

**Master Agreement Number 264788**  
**for**  
**PUBLIC SAFETY VEHICLE LIGHTS, SIRENS, & ACCESSORIES**  
**between**  
**the State of Minnesota**  
**and**  
**Whelen Engineering Company, Inc.**

This Master Agreement is entered into by the State of Minnesota ("Lead State") and the following contractor (each a "Party" and collectively the "Parties") as a result of Solicitation Number 2000015883 (the "RFP") for the purpose of providing Public Safety Vehicle Lights, Sirens, & Accessories through the NASPO ValuePoint cooperative purchasing program:

Whelen Engineering Company, Inc. ("Contractor")  
51 Winthrop Road  
Chester, CT, 06412

**MASTER AGREEMENT CONTACTS.**

Contractor's contact for this Master Agreement is:

Craig Szymanski  
Director of Sales Administration  
[cszymanski@whelen.com](mailto:cszymanski@whelen.com)  
860-526-9504 ext. 2304

Lead State's contact for this Master Agreement is:

Paul Thomas  
Acquisition Management Specialist  
[Paul.Thomas@state.mn.us](mailto:Paul.Thomas@state.mn.us)  
(651)-201-2462

**TERM.** This Master Agreement is effective as of the date of the last signature below or March 7, 2025, whichever is later, and will terminate on February 28, 2027, unless terminated sooner or extended or renewed in accordance with the terms set forth herein. Renewals totaling up to thirty-six (36) months following the initial term may be exercised upon mutual agreement by the Parties.

**ATTACHMENTS.** This Master Agreement includes the following attachments:

Attachment A – Master Agreement Terms and Conditions  
Attachment B – Scope of Work  
Attachment C – Pricing  
Attachment D- Minnesota Security and Data Protection

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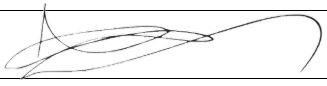


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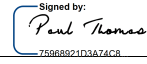
**SIGNATURE.** The undersigned for each Party represents and warrants that this Master Agreement is a valid and legal agreement binding on the Party and enforceable in accordance with the Master Agreement's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Master Agreement and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Master Agreement.

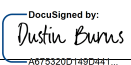
- 1. Contractor: Whelen Engineering Company, Inc.**  
*The Contractor certifies that the appropriate person(s) have executed the Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.*

Print name: Ashish Jain  
Signature:   
Title: CFO Date: 3.21.25

- 2. Lead State: Department of Administration**  
*With delegated authority*

Print name: Paul Thomas  
Signature:   
Title: AMS Date: 3/24/2025

- 3. Commissioner of Administration**  
*As delegated to The Office of State Procurement*

Print name: Dustin Burns  
Signature:   
Title: Heavy Equipment Supervisor Date: 3/24/2025

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**ATTACHMENT A**

**NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS**

**I. Definitions**

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

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

## **II. Term of Master Agreement**

- 2.1 Initial Term.** The initial term of this Master Agreement is for two (2) years. The term of this Master Agreement may be amended beyond the initial term for three (3) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.
- 2.2 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.3 Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.

## **III. Order of Precedence**

- 3.1 Order.** Any Order placed under this Master Agreement will consist of the following documents:

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- 3.1.1** A Participating Entity's Participating Addendum ("PA");
- 3.1.2** NASPO ValuePoint Master Agreement, including all attachments thereto;
- 3.1.3** A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
- 3.1.4** The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
- 3.1.5** Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

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

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

#### **IV. Participants and Scope**

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

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

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- 4.3 Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.
- 4.4 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to [pa@naspovaluepoint.org](mailto:pa@naspovaluepoint.org) to support documentation of participation and posting in appropriate databases.
- 4.5 Participating Entities.**
- 4.5.1** If not proscribed by law or by the Chief Procurement Official of the state in which the entity is located, an entity may be eligible to execute a Participating Addendum directly with Contractor. Such entities may include:
- 4.5.1.1** Political subdivisions, public agencies, and service districts;
  - 4.5.1.2** Public and private educational institutions, including K-12 public, charter, and private schools; institutions of higher education; and trade schools;
  - 4.5.1.3** Federally recognized tribes;
  - 4.5.1.4** Quasi-governmental entities; and
  - 4.5.1.5** Eligible non-profit organizations.
- 4.5.2** Prior to execution of a Participating Addendum with an entity listed above, Contractor shall coordinate with NASPO to confirm the entity's eligibility to execute a Participating Addendum. A determination that an entity is eligible to execute a Participating Addendum is not a determination that procurement authority exists; each entity must ensure it has the requisite procurement authority to execute a Participating Addendum.
- 4.6 Prohibition on Resale.** Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

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- 4.7 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.
- 4.8 Release of Information.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.
- 4.9 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

## **V. NASPO ValuePoint Provisions**

- 5.1 Applicability.** NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.
- 5.2 Administrative Fees**
- 5.2.1 NASPO ValuePoint Fee.** Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.
- 5.2.2 State Imposed Fees.** Some states may require an additional fee be paid by Contractor directly to the state on purchases made by Purchasing



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

### **5.3 NASPO ValuePoint Summary and Detailed Usage Reports**

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

**5.3.2 Summary Sales Data.** "Summary Sales Data" is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.

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



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of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.

