the customer's benefit. No issues were encountered.
Very Good	(4)	Performance met all contract requirements and exceeded some to the customer's benefit. There were a few minor issues, which were negligible.
Satisfactory	(3)	Performance met contract requirements. There were some minor issues, and corrective actions taken by the contractor were acceptable.
Marginal	(2)	Performance did not meet the contractual requirements. There were issues, some of a serious nature, for which corrective action was only somewhat effective.
Unsatisfactory	(1)	Performance did not meet contractual requirements. There were serious issues and the contractor's corrective actions were ineffective.

Organization Name:	_____		
Contract Name:	_____	Dollar Amount:	\$ _____
Duration of Contract (Date/Year – Date/Year):	_____		

NO	CRITERIA	Rated	
1	Rate the Quality of customer service		
2	Rate the Professionalism of the employees including prompt response to inquiries		
3	Rate their Ability to complete deliveries on time or early		
4	Rate the Quality of products		
5	Rate their Ability to manage (includes responses and prompt payment to their merchants and subcontractors)		
6	Rate their Ability to follow the customer's delivery requirements.		
7	Rate the Supplier's geographic coverage ability to deliver to all of your locations.		
8	Rate the value-added services provided.		

9	Rate your overall satisfaction during the contract period.		
10	Rate the performance of the Supplier's products as compared to that of it's competitors.		
11	Rate the Supplier's ordering procedures.		
12	Rate the timeliness of parts delivery		

COMMENTS:

Please indicate here any special instances where the client went out of their way to help you in a situation, i.e. delivery, shipping, emergency response, special purchase.

Email of Evaluator

Signature of Evaluator

RESPONSE CHECKLIST

Cover letter with Compliance Statement and general introduction of your company with statement that all terms and conditions have been read and understood and statement that you understand you may be required to negotiate the state submitted additional terms and conditions when executing a participating addendum.
All items submitted reference OK-SW-192 as the solicitation number
All times Central Standard Time
Complete list of dealers within the United States and Territories
Copies of Standard Warranties and special warranties offered
Copies of Worker's Compensation insurance policy and detailed description of plans to obtain insurance to satisfy requirements.
Buy-back, trade-in, or exchange policy on parts detailed
Brochures, specifications, equipment descriptions.
Description of training opportunities for purchased equipment, details
Description of special incentives and seasonal offers, detailed.
Complete, detailed answered questions, with extra pages added for details and company information from Section D
Name of dedicated contract contact for your districts, or regions.
Your detailed plan on the promotion of the Master Agreement
Answered questions detailing the NASPO ValuePoint processes, i.e. management of fees, working with NASPO staff, etc. (D.6.5 of the solicitation and D.7)
Sample pricing submitted.
References obtained from 3 clients filled out and returned with your response
Complete solicitation response submitted on electronic format, one original hard copy and seven (7) cd rom or flash drive copies.
Please completely read the solicitation as this list may not be all-inclusive.



**NASPO ValuePoint
INTENT TO PARTICPATE
Cooperative Contract(s) for Construction Equipment**

I. PURPOSE:

The purpose of this Agreement is to provide interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for Construction Equipment.

II. SCOPE OF THE CONTRACT(S)

The State of Oklahoma is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for Construction Equipment.

The resulting contracts will be permissive contracts.

Administrative Fee

There will be a .25% NASPO ValuePoint administrative fee associated with these contracts. It is anticipated that the individual states will be able to add an administrative fee when the state executes its Participating Addendum.

III. TERM OF THE CONTRACT

The initial term of the contract will be established for one year from the date of award with options to extend the contract.

IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION

The solicitation and contract development shall be accomplished in compliance with the NASPO ValuePoint Process Guide and the NASPO Memorandum of Agreement for the NASPO cooperative purchasing program, incorporated herein by reference.

Solicitation Publication Period

Bidders/Offerors will be given at least 40 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria

This RFP will be issued and evaluated in concert with the procurement laws and rules of the State of Oklahoma by a sourcing team comprised of members from several states.

Award(s): The solicitation will permit multiple awards.

Additional Requested Information

State Specific Terms and Conditions: If the participating state wishes to include any State specific terms and conditions with the release of this RFP, please attach those with this Intent to Participate.

Annual Estimated Volume: If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

Annual State Spend \$ \$3,538,452.00

Annual Political Subdivision Spend \$ 950K

DIRECTOR SIGNATURE

State of Florida

Rosalyn Ingram, Director of State Purchasing

Printed name and Title

 5/19/17
Signature and Date

850-488-3049 Rosalyn.Ingram@dms.myflorida.com

Phone and email

State point of contact for this commodity/service

Ashley Balkcom, Associate Category Manager

Printed name and Title

850-488-0050

Phone and email

Please scan and email the signed "Intent to Participate" document by State of Florida
to:

Tim Hay

Cooperative Development Coordinator

NASPO ValuePoint

thay@naspovaluepoint.org



**NASPO ValuePoint
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Annual Estimated Volume: If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

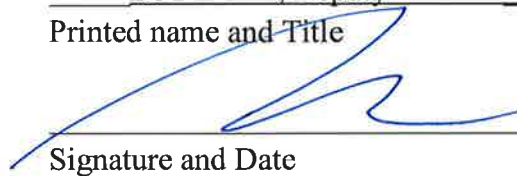
Annual State Spend \$ 2,429,298.00

Annual Political Subdivision Spend \$ N/A

DIRECTOR SIGNATURE

State of Nebraska

Bo Botelho, Deputy Director
Printed name and Title

 5/18/17
Signature and Date

402-471-0972 bo.botelho@nebraska.gov
Phone and email

State point of contact for this commodity/service

Dianna Gilliland, Buyer
Printed name and Title

402-471-4193 dianna.gilliland@nebraska.gov
Phone and email

Please scan and email the signed "Intent to Participate" document by _____

to:

Tim Hay

Cooperative Development Coordinator

NASPO ValuePoint

thay@naspovaluepoint.org

STATE OF NEBRASKA
STANDARD TERMS AND CONDITIONS FOR COOPERATIVE CONTRACTS

a. **CONTRACT PERIOD:**

b. **COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY
EMPLOYMENT / NONDISCRIMINATION**

The contractor shall comply with all applicable local, State and Federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this contract.

c. **PERMITS, REGULATIONS, LAWS**

The contractor shall procure and pay for all permits, licenses and approvals necessary for the execution of the contract. The contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders and regulations.

d. **IMPORTANT NOTICE**

Pursuant to Neb. Rev. Stat. § 84-602.02, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. All non-proprietary or confidential information as defined by State Law WILL BE POSTED FOR PUBLIC VIEWING.

e. **OWNERSHIP OF INFORMATION AND DATA**

The State of Nebraska shall have the unlimited right to publish, duplicate, use and disclose all information and data developed or derived by the contractor pursuant to this contract.

The contractor must guarantee that it has the full legal right to the materials, supplies, equipment, and other rights or titles (e.g. rights to licenses transfer or assign deliverables) necessary to execute this contract. The contract price shall, without exception, include compensation for all royalties and costs arising from patents, trademarks and copyrights that are in any way involved in the contract. It shall be the responsibility of the contractor to pay for all royalties and costs, and the State must be held harmless from any such claims.

f. **INDEPENDENT CONTRACTOR**

It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The contractor represents that it has, or will secure at its own expense, all personnel required to perform the services under the contract. The contractor's employees and other persons engaged in work or services required by the contractor

under the contract shall have no contractual relationship with the State; they shall not be considered employees of the State.

All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination against the contractor, its officers or its agents) shall in no way be the responsibility of the State. The contractor will hold the State harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits from the State including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay or retirement benefits.

g. **CONTRACTOR RESPONSIBILITY**

The contractor is solely responsible for fulfilling the contract, with responsibility for all services offered and products to be delivered as stated in the contract. The contractor shall be the sole point of contact regarding all contractual matters.

If the contractor intends to utilize any subcontractors' services, the subcontractors' level of effort, tasks and time allocation must be clearly defined in the contract. The contractor shall agree that it will not utilize any subcontractors not specifically included in this contract, in the performance of the contract, without the prior written authorization of the State. Following execution of the contract, the contractor shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the contract.

h. **CONTRACTOR PERSONNEL**

The contractor warrants that all persons assigned to the project shall be employees of the contractor or specified subcontractors, and shall be fully qualified to perform the work required herein. Personnel employed by the contractor to fulfill the terms of the contract shall remain under the sole direction and control of the contractor. The contractor shall include a similar provision in any contract with any subcontractor selected to perform work on the project.

Personnel commitments made in the contract shall not be changed without the prior written approval of the State. Replacement of key personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

The State reserves the right to require the contractor to reassign or remove from the project any contractor or subcontractor employee.

In respect to its employees, the contractor agrees to be responsible for the following:

- 1) any and all employment taxes and/or other payroll withholding;
- 2) any and all vehicles used by the contractor's employees, including all insurance required by state law;
- 3) damages incurred by contractor's employees within the scope of their duties under the contract;
- 4) maintaining workers' compensation and health insurance and submitting any reports on such insurance to the extent required by governing State law; and
- 5) determining the hours to be worked and the duties to be performed by the contractor's employees.