**5.3.4 RESERVED.**

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

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

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

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

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

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

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**5.4.5 Most Favored Customer.** Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

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

**5.6 Canadian Participation.** Subject to approval of Contractor and negotiation of coverage of applicable customs, taxes, duty, exchange rate differences, and brokerage fees, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities, housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

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

## **VI. Pricing, Payment & Leasing**

**6.1 Pricing.** The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.

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- 6.1.1** All prices and rates must be guaranteed for the initial term of the Master Agreement.
- 6.1.2** Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.
- 6.1.3** No retroactive adjustments to prices or rates will be allowed.
- 6.2** **Payment.** Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.
- 6.3** **Leasing or Alternative Financing Methods.** The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

## **VII. Ordering**

- 7.1** **Order Numbers.** Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.
- 7.2** **Quotes.** Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an “as needed” basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.

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- 7.3 Applicable Rules.** Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- 7.4 Required Documentation.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- 7.5 Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.
- 7.5.1** Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.
- 7.5.2** Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.
- 7.5.3** Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- 7.5.4** Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.
- 7.5.5** Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.
- 7.6 Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:
- 7.6.1** The services or supplies being delivered;
- 7.6.2** A shipping address and other delivery requirements, if any;
- 7.6.3** A billing address;
- 7.6.4** Purchasing Entity contact information;

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- 7.6.5** Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
  - 7.6.6** A not-to-exceed total for the products or services being ordered; and
  - 7.6.7** The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.
- 7.7 Communication.** All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- 7.8 Contract Provisions for Orders Utilizing Federal Funds.** Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

## **VIII. Shipping and Delivery**

- 8.1 Shipping Terms.** All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor in the United States. If the Purchasing Entity requests a specific shipping method or carrier, which results in increased transportation and handling charges, such charges will be quoted at the time of order and will be prepaid and added to the invoice.
- 8.1.1** Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.
  - 8.1.2** Unless otherwise mutually agreed to, in-stock items must be delivered within ten (10) business days after receipt of order and non-stock items must be delivered within twenty-five (25) business days after receipt of order. Delivery requirements for custom made Items will be negotiated at time of order placement. Orders must be shipped according to the directions of the Customer. Delivery Lead Times to Canada, Alaska, Hawaii, and non-continental U.S. Territories will be negotiated in the Participating Entity's Participating Addendum, or will be quoted at time of order.

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- 8.2 Minimum Shipping.** The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.
- 8.3 Inside Deliveries.** To the extent applicable, all deliveries will be “Inside Deliveries” as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (e.g., scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor’s carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.
- 8.4 Packaging.** All products must be delivered in the manufacturer’s standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity’s Purchase Order number.

## **IX. Inspection and Acceptance**

- 9.1 Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.
- 9.2 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.
- 9.3 Inspection.** All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.
- 9.3.1** Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.



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- 9.3.2** Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
- 9.4 Failure to Conform.** If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.
- 9.5 Acceptance Testing.** Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.
- 9.5.1** The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.
- 9.5.2** If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.
- 9.5.3** Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.
- 9.5.4** Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.
- 9.5.5** No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

## **X. Warranty**

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



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

## **XI. Product Title**

- 11.1 Conveyance of Title.** Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.
- 11.2 Embedded Software.** Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.
- 11.3 License of Pre-Existing Intellectual Property.** Except for Products and/or services provided pursuant to a specific licensing agreement, Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible

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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. The license for any Products and/or services subject to the aforementioned specific licensing agreement shall be covered by a separate licensing agreement which shall be provided to the Purchasing Entity prior to purchase.

## **XII. Indemnification**

**12.1 General Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement. The Contractor's obligations under this provision shall not apply to the portion of such claims or damages caused by the gross negligence or willful misconduct of NASPO, NASPO ValuePoint, the Lead State, Participating Entities, or Purchasing Entities, or their officers, agents, or employees.

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

- 12.2.1** The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
- 12.2.1.1** provided by the Contractor or the Contractor's subsidiaries or affiliates;
  - 12.2.1.2** specified by the Contractor to work with the Product;
  - 12.2.1.3** reasonably required to use the Product in its intended manner, and the infringement could not have been avoided

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by substituting another reasonably available product, system or method capable of performing the same function; or  
**12.2.1.4** reasonably expected to be used in combination with the Product.

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

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

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

### **XIII. Insurance**

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

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

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

**13.3.1** Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability for “insured contracts”, as defined by the policy, which shall include this Agreement and every agreement executed with a Participating Entity or Purchasing Entity under this Agreement, personal injury (including death), advertising liability, and property damage, with a limit of \$1 million per occurrence and \$2 million general aggregate;

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

**13.4 Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within ten (10) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

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

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

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

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

## **XIV. General Provisions**

### **14.1 Records Administration and Audit**

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

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

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

### **14.2 Confidentiality, Non-Disclosure, and Injunctive Relief**

**14.2.1 Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master

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Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

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

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

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

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

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



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unauthorized use or disclosure of any Confidential Information.

- 14.2.2.2** Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.
- 14.2.2.3** Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.
- 14.2.2.4** Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.
- 14.2.3 Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.
- 14.2.4 Purchasing Entity Law.** These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.



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

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

**14.3 Assignment/Subcontracts**

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

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

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

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

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- 14.6 Cancellation.** Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.
- 14.7 Force Majeure.** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.
- 14.8 Defaults and Remedies**
- 14.8.1** The occurrence of any of the following events will be an event of default under this Master Agreement:
- 14.8.1.1** Nonperformance of contractual requirements;
  - 14.8.1.2** A material breach of any term or condition of this Master Agreement;
  - 14.8.1.3** Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;
  - 14.8.1.4** Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
  - 14.8.1.5** Any default specified in another section of this Master Agreement.
- 14.8.2** Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may

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immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

- 14.8.3** If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
- 14.8.3.1** Any remedy provided by law;
  - 14.8.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;
  - 14.8.3.3** Assessment of liquidated damages as provided in this Master Agreement;
  - 14.8.3.4** Suspension of Contractor from being able to respond to future bid solicitations;
  - 14.8.3.5** Suspension of Contractor's performance; and
  - 14.8.3.6** Withholding of payment until the default is remedied.
- 14.8.4** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.
- 14.9 Waiver of Breach.** Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies will not operate as a waiver under this Master Agreement, any Participating Addendum, or any Purchase Order. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a

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Participating Addendum, or Purchase Order will not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, any Participating Addendum, or any Purchase Order.

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

**14.11 No Waiver of Sovereign Immunity**

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

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

**14.12 Governing Law and Venue**

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

**14.12.2** Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and

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

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

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

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

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## **Attachment B SCOPE OF WORK**

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

### **1. OVERVIEW AND DEFINITIONS**

The purpose of this Request for Proposal (RFP) is to establish Master Agreements with qualified Offerors to provide Public Safety Vehicle Lights, Sirens, & Accessories for all Participating States. The objective of this RFP 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. 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 the approval of the individual chief procurement officer and compliance with local statutory and regulatory provisions.

### **2. REQUIRED CAPABILITIES**

The Contractor must be a qualified manufacturer of LED emergency light bars, siren warning accessories, or other related accessories. Qualified manufacturers must have been in business providing these items for a minimum of two (2) years.

### **3. MASTER AGREEMENT DELIVERABLES**

The Customers intend to purchase Public Safety Vehicle Lights, Sirens, & Accessories. Related accessories may include, but are not limited to, items that are part of a "Traffic Awareness Package" or "Vehicular Emergency Warning Products," which includes all warning lights such as roof-mounted light bars, interior lighting packages, and other miscellaneous warning lights like scene lights, spotlights, as well as siren amplifiers, switches, speakers, mounting brackets, etc. Vehicle Mounted Equipment Items such as cages, push grilles, shotgun holders, etc., are also being considered. Items not affixed to the vehicle are excluded. The Lead State reserves the right to determine what products will be allowed in the Master Agreement(s).

Examples of Vehicle Mounted Equipment include but are not limited to:  
Consoles, Partitions, Window Armor, Vehicle Armor, Push bumpers,



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Prisoner Seats, K9 Enclosures and Accessories, Gun Locks, Trunk Trays, Cargo Slides, Printer Mounts, Computer Mounts, Docking Stations, Anti-Theft Devices, Spotlights, Idle Systems, Air Bag Cutouts, Skid Plates, Trunk Organizers, Cargo Barriers, Wiring Harness, Gun Racks, Siren Speakers, etc. Items not affixed to the vehicle are excluded.