Notice of cancellation of any required insurance policy must be submitted to the State when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

i. **STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION**

The contractor shall not, at any time, knowingly recruit or employ any State employee or agent who is working with the contract or in relation to this contract.

j. **CONFLICT OF INTEREST**

The contractor certifies that there does not now exist any relationship between the contractor and any person or entity which is or gives the appearance of a conflict of interest related to this contract or project.

The contractor certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest.

The contractor certifies that it will not employ any individual known by contractor to have a conflict of interest.

k. **ERRORS AND OMISSIONS**

The contractor shall not take advantage of any errors and/or omissions in this contract. The contractor must promptly notify the State of any errors and/or omissions that are discovered.

l. **ASSIGNMENT BY THE STATE**

The State shall have the right to assign or transfer the contract or any of its interests herein to any agency, board, commission, or political subdivision of the State of Nebraska. There shall be no charge to the State for any assignment hereunder.

m. **ASSIGNMENT BY THE CONTRACTOR**

The contractor may not assign, voluntarily or involuntarily, the contract or any of its rights or obligations hereunder (including without limitation rights and duties of performance) to any third party, without the prior written consent of the State, which will not be unreasonably withheld.

n. **GOVERNING LAW**

The contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the State of Nebraska regarding this contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law. The contractor must be in compliance with all Nebraska statutory and regulatory law.

o. **ATTORNEY'S FEES**

In the event of any litigation, appeal or other legal action to enforce any provision of the contract, the contractor agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the State is the prevailing party.

p. **ADVERTISING**

The contractor agrees not to refer to the contract in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State. News releases pertaining to the project shall not be issued without prior written approval from the State.

q. **STATE PROPERTY (optional if service is included)**

The contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the contractor's use during the performance of the contract. The contractor shall reimburse the State for any loss or damage of such property, normal wear and tear is expected.

r. **SITE RULES AND REGULATIONS (optional if service is included)**

The contractor shall use its best efforts to ensure that its employees, agents and subcontractors comply with site rules and regulations while on State premises. If the contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to between the State and the contractor.

s. **EARLY TERMINATION**

The contract may be terminated as follows:

- 1) The State and the contractor, by mutual written agreement, may terminate the contract at any time.
- 2) The State, in its sole discretion, may terminate the contract for any reason upon 30 days written notice to the contractor. Such termination shall not relieve the contractor of warranty or other service obligations incurred under the terms of the contract. In the event of cancellation the contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.
- 3) The State may terminate the contract immediately for any of the following reasons:
 - a) if directed to do so by statute;
 - b) contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
 - c) a trustee or receiver of the contractor or of any substantial part of the contractor's assets has been appointed by a court;
 - d) fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its contractor, its employees, officers, directors or shareholders;
 - e) an involuntary proceeding has been commenced by any party against the contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) days; or (ii) the contractor has consented, either expressly or by

operation of law, to the entry of an order for relief; or (iii) the contractor has been decreed or adjudged a debtor;

- f) a voluntary petition has been filed by the contractor under any of the chapters of Title 11 of the United States Code;
- g) contractor intentionally discloses confidential information;
- h) contractor has or announces it will discontinue support of the deliverable;
- i) second or subsequent documented "vendor performance report" form deemed acceptable by the State Purchasing Bureau.

t. **FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS**

The State may terminate the contract, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the contract. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give the contractor written notice thirty (30) days prior to the effective date of any termination, and advise the contractor of the location (address and room number) of any related equipment. All obligations of the State to make payments after the termination date will cease and all interest of the State in any related equipment will terminate. The contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the contractor be paid for a loss of anticipated profit.

u. **BREACH BY CONTRACTOR**

The State may terminate the contract, in whole or in part, if the contractor fails to perform its obligations under the contract in a timely and proper manner. The State may, by providing a written notice of default to the contractor, allow the contractor to cure a failure or breach of contract within a period of thirty (30) days (or longer at State's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested or in person with proof of delivery. Allowing the contractor time to cure a failure or breach of contract does not waive the State's right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the contractor, the State may contract the service/goods from other sources and hold the contractor responsible for any excess cost occasioned thereby.

v. **ASSURANCES BEFORE BREACH**

If any document or deliverable required pursuant to the contract does not fulfill the requirements of the contract, upon written notice from the State, the contractor shall deliver assurances in the form of additional contractor resources at no additional cost to the project in order to complete the deliverable, and to ensure that other project schedules will not be adversely affected.

w. **FORCE MAJEURE (only if not in original MA / RFP)**

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. The party

so affected shall immediately give notice to the other party of the Force Majeure Event. The State may grant relief from performance of the contract if the contractor is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the contractor. To obtain release based on a Force Majeure Event, the contractor shall file a written request for such relief with the State Purchasing Bureau. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

x. **PROHIBITION AGAINST ADVANCE PAYMENT**

Payments shall not be made until contractual deliverable(s) are received and accepted by the State.

y. **PAYMENT**

State will render payment to contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the contractor as solely determined by the State. Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). The State may require the contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services/goods provided by the contractor prior to receipt, and the contractor hereby waives any claim or cause of action for any such services/goods.

z. **INVOICES**

Invoices for payments must be submitted by the contractor to the agency requesting the services/goods with sufficient detail to support payment. The terms and conditions included in the contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

aa. **TAXES**

Purchases of goods or services made by the State of Nebraska are exempt from the payment of Federal Excise Taxes, and exemption certificates will be furnished on request. State and local taxes are exempt by State Statute Section 77-2704 (l) (m). Exemption by statute precludes the furnishing of State exemption certificates.

bb. **INSPECTION AND APPROVAL**

Final inspection and approval of all work required and/or goods received under the contract shall be performed by the designated State officials. The State and/or its authorized representatives shall have the right to enter any premises where the contractor or subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

cc. **CHANGES IN SCOPE/CHANGE ORDERS**

The State may, at any time with written notice to the contractor, make changes within the general scope of the contract. Changes in scope shall only be conducted with the written approval of the State's designee as so defined by the State from time to time.

The State may, at any time work is in progress, by written order, make alterations in the terms of work as shown in the specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the State may find necessary or desirable. The contractor shall not claim forfeiture of contract by reasons of such changes by the State. Changes in work and the amount of compensation to be paid to the contractor for any extra work so ordered shall be determined in accordance with the applicable unit prices of the contract.

Corrections of any deliverable services/goods or performance of work required pursuant to the contract shall not be deemed a modification requiring a change order.

dd. **SEVERABILITY**

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions 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.

ee. **CONFIDENTIALITY**

All materials and information provided by the State or acquired by the contractor on behalf of the State shall be regarded as confidential information. All materials and information provided by the State or acquired by the contractor on behalf of the State shall be handled in accordance with Federal and State Law, and ethical standards. The contractor must ensure the confidentiality of such materials or information. Should said confidentiality be breached by a contractor; contractor shall notify the State immediately of said breach and take immediate corrective action.

It is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

ff. **LIMITATION OF LIABILITY**

It is understood by the parties that in the State of Nebraska's opinion, any limitation on the contractor's liability is unconstitutional under the Nebraska State Constitution, Article XIII, Section 3, and that any limitation of liability shall not be binding on the State of Nebraska despite inclusion of such language in documents supplied with the contractor's bid or in the final contract.

gg. INDEMNIFICATION

1) GENERAL

The contractor agrees to defend, indemnify, hold, and save harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the contractor, its employees, subcontractors, consultants, representatives, and agents, except to the extent such contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

2) INTELLECTUAL PROPERTY

The contractor agrees it will at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the contractor or its employees, subcontractors, consultants, representatives, and agents; provided, however, the State gives the contractor prompt notice in writing of the claim. The contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the contractor has indemnified the State, the contractor shall at the contractor's sole cost and expense promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the contractor, and the State may receive the remedies provided under this contract.

3) PERSONNEL

The contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the contractor.

hh. NEBRASKA TECHNOLOGY ACCESS STANDARDS (optional if IT component?)

Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the contract comply with the applicable standards. In the event such standards change during the contractor's performance, the State may

create an amendment to the contract to request that contract comply with the changed standard at a cost mutually acceptable to the parties.

ii. **ANTITRUST**

The contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

jj. **TIME IS OF THE ESSENCE**

Time is of the essence in this contract. The acceptance of late performance with or without objection or reservation by the State shall not waive any rights of the State nor constitute a waiver of the requirement of timely performance of any obligations on the part of the contractor remaining to be performed.

kk. **DRUG POLICY**

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

ll. **EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Contractor is an individual or sole proprietorship, the following applies:

- 1) The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.
- 2) If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.
- 3) The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

mm. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY

The contractor certifies that the contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The contractor also agrees to include the above requirements in any and all subcontracts into which it enters. The contractor shall immediately notify the Department if, during the term of this contract, contractor becomes debarred. The Department may immediately terminate this contract by providing contractor written notice if contractor becomes debarred during the term of this contract.

nn. POLITICAL SUB-DIVISIONS

Contractor may extend the Contract to political subdivisions conditioned upon the honoring of the prices charged to the State. Terms and conditions of the Contract must be met by political subdivisions. Under no circumstances shall the State be contractually obligated or liable for any purchases by political subdivisions or other public entities not authorized by Neb. Rev. Stat. § 81-145, listed as "all officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations." A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

oo. REPORTS

The Contractor shall also provide to the State of Nebraska primary contact person quarterly utilization reports containing at a minimum the following information pertaining to State of Nebraska agencies, boards, commissions, and political subdivisions utilization:

- 1) Ordering Entity
- 2) Purchase order number;
- 3) Description;
- 4) Quantity; and
- 5) Price.

These reports will be provided in Excel format and sent via email on a quarterly basis as follows:

Period End	Report Due
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

Reports shall be sent to: as.materielpurchasing@nebraska.gov; to the attention of the Participating Entity's primary contact. Please include the contract number, XXXXX OC, in the subject line of the email.

pp. ADMINISTRATIVE FEE /REBATE (Only if there is no increase in costs to the end user)

The Contractor agrees to provide a quarterly administrative fee in the form of a check. The fee will be payable to the State for an amount equal to one quarter of one percent (.25%) the net sales (net of any returns, credits, or adjustments under this Addendum for the period. The Contractor's WSCA-NASPO pricing to the State shall not be

adjusted to offset for the equivalent fee amount. Payments shall be made in accordance with following schedule:

Period End	Fee Due
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

The Contractor agrees to provide a quarterly utilization report, reflecting new sales to the State during the associated fee period. The report shall be in the format developed by the Lead State and as agreed to by the Contractor. The report will be provided in secure electronic format and/or submitted electronically to the State contact listed in the Addendum

qq. **ADMINISTRATIVE FEE/REBATE REMITTANCE LOCATION**

All Administrative Fees/Rebates will be sent to the following address:

State Purchasing Bureau
c/o Central Finance, Administrative Services
1526 K Street, Suite 240
Lincoln, NE 68508

rr. **WARRANTY**

The Contractor will provide a copy of the manufacturer's warranty to the State of Nebraska upon signature of the participating addendum.



INTENT TO PARTICIPATE
NASPO ValuePoint Cooperative Contract(s) for
Construction Equipment
By the Commonwealth of Virginia
("Commonwealth" or "CoVA" or "Participating State")
With the State of Oklahoma as "Lead State"
Request for Proposal (RFP) Solicitation # OK-SW192



I. PURPOSE

The purpose of this Intent to Participate ("ITP") is to provide members of the National Association of State Procurement Officials ("NASPO") with the opportunity to participate in multi-state cooperative contract(s) for the provision of Construction Equipment ("Equipment") and any related warranty, maintenance, and support services ("Services") necessary to support Equipment in accordance with all original equipment manufacturer ("OEM") operating and performance requirements, standards, and specifications. Equipment is to be acquired either through purchase, lease or rental. For purposes of this RFP, and any subsequent awarded contract, the Commonwealth expects any contractor to provide or include all related products, parts, materials, or supplies that are integral or peripheral to the Equipment, as part of their contract, to ensure all Equipment can be operated, maintained, and supported in accordance with all OEM operating and performance requirements, standards, and specifications.

Equipment sought through this solicitation can be described by, but not limited to, the following NIGP Commodity Codes: 97524 - Construction Equipment (Not Otherwise Classified) Rental or Lease; 54500 - Machinery and Hardware, Industrial, and; 54531 - Industrial and Construction Machinery, Equipment, Components and Parts (Not Otherwise Classified)

The procurement and resulting contract(s) for these Services are being developed and led by the State of Oklahoma ("Lead State").

II. SCOPE OF THE CONTRACT(S)

The Lead State is authorized by the NASPO Cooperative Purchasing Organization, and the Commonwealth as a Participating State, to act as the lead procurement officer in developing one or more multi-state cooperative master contracts with qualified, responsible, and responsive Offerors for the provision of Construction Equipment.

The resulting contracts will be permissive contracts and available for the use by the Participating States.

It is the intent of the Commonwealth to participate in this joint procurement for Construction Equipment through NASPO in order to obtain the most optimal cost savings and/or reductions in administrative expense for the overall benefit for the Commonwealth, and all of its Public Bodies. Additionally, and consistent with Virginia Code § 2.2-4300, the Commonwealth's intent is also to help ensure that all qualified vendors have access to public business and that no Offeror be arbitrarily or capriciously excluded, and that competition is sought to the maximum feasible degree.

Subject to the execution of any future Participating Addendum ("PA") by the Virginia Department of General Services ("DGS"), any subsequent contract that may be awarded as a result of this RFP may be made available for the benefit and use by any or all Commonwealth of Virginia state agencies, institutions of higher education, or any other public body, as defined in § 2.2-4301 entitled "Definitions" and § 2.2-4304 entitled "Joint and cooperative procurement" of the Virginia Public Procurement Act (VPPA). Further, any such contracts resulting from this RFP may also be made available for use by certain charitable corporations and private nonprofit 501(c)(3) institutions of higher education, chartered in Virginia, and as allowable pursuant to Virginia Code 2.2-1120. Collectively, all aforementioned Commonwealth parties are to be referred to in the aggregate hereinafter as "Authorized Users".



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NASPO ValuePoint Cooperative Contract(s) for
Construction Equipment
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To ensure maximum transparency and public access to the Commonwealth's procurement activities and opportunities, and consistent with Virginia Code § 2.2-1110, all Authorized Users shall be required to submit all orders directly with a contractor through the Commonwealth's central electronic procurement website, and details for this will be delineated in the ordering instructions of the Commonwealth's Participating Addendum.

Administrative Fee

A NASPO ValuePoint administrative fee of one-quarter of one percent (0.25%) will be assessed centrally for purchases made under any resulting contract. The Commonwealth will add a nominal administrative fee at such time that any Participating Addendum (PA) may be negotiated, together with the detailed processes for managing, administering, and recording such fee payments.

III. CONTRACT TERM

The initial term for any Master Agreement is anticipated to be for two (2) years from date of award ("Initial Term") with options by the Lead State to renew the Agreement for up to three (3) additional one (1) year successive periods.

IV. SOLICITATION AND CONTRACT DEVELOPMENT / ADDITIONAL INFORMATION

The solicitation and contract development will be accomplished in conformance with the NASPO ValuePoint Process Guide and the NASPO Memorandum of Agreement for the NASPO cooperative purchasing program, incorporated herein by reference.

Solicitation Publication Period: Offerors will be given at least forty (40) days after publication to submit proposals. Details will be contained in the most recent relevant RFP or RFP Amendment documents issued by the Lead State.

Solicitation Type and Evaluation Criteria: The RFP will be issued and evaluated in accordance with the NASPO Cooperative Purchasing Organization guidance, and the procurement laws and rules of the Lead State by a sourcing team comprised of members from several US states.

Award(s): The solicitation will permit multiple awards.

Participating State Annual Estimated Volume: To be provided.

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 the 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.



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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.



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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," by completing 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/>



INTENT TO PARTICIPATE
NASPO ValuePoint Cooperative Contract(s) for
Construction Equipment
By the Commonwealth of Virginia
("Commonwealth" or "CoVA" or "Participating State")
With the State of Oklahoma as "Lead State"
Request for Proposal (RFP) Solicitation # OK-SW192



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:
 1. 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



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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.



INTENT TO PARTICIPATE
NASPO ValuePoint Cooperative Contract(s) for
Construction Equipment
By the Commonwealth of Virginia
("Commonwealth" or "CoVA" or "Participating State")
With the State of Oklahoma as "Lead State"
Request for Proposal (RFP) Solicitation # OK-SW192



THE COMMONWEALTH RESERVES THE RIGHT TO NEGOTIATE ANY ADDITIONAL REQUIRED CONTRACTUAL PROVISIONS AT SUCH TIME THAT ANY PARTICIPATING ADDENDUM MAY BE EXECUTED, IF ANY, FOR THE USE OF ANY RESULTING CONTRACTS BY THE COMMONWEALTH.

For the Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply (DGS/DPS):

3/24/2017

Robert E. Gleason, CPPO, VCM, VCO
Director, DGS / DPS

(804) 786-3842 robert.gleason@dgs.virginia.gov
Phone Email

Ron King
State Contracting DPS Management Point-of-Contact

(804) 786-1601 ron.king@dgs.virginia.gov
Phone Email

To Be Determined
Statewide Strategic Sourcing Officer – Transportation

(804) XXX-XXXX
Phone Email

Email the signed "Intent to Participate" document to: Tim Hay, NASPO ValuePoint Cooperative Development Coordinator, thay@naspovaluepoint.org.



**NASPO ValuePoint
INTENT TO PARTICIPATE
Cooperative Contract(s) for Construction Equipment**

I. PURPOSE:

The purpose of this Agreement is to provide interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for Construction Equipment.

II. SCOPE OF THE CONTRACT(S)

The State of Oklahoma is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for Construction Equipment.

The resulting contracts will be permissive contracts.

Administrative Fee

There will be a .25% NASPO ValuePoint administrative fee associated with these contracts. It is anticipated that the individual states will be able to add an administrative fee when the state executes its Participating Addendum.

III. TERM OF THE CONTRACT

The initial term of the contract will be established for one year from the date of award with options to extend the contract.

IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION

The solicitation and contract development shall be accomplished in compliance with the NASPO ValuePoint Process Guide and the NASPO Memorandum of Agreement for the NASPO cooperative purchasing program, incorporated herein by reference.

Solicitation Publication Period

Bidders/Offerors will be given at least 40 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria

This RFP will be issued and evaluated in concert with the procurement laws and rules of the State of Oklahoma by a sourcing team comprised of members from several states.

Award(s): The solicitation will permit multiple awards.

I. Additional Requested Information

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.