**A. Warning Light Specifications**

All warning lights must meet applicable standards for the country the warning lights will be used in. Standards include, but are not limited to, SAE J1113-21 and -41, J575, J578, J595, J845, and subsequent revisions, or appropriate national or international standards (such as CISPR 12 and 25) if SAE standard has been superseded.

**B. Third-Party Documentation**

If requested by the Customer, documentation of independent third-party laboratory certification of light bar modules meeting applicable national and international standards must be provided by the Contractor at no additional cost.

If the Contractor has an AMECA-accredited testing facility, that may suffice for third-party documentation for the products for which the accreditation has been obtained.

**C. Items Offered as New**

All products, materials, supplies, and equipment offered and furnished must be new, of current manufacturer production, and must have been formally announced by the manufacturer as being commercially available as of the date of the Solicitation opening unless otherwise stated in this Solicitation.

**D. Warranty**

See Section 10 of **Attachment A**.

**E. Right To Add**

During the term of the Master Agreement, the Lead State reserves the right to add additional location(s), services, and products upon mutual agreement between the Lead State and the Contractor(s) through a duly executed amendment to the Master Agreement.

**F. Manufacturer Catalogs and Price Lists**

The Contractor will provide copies of the manufacturer's catalogs and price lists if requested by any Customer at no cost to the requestor. The Contractor must also maintain an internet website for Customers to view products, product configurations (if applicable), and warranty information.



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**G. Authorized Distributor List**

The Contractor may submit a list of authorized distributors specific to each state.

The Contractor may choose to provide all quotes, accept all purchase orders, accept all payments, perform all deliveries, and provide all invoices, or the Contractor may delegate these duties to its authorized distributors. The Contractor is responsible for its authorized distributor's performance. No authorized distributor shall serve to terminate or in any way affect the primary legal responsibility of the Contractor for timely and satisfactory performance of the obligations of the Master Agreement.

The Participating Entity reserves the right to remove any authorized distributor only from their Participating Addendum at any time due to poor performance upon written notice to the Contractor. For Participating Entities in states without authorized distributors, the Contractor must take all orders directly until an authorized distributor is assigned.

The Contractor is responsible for collecting and submitting all sales reports from their sales and the authorized distributors and submitting all Administration Fees on invoiced sales, whether they have been paid or not.

The Contractor may add and/or delete Authorized Distributors at any time during the Master Agreement term upon request and mutual agreement of the Participating Entity.

**H. Shipping And Delivery Requirements**

See Section 8 of **Attachment A**.

**I. Product Demonstrations**

If requested, the Contractor must provide product demonstrations at no cost to the Customer. The Contractor will only be required to provide demonstrations to Customers in the states for which they have current executed participating addendums. Product demonstrations may be virtual.

**4. LEAD STATE RESPONSIBILITIES AND TASKS**

The Lead State's Authorized Representative is Paul Thomas, 50 Sherburne Avenue, Suite 112, Saint Paul, MN 55155, 651-201-2462 or his/her successor or delegate, and has the responsibility to monitor the Contractor's performance.

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## **5. SAMPLES**

Unless otherwise agreed to in writing, samples are to be furnished at no charge. Except for those destroyed or mutilated in testing, samples will be returned to the Contractor if requested. If samples are returned in an unusable condition, the customer will be responsible for the cost of the product at the pricing in effect at the time the item(s) are returned.

Attachment C- Pricing

Contract No. 264788

The below list is the current Whelen Distributors eligible on current state PAs on March 14, 2025. Contact Contractor for the current authorized distributors.