State of Montana Administrative Fee: The State of Montana assesses an Administrative Fee of one and one-half percent (1.50%) for all net sales (sales less credits and returns) made under this PA. The prices paid to Contractor must include the 1.5% Administrative Fee. The Contractor shall remit this Administrative Fee concurrent with the Required Usage Reporting described below. The Administrative Fee must be submitted by ACH along with email notification to the State of Montana Contracts Officer. This Administrative Fee is effective April 1, 2017.

Required Reporting: Contractor shall submit quarterly reports to the Contracts Officer (CO) assigned by the State to manage this contract. Contractor shall provide CO with an electronic usage report (Excel), which must list the following information at the minimum: purchasing entity; description of items purchased; date of purchase; contract price; and the extended price for each transaction. These reports are due no more than 30 days after the end of the quarter.

First Quarter:	July 1 through September 30
Second Quarter:	October 1 through December 31
Third Quarter:	January 1 through March 31
Fourth Quarter:	April 1 through June 30

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.

Annual Estimated Volume: If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

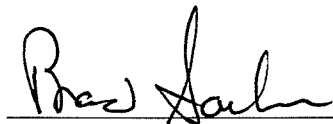
Annual State Spend \$ _____

Annual Political Subdivision Spend \$ _____

DIRECTOR SIGNATURE

State of Montana

Brad Sanders, Chief Procurement Officer



5/11/17

Signature and Date

(406) 444 – 1459

II.

bsanders@mt.gov

State point of contact for this commodity/service

Jack Kane, Contracts Officer
(406) 444 – 3313

III. jkane@mt.gov

Please scan and email the signed “Intent to Participate” document by May 12, 2017
to:

Tim Hay
Cooperative Development Coordinator
NASPO ValuePoint
thay@naspovaluepoint.org

PARTICIPATING ADDENDUM

(hereinafter "Addendum")

For

NASPO VALUEPOINT Add description of goods & services

MASTER AGREEMENT NO. Add contract no.

(hereinafter "Master Agreement")

Between

Insert Contractor Name

(hereinafter "Contractor")

and

State of Hawaii

(hereinafter "Participating State")

State of Hawaii, State Procurement Office (SPO) Price List Contact No. add PL No.

This Addendum will add the State of Hawaii as a Participating State to purchase from the NASPO ValuePoint Master Agreement Number insert contract number with insert contractor name.

1. Scope:

This addendum covers NASPO ValuePoint describe services lead by insert lead State for use by state agencies and other entities located in the Participating State authorized by the state's statutes to utilize state contracts.

2. Participation:

All jurisdictions located within the State of Hawaii, which have obtained prior written approval by its Chief Procurement Officer, will be allowed to purchase from the Master Agreement. Private nonprofit health or human services organizations with current purchase of service contracts governed by Hawaii Revised Statutes (HRS) chapter 103F are eligible to participate in the SPO price/vendor list contracts upon mutual agreement between the Contractor and the non-profit. (Each such participating jurisdiction and participating nonprofit is hereinafter referred to as a "Participating Entity"). Issues of interpretation and eligibility for participation are solely within the authority of the Administrator, State Procurement Office.

3. Changes: Replace with specific changes or statements that no changes are required

A. Usage Reports. Contractor shall submit a quarterly gross sales report (including zero dollar sales) in EXCEL to the contact person listed in the Participating Addendum, Paragraph 6 (or as amended) in accordance with the following schedule (or as requested):

<u>Quarter Ending</u>	<u>Report Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The report shall identify each transaction and include the following information:

Department/Agency Name
Date of Purchase
Product/Service Description
Quantity
Unit of Measure
Item No. Part Number (if applicable)
MSRP List Price
NASPO ValuePoint Contract Price

The quarterly report shall also include any adjustment from prior periods (i.e. exchanges and/or return).

- B. The validity of this Addendum, any of its terms or provisions, as well as the right and duties of the parties in this Addendum, shall be governed by the laws of the State of Hawaii. A copy of the Attorney General's General Conditions, which is made a part of this Addendum, can be found at <http://spo.hawaii.gov/wp-content/uploads/2014/02/103D-General-Conditions.pdf>. Any action at law or in equity to enforce or interpret the provisions of this Addendum shall be brought in a court of competent jurisdiction in Honolulu, Hawaii.
- C. Inspection of Facilities. Pursuant to HRS § 103D-316, the Participating State, at reasonable times, may inspect the part of the plant or place of business of the Contractor or any subcontractor that is related to the performance of a Master Agreement and this Addendum.
- D. Campaign Contributions. The Contractor is notified of the applicability of HRS § 11-355, which prohibits campaign contributions from Contractor during the term of the Addendum if the contractor is paid with funds appropriated by the Hawaii State Legislature.
- E. Purchases by State of Hawaii government entities under this Master Agreement is not mandatory. This Addendum is secondary and non-exclusive.
- F. The State of Hawaii's purchasing card (pCard) is required to be used by the State's executive departments/agencies (excluding the Department of Education, the Hawaii Health System Corporation, the Office of Hawaiian Affairs, and the University of Hawaii) for all orders totaling less than \$2,500. For purchases of \$2,500 or more, agencies may use the pCard, subject to its credit limit or issue a purchase order.

Contractor(s) shall forward original invoice(s), directly to the ordering agency. General excise tax shall not be applied to the delivery charge.

Pursuant to HRS § 103-10, Participating State and any agency of the Participating State or any county, shall have thirty (30) calendar days after receipt of invoice or satisfactory delivery of goods to make payment. Any interest for delinquent payment shall be as allowed by HRS § 103-10.

- G. Pursuant to HRS §103D-310(c), if Contractor is doing business in the Participating State, Contractor is required to comply with all laws governing entities doing business in the Participating State, including the following HRS chapters.

1. Chapter 237, General Excise Tax Law;
2. Chapter 383, Hawaii Employment Security Law;
3. Chapter 386, Workers' Compensation;
4. Chapter 392, Temporary Disability Insurance;
5. Chapter 393, Prepaid Health Care Act; and

A Certificate of Good Standing is required for entities doing business in the State.

The Hawaii Compliance Express (HCE) is utilized for verification of compliance. The SPO will conduct periodic checks to confirm Contractor's compliance on HCE throughout the term of the Addendum.

Alternatively, Contractors not utilizing HCE to demonstrate compliance shall provide paper certificates to the SPO as instructed below. All certificates must be valid on the date it is received by the SPO. All applications for applicable clearances are the responsibility of the Contractor.

HRS Chapter 237 tax clearance requirement. Pursuant to Section 103D-328, HRS, Contractor shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate.

The Tax Clearance Application, Form A-6, and its completion and filing instructions, are available on the DOTAX website: <http://tax.hawaii.gov/forms/>.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements. Pursuant to Section 103D-310(c) Contractor shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable to the SPO.

The DLIR Form LIR#27 Application for Certificate of Compliance with Section 3-122-112, HAR, and its filing instructions are available on the DLIR website: <http://labor.hawaii.gov/forms/>.

Compliance with Section 103D-310(c), HRS, for an entity doing business in the State. Contractor shall be required to submit a Certificate of Good Standing (COGS) issued by the State of Hawaii Department of Commerce and Consumer Affairs (DCCA) – Business Registration Division (BREG). The Certificate is valid for six (6) months from date of issue. A photocopy of the certificate is acceptable to the SPO.

To obtain the Certificate, the Offeror must be registered with the BREG. A sole proprietorship is not required to register with the BREG and is therefore not required to submit the certificate.

For more information regarding online business registration and the COGS is available at <http://cca.hawaii.gov/breg/>.

H. Effective Date and Contract Period. This Addendum is effective upon the date of execution by the Participating State and shall continue for the term set forth in the Master Agreement.

4. Licensing

Offerors(Bidders) and Contractors must be properly licensed and capable of performing the Work as described in the RFP(IFB), at the time of submission of the Proposal(Bid), in accordance with the Professional and Vocational licensing laws of the state. Contractors under Participating Addendums must maintain any and all required licenses through the duration of the contract and Participating Addendum.

5. Lease Agreements:

Leasing is not authorized by this Addendum

6. Primary Contact:

The primary contact individuals for this Addendum are as follows (or their named successors:

Participating State

Name: Name of purchasing specialist
Address: State Procurement Office
1151 Punchbowl Street, Room 416
Honolulu, HI 96813
Telephone: phone number
Fax: (808) 586-0570
E-Mail: specialist e-mail address

Contractor

Name:
Address:
Telephone:
Fax:
E-Mail:

7. Subcontractors:

Subcontractors are (or are not) allowed under this Addendum.

8. Freight Charges (unless otherwise stated in the master contract):

Prices proposed will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of a full order originally shipped without transportation charges (that failed to ship with the original order, thereby becoming back-ordered) will also be shipped without transportation charges.

9. Purchase Order and Payment Instructions:

All purchase orders issued by Participating Entities under this Addendum shall include the Participating State contract number: SPO Price List Contract No. 16-07 and the NASPO ValuePoint Master Agreement Number 06913.

- Purchase Orders and Payments shall be made to **add contractor name** or authorized subcontractors, if any.

10. Participating Entity as Individual Customer:

Each Participating Entity shall be treated as an individual customer. Except to the extent modified by this Addendum, each Participating Entity will be responsible to follow the terms and conditions of the Master Agreement; and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each Participating Entity will be responsible for its own charges, fees, and liabilities. Each Participating Entity will have the same rights to any indemnity or to recover any costs allowed in the Master Agreement for their purchases. The Contractor will apply the charges to each Participating Entity individually.

11. Entire Contract:

This Addendum, the Master Agreement, and the Attorney General's General Conditions, set forth the entire agreement, and all the conditions, understandings, promises, warranties and representations among the parties with respect to this Addendum and the Master Agreement, and supersedes any prior communications, representations or agreements whether, oral or written, with respect to the subject matter hereof.

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum, the Master Agreement, and the Attorney General's General Conditions that are included in any purchase order or other document shall be void. The terms and conditions of this Addendum, the Master Agreement, and the Attorney General's General Conditions, shall govern in the case of any such inconsistent, contrary, or additional terms.

IN VIEW OF THE ABOVE, the parties execute this Addendum by their signatures, on the dates below.

Participating State: STATE OF HAWAII	Contractor:
Signature:	Signature:
Name: SARAH ALLEN	Name:
Title: Administrator, SPO	Title:
Date:	Date:

APPROVED AS TO FORM:

Deputy Attorney General



Amendment of Solicitation

Date of Issuance: 06/27/2017

Solicitation No. OK-SW-192

Requisition No. _____

Amendment No. 1

Hour and date specified for receipt of offers is changed: ☐ No ☒ Yes, to: 07/27/2017 3:00 PM CST

Pursuant to OAC 260:115-7-30(d), this document shall serve as official notice of amendment to the solicitation identified above. Such notice is being provided to all suppliers to which the original solicitation was sent.

Suppliers submitting bids or quotations shall acknowledge receipt of this solicitation amendment prior to the hour and date specified in the solicitation as follows:

- (1) Sign and return a copy of this amendment with the solicitation response being submitted; or,
- (2) If the supplier has already submitted a response, this acknowledgement must be signed and returned prior to the solicitation deadline. All amendment acknowledgements submitted separately shall have the solicitation number and bid opening date printed clearly on the front of the envelope.

ISSUED BY and RETURN TO:

U.S. Postal Delivery:

OMES Central Purchasing
5005 N Lincoln Blvd Ste 300
Oklahoma City, OK 73105
or

Personal or Common Carrier Delivery:

OMES Central Purchasing
5005 N Lincoln Blvd Ste 300
Oklahoma City, OK 73105

Joyce Leivas
Contracting Officer

405 - 521 - 2479
Phone Number

Joyce.Leivas@omes.ok.gov (preferred communication)
E-Mail Address

Description of Amendment:

a. This is to incorporate the following:

*****THE CLOSING DATE IS CHANGED FROM JULY 6, 2017 TO JULY 27, 2017*****

Questions that were received have been answered and are attached to this Amendment.

Sections within the solicitation that have wording changes are attached to this Amendment at the end of the questions and answers.

b. All other terms and conditions remain unchanged.

Supplier Company Name (**PRINT**)

Date

Authorized Representative Name (**PRINT**)

Title

Authorized Representative Signature

This Amendment serves to answer questions submitted by interested suppliers. See Section 2.2 RFP Amendments for instructions for submitting the acknowledged amendment. This Amendment also serves to extend the closing date from July 6, 2017 to July 27, 2017.

We are anticipating a high volume purchase contract. As you can see in the Scope of work, Section B, we expect the Manufacturer to have a close working relationship with the dealer network as well as a consistent method of business practices. Yes, the Dealers are going to be the point of contact for the customer, but the contract will be with the Manufacturer and as such, the Manufacturer is responsible for the dealers being completely aware of the details of the contract. The formation of the scope of work is based on the dealer's interaction with the customer. The Manufacturer will relay the scope to the dealers and ensure they understand how the contract works. The Administrative and Technical Response questions are designed for NASPO ValuePoint to have a clear understanding of how the Manufacturer to dealer relationship works, from the training involved to the oversee process. As the Manufacturer relies on the dealer network to sell and maintain (warranty work) the equipment, we rely on the Manufacturer to make sure the policies are consistent with the contract requirements.

Pertaining to the e-Market Center Appendix questions:

The e-Market Center Appendix was provided in the solicitation as information to the Suppliers that NASPO ValuePoint does have an established online marketplace used for ordering for some contracts and you are asked to support the e-Market Center in one of the ways listed.

As stated in 4.4 NASPO ValuePoint eMarket Center, and again in Section 9 of the NASPO ValuePoint Master Agreement Ts and Cs "b"; "at a minimum", the Offeror agrees to participate in development of ordering instructions." There are three ways to participate in the e-Market Center. One is by a hosted catalog, whereby the Supplier provides their pricing on spreadsheets that are then uploaded to the program, another is a punchout, which is a re-direction to the Supplier's website where the shopping is done and then the shopper is brought back to the e-Market Center to check out. The third is the most simple participation form of just providing order instructions directing the shopper to the contract website where the pricing and contract information is located.

Questions received:

Q1. Section "a". in the eMarket Center appendix makes reference to a punchout site. Could you further explain what the punchout site consists of?

A1. With the punchout scenario, the shopper leaves the e-Market Center website, goes to the Supplier's website where they shop, then come back to the eMarket Center website to finish the ordering process.

Q2. Will the information on the eMarket Center be publicly available? Will it be seen by other Contractors?

A2. The eMarket Center is only accessible to those who use it. Registered users use a password to use the eMarket Center. Only registered users (shoppers) can see the information so no, it won't be seen by other Contractors.

Q3. Section 3 4.4 page 16 “To be eligible for award, the Offeror 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.”

We offer a public site where the buying agency can review the most current listing of models and options. Once the machine is defined, ideally with local dealer’s help as there are many configurations and interdependencies, a complete/formal contract quote can be provided. Unique ordering instructions will be provided, but a restatement of the voluminous pricing by line item (covering all models and options) will not be generated/presented in Excel or similar format for uploading/updating of same to SciQuest or a similar site. Please confirm as allowed and agreed.

Establishing and maintaining a separate eMarketplace for each participating entity would preferably be done by pointing other participating entities to the Oklahoma content(price pages and discounts) and noting only the variances from the Oklahoma contract for their specific agreement. Any concerns?

A3. This is why the ordering instructions option is offered. Please read above where the three types of participation are addressed.

Q4. eMarket Appendix C.1 “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.” Text from similar question on Section 3 above states “or unique ordering instructions.” Please confirm that only submittal of current PDF price pages along with unique ordering instructions is acceptable and correct, as opposed to establishing separate Excel charts for line item pricing of all models and options.

A4. Please see the explanation above of the ways to support the e-Market Center. Yes unique order instructions is an acceptable way to support the E-Market Center.

Q5. eMarket Appendix 2.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.”

A5. Yes if the hosted option was used, that describes that option.

Q6. Is this SciQuest integration mandatory?

A6. No.

Q7. It conflicts with the preceding statement of allowing unique ordering instructions only for SciQuest. Can PDF price pages be submitted without having to recreate an expansive Excel file to cover all models and a multitude of options that would require maintaining each quarter?

A7. Price pages don’t even have to be submitted if ordering instructions are chosen, the ordering instructions direct the end user to where to find the contract information.

Q8. h UNSPSC codes, where exactly are these supposed to appear, or to be integrated – on the Oklahoma discount chart or somewhere in Sci-Quest?

A8. The e-Market Center Appendix contained the official UNSPSC website. Sci-Quest, uses the codes.

Q9. Can we see the eMarket Center to know if we can comply technically? If we can't comply due to technical reasons, can we provide an alternative solution?

A9. All can be negotiated in the creation of the Master Agreement.

Pertaining to the Freight questions:

The questions will be addressed but, in summary we are asking that the freight be paid by the Supplier from the manufacturer's location to the Dealer network location. When the customer requests a quote, that quote should include freight from the dealer location to the customer, as well as any other charges such as freight, packaging, delivery, set up, options, etc. The quote should be by line item, showing the charge for each item. The invoice also, should be itemized by line item, showing the charge for each item. Yes, we are asking that you price the equipment and then add the freight to the quote. We are not asking that the pricing itself include freight already figured in. If something sells for \$2,000.00 and it weighs 5 tons and is going to be shipped 15 miles and is going to cost \$200.00 then one line would have the \$2,000 and another line would have the \$200.

If we are not understanding the standard freight process used by heavy equipment Suppliers, then please explain in your response what your freight processes are, directly from the manufacturer, from the dealer, asked for in the Administrative Technical response questions, Management and Leadership, Question 5 when we ask you to describe how sales are made.

Q1. On page 9 of Attachment A, #14 is reserved for shipping and delivery. When will that be added?

A1. It won't be added in that location as it is addressed in the Scope B section because freight is addressed in the Scope, B section of the solicitation. The NASPO terms and conditions are shown in their entirety as part of the solicitation process. The creation of the Master Document and participating Addendums will address any terms that are questioned.

Q2. As you know, freight costs for construction equipment are significant due to size and weight of the equipment. In order to ensure that the purchaser pays only applicable freight, I would like to suggest that the purchasing agency request that the supplying dealer add applicable freight to the quote that they will be providing prior to the purchase transaction.

A2. This is already what we are asking for, that the freight be added to the quote provided to the ordering entity.

Q3. I believe that other agencies (NJPA for example) make an exception for the same reason I noted. Below is a clip of the wording in the RFQ. The last sentence seems to contradict the text above it.

Would you please clarify? Thank you.

Clarification is asked for the following section of the solicitation:

B.17. Allowable Charges

Freight/Shipping/Set-up Fees.