SECTION 1: AUTHORIZED DISTRIBUTOR LIST			
Vendor Name:	Whelen Engineering Company, Inc		
Contact Person Name (Customer Service):	Craig Szymanski Contract Administrator		
Street Address:	51 Winthrop Rd		
PO Box:			
City, State, Zip:	Chester, CT, 06412		
Phone #:	860-790-1080		
Toll Free #:	800-294-3536		
Email Address::	<a href="mailto:cszymanski@whelen.com">cszymanski@whelen.com</a>		
DISTRIBUTOR NAME	DISTRIBUTOR ADDRESS (STREET, CITY, STATE, ZIP CODE)	CONTACT INFORMATION (NAME, EMAIL, PHONE)	U.S. STATES UNAVAILABLE TO THIS DISTRIBUTOR
HARD WIRED AUTO ELECTRONICS LLC	1586 VT ROUTE 109 , WATERVILLE VT 05492	Jesse Hanley, <a href="mailto:jesse@hardwiredautoelectronics.com">jesse@hardwiredautoelectronics.com</a> , 802-730-4223	Vermont
ADAMSON INDUSTRIES	45 RESEARCH DR , HAVERHILL MA 01832	Mario Garcia, <a href="mailto:mgarcia@adamsonindustries.com">mgarcia@adamsonindustries.com</a> , 978-681-0370	Vermont
LEHR Auto Electric	9240 Prototype Drive, Reno, NV 89521	Jim Stommel, <a href="mailto:sales@lehrauto.com">sales@lehrauto.com</a> , 800-982-8468	Hawaii, Nevada, Oregon
Northern Safety Technology	5708 Upper 147th St W., Suite 107, Apple Valley, Minnesota 55124	Mike Dow, <a href="mailto:mikedow@nstmn.com">mikedow@nstmn.com</a> , (651) 765-2657	Iowa, Minnesota, North Dakota, , South Dakota
Keltek, Inc	205 N. High Street, Baxter, Iowa 50028	Sean Williams, <a href="mailto:sean.williams@keltekinc.com">sean.williams@keltekinc.com</a> , (641) 227-2222	Minnesota , Iowa, North Dakota, South Dakota
Karl Chevrolet	1101 SE Oralabor, Ankeny, Iowa 50021	Heather Rudolph, <a href="mailto:hrudolph@karlchevrolet.com">hrudolph@karlchevrolet.com</a> , (515) 299-4479	Iowa
ERS Emergency Services	1204 6th St N, Nampa, Idaho 83687	Scott Holloway, <a href="mailto:pres.ersinc@gmail.com">pres.ersinc@gmail.com</a> , (208) 362-1741	Idaho
L & W Emergency Equipment	250 East Court St, Lawrenceburg, Kentucky, 40342	Lance Roe, <a href="mailto:lance@lwoutfitters.com">lance@lwoutfitters.com</a> , (502) 839-6334	Kentucky, West Virginia
Radio Comm Systems Inc	4445 Robards Lane, Louisville, Kentucky, 40218	Arvil Hall, <a href="mailto:rhall@rcs.com">rhall@rcs.com</a> , (502) 587-7384	Kentucky, West Virginia
Emerg-Equip	1626 Walker Road, Scott, Louisiana 70583	CJ Hammond, <a href="mailto:cjhammond@emerg-equip.com">cjhammond@emerg-equip.com</a> , (337) 534-4267	Louisiana
TEECO Safety	1360 Grimmet Drive, Shreveport, Louisiana 71107	Randy Nash, <a href="mailto:randy@teecosafety.com">randy@teecosafety.com</a> , (318) 424-5176	Louisiana
Vehicle Parts & Equipment	723 Deckbar Avenue, Jefferson, Louisiana 70121	Paul Lulei, <a href="mailto:vpw911@aol.com">vpw911@aol.com</a> , (504) 835-5716	Louisiana
Emergency Automotive Tech	2755 Geneva Avenue, Oakdale, Minnesota 55128	Kelly O'Tool, <a href="mailto:KellyO@eatimn.com">KellyO@eatimn.com</a> , (651) 765-2657	Minnesota, North Dakota, South Dakota
911 Custom	6970 West 152nd Terrace, Overland Park, Kansas 66223	Kevin Beck, <a href="mailto:kevin@911custom.com">kevin@911custom.com</a> , (913) 390-8540	Missouri, Nebraska, Oklahoma
Code 4 Services	37882 County Highway 3, Pelican Rapids, Minnesota, 56572	Jared Grefsrud, <a href="mailto:jared@code4services.com">jared@code4services.com</a> , (320) 266-1600	North Dakota
Stolz Telecom, LLC	6825 Camille Avenue, Oklahoma City, Oklahoma 73149	Robert Stolz, <a href="mailto:rob@stolztele.com">rob@stolztele.com</a> , (405) 632-2262	Oklahoma
Sirennet	7800 SW Durham Street, Suite 700, Tigard, Oregon 97224	Stuart McLoughlin, <a href="mailto:StuartM@sirennet.com">StuartM@sirennet.com</a> , (503) 670-4700	Oregon, Washington
Systems for Public Safety	8909 S Tacoma Way, Lakewood, Washington 98499	Crystal Hurley, <a href="mailto:krista@systemsforpublicsafety.com">krista@systemsforpublicsafety.com</a> , (253) 983-1103	Oregon, Washington