Freight from the Supplier to the dealer network locations within the lower 48 states or to the nearest port for Alaska and Hawaii shall not be paid by the Purchasing Entity. Please provide freight costs policy guidelines for your dealers, whether it is a set rate per loaded mile or the dealer is allowed to set the rate.

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

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

A3. Clarification:

The Supplier pays for any freight from the Manufacturer location to the dealer network.

If you, as the Manufacturer have policies in place, such as a set price per loaded mile from the dealer to the customer, please provide it.

If the dealer is allowed to set the rate, tell us they are.

Delivery is free on board to the destination of the ordering party, freight collect, which is changed to read "freight prepaid and added to invoice." For clarity.

The last line means that the cost is to be itemized on the quotes and the invoices. The price of the product, any freight, set-up fees, shipping and handling, all to be on separate lines. See changed B.17 at the end of this Amendment.

Q4. Please verify if freight from the factory to the distributor is to be included in the submitted pricing. This is very difficult to forecast, due to geographic distances.

A4. The freight from the factory to the distributor is the responsibility of the Supplier and is to be paid by the Supplier, yes.

Q5. Please verify if the freight delivery cost to the end governmental entity is to be included in the submitted pricing. This is very difficult to forecast, due to geographic distances.

A5. Freight from the distributor to the customer is an allowable charge. We aren't asking that the freight from the distributor to the customer be included in the submitted pricing. The freight isn't a known charge until the distance is known, so isn't charged until the customer orders. The freight should be quoted at the time of order and annotated on the quote and then again on the invoice as a separate line item.

Q6. Attachment B: Scope of Work, B.17. Freight. Please confirm our understanding that freight from factory to dealer (lower 48) is not chargeable on a quote, while setup/make-ready, local delivery and any dealer-to-dealer transfer costs are chargeable on a quote.

A6. The freight from the factory to the dealer is the responsibility of the Supplier. The freight from the dealer to the ordering party is an allowable charge. Dealer to dealer transfer costs are not anticipated to be paid by the ordering party. Any transfers from one dealer to another are between the dealers, not the ordering party.

Q7. Attachment H 11 page 52 (Oklahoma) Customer price to include and contractor shall prepay all shipping, packaging, delivery and handling fees. To clarify, and as per B10 and B17 (NASPO) freight, shipping, setup...can be quoted so long as it's prepaid right?

A7. Yes.

Q8. Please confirm our understanding that Oklahoma only allows recovery (if listed on the quote) of equipment setup/make ready costs.

A8. The itemized quote is to include the price of the equipment as well as any ancillary items, options, accessories, set up, make ready costs and freight. We just want them separated out on the quote and then again on the invoice. Each item to be a line item.

Q9. Due to the cooperative contract possibly covering all states and territories, separate freight and setup quotes for each machine are much preferred – due to the variances of size, weight, and delivery distance involved. The current Oklahoma contract allows factory to dealer freight, setup and local to be charged as separate line items and we wish to keep this same process. Keeping the freight and setup charges out of the discount calculations will make the master agreement much more consistent and readily adaptable for adoption by other participating entities while minimizing discount variances. Please confirm this as correct and acceptable.

A9. We are asking that the freight from the manufactured location to the dealer be paid by the Supplier. When the customer is quoted a price for the equipment is when the freight from the dealer to the customer's location is given as well as set up charges.

General Questions

Q1. The solicitation reads that "Only complete responses will be considered for award". Is a Vendor's response considered incomplete if they do not manufacture all items requested within the solicitation?

A1. No. By complete responses, we mean that all the questions need to be answered, and requested documents submitted. The vendor does not have to manufacture all of the items requested but there does need to be a dealer network presence in the entire customer base.

Q2. Section 20 states that the Contractor must grant rights to any media in this contract. Does this mean that product literature, marketing material, and manuals that are OEM proprietary must be allowed to be distributed by the Purchasing Entity with full authority to modify or sell?

A2. The Purchasing Entity will not have full authority to modify or sell any product literature, marketing material and manuals that are OEM proprietary.

Q3. The Management and Leadership questionnaire has some text overlap making it hard to decipher. Would it be possible to have this questionnaire resubmitted with the proper corrections?

A3. The corrected page will be attached to the Question and Answer Addendum, at the end of this document.

Q4. Will contractors have the opportunity to request clarification to any responses released to all bidders?

A4. There is no guarantee that any more questions will be addressed. See Section 2.1 RFP Question and Answer process and 2.2 RFP Amendments.

Q5. Are the Past Performance verifications required to be on the contracts executed by the manufacturer with 3 different agencies or can we use (Vendor's dealer name), acting as an agent for (Manufacturer) historical success with other agencies?

A5. The references can come from whomever the manufacturer chooses.

Q6. "Promotion of NASPO Master Agreement." On page 17 there is language asking how we intended to "promote" the Master Agreement. What does the document mean by Promote?

A6. By promotion we mean for you to go out and market your products to the government entities and want to know if you have a plan to do so.

Q7. Past Sales. On pdf page 45, they ask for past 5 year's sales in the USA. Can we mark this as Confidential?

A7. All of the documents will be available in alignment with the opens records acts of each state. Please see Section 2.13 Confidential or Proprietary Information. This section provides the guidance for submitting documents marked confidential.

Q8. Attachment A 7 NASPO ValuePoint Summary and Detailed Usage Reports "c". We do not allow sales to employees for personal use. Our discounts and contracts are reserved for governmental agencies for public use only.

A8. We don't anticipate asking the suppliers to provide for employee-type discounts with this contract. There aren't any provisions within the solicitation scope.

Q9. Attachment B 20. We can certainly provide a dealership listing with addresses and phone numbers. Due to the high number of dealer locations and various specialties of staffing at each site, it is best to call the dealership to discuss any needs, rather than provide a single point of contact as part of our RFP.

A9. The entire dealership listing is asked for to satisfy the requirement of there being a dealer presence in every state that might use the contract, for evaluation purposes. We realize the dealers will be the points of contact who interact with the customers but we also realize that there is some sort of management in place of those dealers and it is management who is responding to the solicitation.

Q10. What is the anticipated start date for this contract/Master Agreement?

A10. In the early Fall of 2017.

Q11. State agencies in Oklahoma are deemed tax free (no federal or state tax is applicable). Political subdivisions are deemed exempt from fed taxes (no mention of state tax being exempt) does that imply that local agencies are to be assessed a state tax? If so, where does one find the applicable rate charts?

A11. All government entities within the State of Oklahoma are exempt from State and Federal Taxes.

Q12. Attachment A 21 Commercial General Liability – we do not purchase primary “products” liability insurance coverage. The required product liability limit falls within our self-insured retention. Please remove the word “product” from the contract as it relates to liability insurance. Or is this clarification better left for our particular submittal?

A12. This can be addressed upon creation of the Master Agreements.

Pricing/Invoicing/Ordering Questions

Q1. (Vendor Name) will provide the pricing. Can the regional (Vendor’s dealer) distributor provide/submit the invoicing, rather than (Vendor’s Name)?

A1. Yes, the distributor can provide the invoicing to the customer as the agent for the Manufacturer. Although the Manufacturer will hold the contract, it is expected that as agents of the Manufacturer, the distributors will provide the initial quotation for the customer, order the product, receive payment for the product, deliver the product, and provide training for it, and provide warranty work with any necessary parts to perform the warranty work. The contract will be with the Manufacturer to insure a uniform purchasing process with the Manufacturer’s distributor/dealer network instead of having contracts with hundreds of individual dealers/distributors.

Q2. In Section 11 – price up must be approved by the Lead State. See Section B. What process is used to determine if a price increase is acceptable?

A2. A Manufacturer’s list price price increase as well as new products introduction and discontinued items.

Q3. Will the State accept (Vendor name) as acting as an agent for (Manufacturer name) for invoicing, annual marketing plans, fee reporting schedules and such?

A3. The State accepts a distributor/dealer as an agent for the purposes of invoicing yes. Dealers are encouraged to develop plans for marketing to the government entities. The quarterly reports are to be submitted by the Manufacturer as well as the fees. It is assumed that the Manufacturer does require the dealers to submit government sales reports to them that can in turn be reported to NASPO ValuePoint. Any States that require reports and fees in addition to the NASPO ValuePoint fees will address that in their Participating Addendums.

Q4. Are trade-in units acceptable on new machine sales and are they subject to the fees?

A4. Trade ins are acceptable if the government entity is allowed to use trade-ins for new equipment. Please see B.9 Ordering as well as the corrected formula within this Amendment.

Q5. Are extended warranties acceptable on new machine sales and are they subject to the fees?

A5. Extended warranties are acceptable on new machine sales and if they have a price, are included in the total sale, so yes, subject to fees.

Q6. Can Service and Parts sales from the distributor be added and would these sales be subject to the fees?

A6. To clarify, warranty service is to be provided and if parts are required to perform the warranty service, they are included. Parts sales, however are a desirable item for the contract. The Supplier will not be required to sell parts other than those used in warranty work, but it is desirable that they do and provide a discount for those parts. We are not including services other than warranty work as part of the contract. Yes total sales are subject to the administrative fees.

Q7. Attachment B: Scope of Work, B.4. Warranty-Equipment/Accessories/Attachments

The way this section is written it sounds like the Supplier/Manufacturer is being expected to itself provide warranty labor for warranty repair work on purchased equipment. However, our authorized dealers would do the warranty work, not (Vendor name) as the supplier/manufacturer. This seems to be anticipated when reading Section B.8 Repair Facilities, which states that the repair facilities that will perform warranty work under the Contract shall be identified as the Supplier's dealer network. We just want to confirm that the Supplier is NOT required to do warranty work directly itself, but rather our dealer network would be the providers of warranty work.

A7. We realize the dealers will act as agents of the manufacturer but the Master Agreements will be created with the Manufacturer. As such, the solicitation documents include all phases of the contract, including the requirements of the dealer's location for warranty work B.4, quality of parts, buy backs, repair facilities, ordering, invoicing, delivery, training, allowable charges, because it is the dealers who will be transacting with the customers.

Q8. Can additional discounts over the (Manufacturer name) be offered?

A8. Yes, additional discounts are always welcome. The discounts can always be increased during the contract.

Q9. We realize that fees are to be submitted on a quarterly basis, but can these fees be paid after the governmental entity pays for the machines?

A9. The fees should be paid according to the invoice date.

Q10. Confidentiality. The document has limited confidentiality for supplier information. Will supplier pricing be publicly available (for example, published on a website)?

A10. Yes, the pricing will be available if Suppliers provide it with their discounts in their response. The pricing is based on a discount percentage off the Manufacturer most current list price.

Q11. Does providing links to our public on-line illustrated parts lookup (also smart phones apps) satisfy the requirement to provide hardcopy of the parts book with the equipment.

A11. Yes.

Q12. Please confirm that submission requires both a website link and the equipment specs on a CD or flash drive (not one or the other).

A12. Yes, initially we would like the equipment specs submitted on a flash drive with your response to confirm what all you are offering..

Q13. Attachment C: Pricing pages. Can additional product lines be added to the contract that are not called out for on Attachment C. (Example: Compaction equipment).

A13. No, we are only asking for what is on the pricing pages.

Q14. What will be the quoting and ordering process for this contract? We typically will sell the equipment through distribution to the end customer. These pieces of equipment are highly customizable and often come with special attachments that an OEM may not manufacture themselves. A relationship with local distribution is vital to the service and support of the customer.

A14. Again, we realize that the Manufacturer relies on their dealer/distributor network to sell their equipment and provide warranty work and service for the equipment they sell. While this contract will not have service other than that provided by warranty work with parts necessary to complete the warranty work, we have asked for parts to be provided at a discounted rate, as a desirable. The customer will contact the dealer. The dealer will provide a quote for the product and any attachments, options, extended warranties, required, all itemized. The dealer will invoice the customer, again, an itemized invoice. The dealer will deliver the product or the customer will pick it up. The customer will pay the dealer as an agent of the manufacturer. The Manufacturer will ensure the dealer follows the scope of the contract.

Q15. Section 1 1.1 page 4, bottom of fourth paragraph. "The contract will be a multiple award contract for both equipment and warranty work with replacement parts." Our office manages whole goods equipment contracts. The local dealers perform the actual warranty and/or service work. Please note that service work and any needed parts, not covered by an applicable warranty, are quoted by the local dealer as needed. In other words, our corporate RFP response will not include pricing for service or parts. Any applicable charges for service or parts, after the initial machine sale, will be handled directly between the requesting agency and the local dealer.

A15. To clarify: The contract will be a multiple award contract for both equipment and warranty work with replacement parts. The only service involved with the contract will be for warranty work. If the warranty work requires parts to be used, then the parts will be supplied in order to perform the warranty work. We are asking for a discount percentage off of parts in general however, on an as needed basis. This is a desirable for the contract, not a requirement. The pricing pages do have a place to fill in a discount off percentage for parts if the supplier is willing to provide for a discount off parts.

Q16. Attachment A 16e. Possibility of 30 day acceptance testing. We produce made to order products with full machine warranty. When might acceptance testing be required, if ever? We are in alignment with item B.4 on page 41 that states, "All equipment warranties shall start on the date of delivery and shall be for the full term of said warranty." There is no mention here of delay on warranty start date due to a possible acceptance test beyond delivery date.

A16. If there is a warranty restart it would occur at the end of the 30 day period. This can be further addressed in the negotiation of the Master Agreement.

Q17. Attachment A 17 P Card payments – RFP states no additional fee allowed. We request permission to bill a 3% processing fee to allow credit card usage. Order amounts can be quite expensive and the granted discounts will not take into effect this billing convenience charge for just those customers that choose to pay with a P Card.

A17. The supplier's acceptance of a credit card for payment can be negotiated in the Master Agreement process. . In Oklahoma, the following applies: 14A OK Stat § 14A-2-417 (2014)A. No seller in any sales transaction may impose a surcharge on a cardholder who elects to use a credit card or debit card in lieu of payment by cash, check or similar means. While this is true for Oklahoma, other states would have to address this term in their Participating Addendum.

Q18. Will the contract allow sales of used equipment at fair market value?

A19. No, only new equipment is requested.

Q20. May changes be made to the sample pricing request to ensure they capture a broad range of products, including the most typical/common for governmental purchasers?

A20. Yes, one of the machines was not represented clearly. Please see the New evaluation sample pricing pages attached at the end of this document.

Terms

Q1. Under Attachment A: NASPO ValuePoint Master Agreement Terms & Conditions, should we read "Contractor" to mean dealer?

A1. No. The Contractor is the Manufacturer.

Q2. Can we word the Master Agreement such that dealers can sign the PAs with the states?

A2. No. The Manufacturer will negotiate the PA with each state. While we realize it is the dealer who will be interacting with the customer, as the Manufacturer's agent, the contract Master Agreement will be with the Manufacturer.

Q3. Can the price list and discount list be available to buyers only and not the general public?

A3. If the Supplier submits a price list as part of their pricing, it will be available on the contract website. The Supplier can either supply the price list with the discount already figured in, or just the pricing documents with the discount filled in because the pricing is always going to be based on the most current Manufacturer list price less the discount. Price list we are asking for on the flash drive as part of the response to the solicitation is not going to be published.

Q3. There seems to be a typo in Attachment B, section 9. Should the sentence read: "Any trade-in allowances determined by the Supplier shall be deducted from the established current price AFTER the discount is applied."

A3. Yes, that is how it should read. Please see the corrected section, B.9 Ordering, at the end of this Amendment.

Q4. Will the State of Oklahoma Terms & Conditions (Participating Addendum) be negotiated concurrently, or only after the Master Agreement is finalized? What about the other States that are included in Attachment H?

A4. The Master Agreement will be finalized first, then the PA's. See Section 1.6 Participating States.

Q5. General. There are Master Terms and Conditions provided and each state has their supplementary Ts and Cs which are also attached. Do we need to comment on the specific state Ts and Cs in our proposal or just the Master Terms and Conditions?

A5. The Master Terms and Conditions. The Participating Addendums will be addressed after the Master Agreement is negotiated. (This also pertains to a question concerning the State of Nebraska document concerning data.)

Q6. Terms of Master Agreement ("MA") a. Term. The MA can be extended by the state past 1 year; Is this solely at the state's discretion?

A6. Yes

Q7. Attachment A 21 Commercial General Liability – We do not purchase primary "products" liability insurance coverage. The required product liability limit falls within our self-insured retention. Please remove the word "product" from the contract as it relates to liability insurance. Or is this clarification better left for our particular submittal?

A7. This can be addressed upon creation of the Master Agreement.

Q8. RFP Section 36. Assignment of Antitrust Rights in the Master Agreement Terms and Conditions

This section states that the Contractor assigns to a Participating Entity (state) any claim for relief that the Contractor has or may have for any violation of state or federal antitrust laws in connection with any goods or services provided by the Contractor in that state. Is this assignment of rights intended to apply to the entirety of the Contractor's claim for the particular antitrust violation, or is it only meant to apply to the portion of the Contractor's claim that pertains to the dollar amount of equipment that the Participating Entity purchased in that state from Contractor or its authorized dealers?

A8. The assignment of antitrust rights clause has been in this cooperative's terms and terms and conditions at least since 2010. The clause arose out of court decisions limiting the ability of state attorneys general to pursue claims based on purchases in the state from governmental entities other than the state. The clause by its terms operates to assign only antitrust claims based sales of goods or services in the participating state under the master agreement.

Q9. Our understanding is that contract discounts may be adjusted by state to reflect underlying state contract usage fee levels. Delivery and setup/make ready cost recovery provisions also may vary between states. The inability to recover these other costs also impacts the supplier discount

structure. May the higher cost state discounts also be adjusted to reflect their lesser cost recovery provisions (i.e. – Oklahoma in H-11)?

A9. The discounts can be increased but not decreased. Negotiations can be conducted upon completion of NASPO Master Agreement.

Q10. License of Pre-Existing Intellectual Property (Section 20). Please explain what the right to “dispose of” intellectual property means in connection with the agreement?

Q10. Section 20 states that the Contractor must grant rights to any media in this contract. Does this mean that product literature, marketing material, and manuals that are OEM proprietary must be allowed to be distributed by the Purchasing Entity with full authority to modify or sell?

A10. This answer has to do with both of the above questions concerning Intellectual Property. The Purchasing Entity will not have full authority to modify or sell any product literature, marketing material and manuals that are OEM proprietary.

Q11. Summary Sales Data (Section 7) Suppliers need to report sales quarterly. This appears to mean only sales made under the contract, but please confirm. Also please confirm whether the data will remain confidential.