# Attachment C- Pricing

## Contract No. 264788

SECTION 2: CATALOG DISCOUNT OFF LIST %		
Vendor Name:	Whelen Engineering Company, Inc.	
Contact Person Name (Customer Service):	Craig Szymanski, Contract Administrator	
Street Address:	51 Winthrop Road	
P.O. Box:		
City, State, Zip	Chester, CT, 06412	
Phone #:	860-790-1080	
Toll Free #:	800-294-3536	
Email Address:	<a href="mailto:cszymanski@whelen.com">cszymanski@whelen.com</a>	
Website:	<a href="http://www.whelen.com">www.whelen.com</a>	
Spec. Number	Information Requested	Answer
2.1	Catalog Info	
2.1.1	Manufacturer:	Whelen Engineering Company, Inc.
2.1.2	Pricelist/Catalog Date/Pricelist Catalog ID:	PL24.0WL and PL24.0PAWL
2.2	Percentage Discount- Pricelist/Catalog Pricing	
2.2.1	Discount Off Pricing Listed in Catalog:	US Customers: 39% off list price. Canadian Customers: 33% off list price multiplied by the exchange rate at time of quote.
2.3	Standard Material Warranty	
2.3.1	Warranty (hours, months, or years):	Standard 2-Year Warranty, 5-Year Warranty on certain products and a 10-Year Warranty on premium products. See our warranty statement at <a href="https://www.whelen.com/support-training/whelen-warranty/">https://www.whelen.com/support-training/whelen-warranty/</a>

## SECTION 3: QUANTITY PRICE BREAKS

[illegible]

# Attachment C- Pricing

## Contract No. 264788

SECTION 4- Additional Vendor Information	
Vendor's Legal Business Name	Whelen Engineering Company, Inc.
Vendor's HQ Address (Street, City, State, Zip Code)	51 Winthrop Road, Chester, CT, 06412
Contract Contact Person Name, Email Address, Phone	Craig Szymanski, cszymanski@whelen.com, 860-790-1080
Customer Service Contact Name, Email Address, Phone (Orders/Quotes/Product Questions)	Information will be provided with each PA, as the contact information changes based on location.

## Attachment C- Pricing Contract No. 264788

**1. Contract Pricing.**

**1.1 In General.** Prices listed take into consideration all inherent costs of providing the requested goods and services. The Contractor agrees to pay any and all fees, including, but not limited to: duties, custom fees, permits, brokerage fees, licenses and registrations, government taxes, overhead, profit, parking permits, proper disposal of materials, insurance payments. The State will not pay any additional charges beyond the price(s) listed, unless otherwise provided for by law or expressly allowed by the Contract. Prices listed within Attachment C are maximum prices. These maximum prices shall remain firm for the initial term of the Contract. The Price List may not include any additional terms or conditions. A unit price and a total for the quantity must be stated for each item quoted. Prices must be quoted in United States currency. Any increase to Contract pricing requires a duly executed amendment to this Contract. Contractor may provide lower pricing at its discretion without requiring a duly executed amendment to the Contract.

**1.2 Discount-off List Pricing.** Prices offered for equipment are a percent (%) discount from the Manufacturer's (Original Equipment Manufacturer – OEM) List Price or Dealer's List Price. The discount offered must remain firm, and may be increased, during the life of the Contract. After the initial term of the Contract, the manufacturer's or dealer's price list may be updated upon mutual agreement by the State and the Contractor through a fully executed amendment.

Product	Vendor Cost from Supplier	Discount-off List Offered	Computation	State Contract Price
XYZ Tablet	\$300.00	3.5%	$\$300.00 - (300 \times 0.035) = \$289.50$	\$289.50

**2. Prompt Payment Terms.** Contractor's payment terms are: NET30.

**3. Delivery.** Unless otherwise mutually agreed to, in-stock items must be delivered within ten (10) business days after receipt of order and non-stock items must be delivered within twenty-five (25) business days after receipt of order. Delivery requirements for custom made Items will be negotiated at time of order placement. Orders must be shipped according to the directions of the Customer. Delivery Lead Times to Canada, Alaska, Hawaii, and non-continental U.S. Territories will be negotiated in the Participating Entity's Participating Addendum, or will be quoted at time of order.

**4. Transportation.** All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor in the United States. If the Purchasing Entity requests a specific shipping method or carrier, which results in increased transportation and handling charges, such charges will be quoted at the time of order and will be prepaid and added to the invoice. Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.

**Minimum Order Amounts:**

Contiguous United States and Canada: \$50.00

Alaska, Hawaii: \$1000.00

*Any order for less than the specified amount above is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.*



**5. Pricing .** All prices and rates must be guaranteed for the initial term of the Master Agreement. Request for price increases for current contract items after the initial term will be limited to once per year unless a market situation arises. If offering new state-of-the-art equipment, the manufacturer's price list may only be changed up to two (2) times within any twelve (12) month period. Any changes in pricing must be submitted in writing, to the Lead State, at a minimum of thirty (30) days prior to a price increase. Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.