A11. Contract sales amounts won't be published but all documents will be subject to open records laws.

Q12. Attachment B: Scope of Work, B.13. Delivery

Does the provision for “other arrangements” cover custom orders that could take up to 150-180 days to deliver depending on the product and manufacturing location? Locally in stock equipment can often be delivered within a week.

A12. Yes, the use of “other arrangements” was meant to mean that if delivery cannot be made within 120 days, then the ordering party and the Supplier will work out a schedule for delivery.

Q13. Please confirm our understanding that service parts are not within the scope of the Master Agreement except when ordered as a completing item(s) for delivery with ordered equipment and as noted in the Warranty provisions.

A13. Service and parts means the warranty work that is performed with parts used to complete the warranty work. Parts in general are now a desirable item.

Q14. Can local dealers be granted authority to cover the full spectrum of quoting/selling/reporting sales/paying admin fees directly to NASPO and their home state, as may be required to comply with an applicable Participating Addendum - as opposed to our central office managing the sales activity for all dealers in Oklahoma and potentially nationwide? If dealers are allowed to quote, sell, report sales, and pay admin fees directly, will the contract be officially assigned by NASPO to each agreeing dealership/dealer family.

A14. The dealers, acting as agents for the Supplier, can quote and sell the equipment and deliver the equipment and receive payments for you. The Master Agreement is with the Supplier. The Participating

Addendums will be with the Supplier. The usage reporting that is submitted to NASPO ValuePoint will be provided by the Supplier, whose dealer network will report sales to, (as they probably already do as business practice). The usage reporting template can be adjusted to fit the information being reported. The administrative fees will be paid by the Supplier. Participating Addendums will address any processes other states require for reporting and any fees they may have.

Q15. Detailed sales data, I presume you (Joyce) are the contact for receiving the Oklahoma sales reports. Please provide email address for the NASPO ValuePoint Cooperative Development Team that is to receive the sales reports. If dealers are not allowed to quote/sell/report sales/pay admin fees directly, our office may not have ready-access to all categories presently shown on the requested detailed sales report. Depending on the allowance of dealers to quote, sell, report, and pay directly - we may need to revisit what content is available to our central office for the detailed sales reports.

A15. The reports can be adjusted according to what type of information can be provided. NASPO ValuePoint will work with the Supplier on the minimum requirements they need for reporting purposes. The contact information will be provided during the Master Agreement process. Oklahoma sales will be reported to the NASPO Value Point contact. Participating Addendums will address any processes other states require for reporting and any fees they may have.

This page replaces the page within the solicitation document that has jumbled text in numbers 5 and 6 of the Management and Leadership questions.

B.21 Administrative and Technical Response Requirements

Technical

The Suppliers who are awarded a Contract are expected to be financially capable of the production of all of the equipment that will be ordered. As a part of the process in subjectively evaluating your company's qualifications to provide equipment in a timely manner upon ordering, please answer **all** of the the following questions **completely** on **separate** pages, retaining the numbering system.

1. How many years has your company been in the new Construction equipment producing industry? _____ years.
2. Has your company ever filed for Bankruptcy? Yes _____ No _____
3. During each the past 5 years what is your average dollar amount of sales in the United States?
2011 \$ _____ 2012 \$ _____ 2013 \$ _____ 2014 \$ _____ 2015 \$ _____
4. How long does it take to produce a typical piece of equipment (base model, not special order)?
_____ months.
Are all of your most popular products (base model, not special order) maintained in inventory?
Yes _____ No _____
5. Have you ever had a recall situation for any of your equipment? Yes _____ No _____ and if yes, approximately how much of a negative impact in a dollar amount was it to the company to repair/replace the equipment? \$ _____.
6. Do you, the manufacturer, or your dealers in your network offer any value-added incentives to purchase such as seasonal sales? Yes _____ No _____, and if so how would you incorporate special sale situations in the contract?

Management and Leadership

Since the dealers are the ones the Purchasing Entities will be buying the equipment and parts from, as well as setting up and delivering the equipment and performing warranty work and maintenance, information given about your relationship with them is vital when evaluating your response. Please answer completely on a separate page, retaining the numbering system.

1. Is your dealer network in every state in the U.S. and U.S. properties? Yes _____ No _____
If no, where are you lacking coverage?

2. Describe how your dealers are chosen?

3. Describe the type of training is mandatory for the dealers to retain their ability to sell your equipment?

4. Are your dealers considered employees or independently owned businesses? Employees_____ Independently owned_____.

5. Are the dealers visited by a regional/district managerial employee of the Supplier on a regular basis? (i.e. auditing, inspection of premises, reporting procedures) If the dealers are independently owned businesses, describe how sales are made and to whom payment is made when the contract is part of a cooperative and who provides the required usage reports. If payment is made to a dealer on your behalf, how is that addressed in your company's policies?

~~6. Will you offer discounts on your extended warranties? Yes_____ No_____. If yes, please include in your response the types of the extended warranties and the terms, if No, still include the types and terms of your extended warranty plans.~~

6. Will you offer discounts on your extended warranties? Yes_____ No_____. If yes, please include in your response the types of the extended warranties and the terms, if No, still include the types and terms of your extended warranty plans.

7. Do you offer green options for hydraulic fluids? Yes_____ No_____. If yes, please provide the specifications for the fluid.

8. The roll out of a contract that has the capacity to serve every state in the United States as well as U.S. Territories is going to have to be well planned. What will you do to introduce this contract to the Purchasing Entities? Please attach your plan on how to make sure this contract is well-advertised, including any marketing ideas samples you may have.

9. Please list cooperative contracts you presently hold and state if they impede your ability to participate in other cooperative contracts.

This page replaces B.17 Allowable Charges. The change is underlined.

B.17. Allowable Charges

Freight/Shipping/Set-up Fees.

Freight from the Supplier to the dealer network locations within the lower 48 states or to the nearest port for Alaska and Hawaii shall not be paid by the Purchasing Entity. Please provide freight costs policy guidelines for your dealers, whether it is a set rate per loaded mile or the dealer is allowed to set the rate.

Delivery is to be FOB Destination (of ordering entity) freight prepaid and added to invoice.

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

Quotes shall show the Supplier's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered.

Allied and incidental items requested by Purchasing Entities shall comply with their state or other government regulations. Allied equipment may only be sold in connection with the sale of a contract item. Items must be clearly labeled on the purchase order or quote as Allied.

Allied and incidental items are attachments, accessories, parts or bundles not manufactured by the contract Supplier that are requested by the Purchasing Entities to complete the purchase of equipment awarded on contract but not substantially convert the product.

Unpublished or non-contract options required to complete a product ordered but not convert a product to where it competes with a product item awarded to another supplier.

This page replaces B.9 Ordering. The change is underlined.

B.9. Ordering

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

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

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

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

Example: List price is \$17,199, and the discount is 23% and the trade-in is \$6,000. $\$17,199 - 23\% = \$13,243.23$. $\$13,243 - \$6000 = \$7,243.23$, final price.

The purchasing entity is responsible for being familiar with all of the contract terms and conditions.

Supplier shall furnish any required Safety Data Sheets or a composite concentration list prior to contract award, with the product invoice, or at the request of the Purchasing Entity.

Suppliers shall provide catalogs and current price lists at no charge upon purchasing entity or Contracting Officer's request. A copy of the catalog pricing page or price list IS to be made available to the purchaser for their accounting divisions.

All equipment shall be delivered with one copy of the operator's manual, and an illustrated repair parts manual or list. If other manuals are required by the Purchasing Entity, they shall be offered at the discount offered in the price attachment.

Changes in Supplier Contact

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

This page replaces the pages in the solicitation for evaluation purposes only.

For evaluation purposes only the Supplier will provide the price, based on the most current Supplier's List Price, less the discount to be offered, of the following types of equipment as a **sampling** of what is offered: This is just for the evaluation.

Skid Steer Loader

Minimum specifications, basic common model requested:

Wheeled Skid Steer Rated Operating load standard of between 1,675 and 2,100 (pounds) _____pounds.

Tipping Load of between 3,475 and 4,200 (pounds) _____pounds.

Bucket Pin Height at Maximum Lift between 116" and 122". _____inches.

Operating Weight of between 6,200 and 7,500 (pounds) _____pounds.

Brand: _____

Model # _____

Current Supplier List Price: \$_____ Less Discount Offered: _____% =

Price: \$_____.

Tracked (Crawler) Excavator

Basic most common model:

Operating weight of between 35,000 and 53,000 (pounds) _____pounds.

Track length between 12' and 15" _____feet.

Shipping Height between 9.50' and 11.50' _____feet.

Bucket digging force between 23,000 lbf and 26,000 lbf, _____lbf.

Maximum digging depth between 18' and 22' feet. _____feet.

Brand: _____

Model # _____

Current Supplier List Price: \$_____ Less Discount Offered: _____% =

Price. \$_____.

Motor Grader

Basic common model:

Operating weight in pounds between 35,000 and 45,000 pounds. _____pounds.

Moldboard length in feet between 11.50' and 15'. _____feet.

Overall length in feet and inches between 27' and 29'8". _____feet _____inches.

Blade lift above ground in inches between 16.50" and 19.50". _____feet _____inches.

Brand: _____

Model # _____

Current Supplier List Price: \$_____ Less Discount Offered: _____% =

Price. \$_____.