**6. Quantity Price Breaks.**

Responders may also offer quantity price breaks. The price breaks will be in the form of a higher percentage discount, off of the Manufacturer Price List, for the order. Use Section 3- Price Breaks tab at the bottom of the worksheet to submit the higher discounts offered and the quantity break lines (e.g., 5% higher discount for 20-29 units ordered, 10% higher discount for 30-39 units ordered, etc.).

## Attachment D

### MASTER AGREEMENT EXHIBIT

### MINNESOTA SECURITY AND DATA PROTECTION

These terms and conditions shall only apply to Participating Entities and Purchasing Entities in the State of Minnesota.

1. To the extent to which it applies, Contractor is responsible for the security and protection of data subject to and related to Cloud Services. The terms, conditions, and provisions of this Security and Data Protection section take precedence and will prevail over any other terms, conditions, and provisions of the Master Agreement, if in conflict. This Security and Data Protection section, including its sub-sections, survives the completion, termination, expiration, or cancellation of the Master Agreement.
2. For the purposes of this Security and Data Protection section, the following terms have the following meanings:
  - 2.1 "Cloud Services" includes "cloud computing" as defined by the U.S. Department of Commerce, NIST Special Publication 800-145 (currently available online at: <http://nvlpubs.nist.gov/nistpubs/Legacy/SP/nistspecialpublication800-145.pdf>) and any other software, hardware, hosting service, subscription, or other service or product by which Contractor stores, transmits, processes or otherwise has access to State data.
  - 2.2 "State" refers to each State which has executed a Participating Addendum with the Contractor.
  - 2.3 "Data" has the meaning of "government data" in Minn. Stat. § 13.02, subd. 7.
  - 2.4 "Not public data" has the meaning in Minn. Stat. § 13.02, subd. 8a.
  - 2.5 "Security incident" means any actual, successful or suspected: (1) improper or unauthorized access to, viewing of, obtaining of, acquisition of, use of, disclosure of, modification of, alteration to, loss of, damage to or destruction of State data; (2) interference with an information system; (3) disruption of or to Contractor's service(s); or (4) any similar or related incident.
  - 2.6 "Privacy incident" means violation of the Minnesota Government Data Practices Act (Minnesota Statutes chapter 13); violation of federal data disclosure or privacy requirements in federal laws, rules and regulations; or breach of a contractual obligation to protect State data. This includes, but is not limited to, improper or unauthorized access to, viewing of, obtaining of, acquisition of, use of, disclosure of, damage to, loss of, modification of, alteration to or destruction of State data protected by such State or federal laws or by contract.
3. Data Ownership. Each State solely and exclusively owns and retains all right, title and interest, whether express or implied, in and to any and all State data. Contractor has no and acquires no right, title or interest, whether express or implied, in and to any State's data.
  - 3.1 Contractor will only use State data for the purposes set forth in the Contract. Contractor will only access State data as necessary for performance of this Contract. Contractor will not access State user accounts except to respond to service or technical problems or at the State's specific request.



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- data. Encryption keys to State data will only be accessed by Contractor as necessary for performance of this Contract.
8. **Data Storage.** Contractor warrants that any and all State data will be stored, processed, and maintained solely on designated servers and that no such data at any time will be processed on or transferred to any portable computing device or any portable storage medium, unless that storage medium is in use as part of the Contractor's designated backup and recovery processes.
  9. **Data Center and Monitoring/Support Locations.** During the term of the Contract, Contractor will: (1) locate all production and disaster recovery data centers that store, process or transmit State data only in the continental United States, (2) store, process and transmit State data only in the continental United States, and (3) locate all monitoring and support of all Cloud Services only in the continental United States. The State has the right to on-site visits and reasonable inspection of the data centers upon notice to Contractor of seven calendar days prior to visit.
  10. **Security Audits & Remediation.** Contractor will audit the security of the systems and processes used to provide any and all Cloud Services, including those of the data centers used by Contractor to provide any and all Cloud Services to the State. This security audit: (1) will be performed at least once every calendar year beginning with 2016; (2) will be performed according Statement on Standards for Attestation Engagements ("SSAE") 16 Service Organization Control ("SOC") 2, International Organization for Standardization ("ISO") 27001, or FedRAMP; (3) will be performed by third party security professionals at Contractor's election and expense; (4) will result in the generation of an audit report ("Contractor Audit Report"), which will, to the extent permitted by applicable law, be deemed confidential information and as not public data under the Minnesota Government Data Practices Act (Minnesota Statutes chapter 13); and (5) may be performed for other purposes in addition to satisfying this section.
    - 10.1 Upon the State's reasonable, advance written request, Contractor will provide to the State a copy of the Contractor Audit Report.
    - 10.2 Contractor will make best efforts to remediate any control deficiencies identified in the Contractor Audit Report in a commercially reasonable timeframe.
    - 10.3 If the State becomes aware of any other Contractor controls that do not substantially meet the State's requirements, the State may request remediation from Contractor. Contractor will make best efforts to remediate any control deficiencies identified by the State or known by Contractor, in a commercially reasonable timeframe.
  11. **Insurance and Liability.** Contractor warrants that it has and will maintain the insurance described within each executed Participating Addendum. An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required provided that Contractor warrants that the minimum coverage requirements below are met.
  12. **Subcontractors and Third Parties.** Contractor warrants that no State data will be transmitted, exchanged or otherwise provided to other parties except as specifically agreed to in writing by the State's Chief Information Security Officer or delegate. Contractor must ensure that any contractors, subcontractors, agents and others to whom it provides State data, agree in writing to be bound by the same restrictions and conditions under this Contract that apply to Contractor with respect to such data.
  13. **Compliance with Data Privacy and Security Laws and Standards.** Contractor shall comply with all applicable State and federal data privacy and data security laws, rules, and regulations.
  14. **Remedies.** Contractor acknowledges that the State, because of the unique nature of its data, would suffer irreparable harm in the event that Contractor breaches its obligation under this Security and Data Protection section, and monetary damages may not adequately compensate the State for such a breach. In such circumstances, the State will be entitled, in addition to monetary relief, to injunctive

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relief or specific performance as may be necessary to restrain any continuing or further breach by Contractor, without showing or proving any actual damages sustained by the State.

- 15. Business Continuity.** Contractor shall have written business continuity and disaster recovery plans that define the roles, responsibilities and procedures necessary to ensure that Cloud Services provided under this Contract shall be maintained continuously in the event of a disruption to the Contractor's operations, regardless of the cause of the disruption. Such plans must, at a minimum, define the Contractor's actions to address the impacts of the following key areas likely to cause a disruption to Contractor's operations: loss of key personnel, loss of facility, and loss of information technology. Contractor must conduct testing and review of its business continuity and disaster recovery plan at least annually. Upon State request, Contractor must also participate, at mutually agreed upon times, in State business continuity and disaster recovery testing, training, and exercise activities.

Any term or condition that allows the Contractor to terminate the Contract for any or no reason (i.e., termination for convenience) is null and void. In the event of termination or cancellation of this Contract for any reason, the Contractor shall continue to provide any then-existing Cloud Services for as long as the State needs to transfer its data, software and other assets to an alternate service or service provider. After any such termination or cancellation, the State may purchase the continuing Cloud Services at the pricing in effect prior to such termination or cancellation. The fee for any such purchase shall be prorated for the period of time needed, as determined by the State, and shall be reduced by the amount paid for Cloud Services that were not used prior to such termination or cancellation. The amount of any such fee reduction shall be determined on a pro-rata basis. The Contractor shall refund to the State any unused portion of payments for Cloud Services.

- 16. Background Checks.** Contractor represents that it has conducted and will conduct background investigations into all of Contractor's agents, employees, and subcontractors that will provide Cloud Services to the State. Such background investigations must have been or will be conducted by investigating local, state and federal criminal records, local, state and federal civil case records, and employment references.

If any provision of this sub-section is found to violate any applicable laws, rules, or State policies, then the Contractor will be relieved of all obligations arising under such provision. Notwithstanding anything to the contrary in this sub-section, this sub-section is only applicable and effective to extent that it is consistent with applicable laws, rules, and State policies.

- 17. Secure Coding.** Contractor warrants that all Cloud Services are free from any and all defects in materials, workmanship, and design. Contractor warrants that all Cloud Services are free from any and all viruses, malware, and other harmful or malicious code. Contractor must scan all source code for vulnerabilities, including before and after any source code changes are made and again before being placed into production, and must promptly remediate any and all vulnerabilities. Contractor must follow best practices for application code review and the most current version of the OWASP top 10.
- 18. Compliance with Data Privacy and Security Laws and Standards.** Contractor shall comply with Contractor shall comply with all applicable State and federal data privacy and data security laws, rules, and regulations.
- 19.** For the term of this Contract, Contractor will maintain an ISO 27001 Certification for any and all Cloud Services provided under this Contract.