

## **Solicitation CH16012**

### **NASPO ValuePoint Cloud Solutions**

**Bid Designation: Public**

State of Utah



**State of Utah**

## Bid CH16012

### NASPO ValuePoint Cloud Solutions

Bid Number **CH16012**  
 Bid Title **NASPO ValuePoint Cloud Solutions**

Bid Start Date **Dec 21, 2015 11:15:04 AM MST**  
 Bid End Date **Mar 10, 2016 1:00:00 PM MST**  
 Question & Answer End Date **Jan 29, 2016 12:00:00 PM MST**

Bid Contact **Christopher Hughes**  
**Contracts Analyst**  
**DAS**  
**801-538-3254**  
**christopherhughes@utah.gov**

Contract Duration **See Specifications**  
 Contract Renewal **See Specifications**  
 Prices Good for **Not Applicable**

**Bid Comments**    **The State of Utah, Division of Purchasing (Lead State) is requesting proposals for cloud solutions in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The purpose of this Request for Proposals (RFP) is to establish Master Agreements with qualified Offerors to provide services related to cloud solutions for all Participating Entities. The objective of this RFP is to obtain best value, and 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 shall be extended to state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the individual state procurement director and compliance with local statutory and regulatory provisions. The initial term of the Master Agreement shall be ten (10) years with no renewal provisions; however, Contract Vendors must submit an annual certification that they are still compliant with the mandatory minimum requirements and technical specification of the RFP.**

**Each state, territory, and participating entity is unique in how they currently employ cloud solutions; some are utilizing cloud solutions to augment services that their technology departments provide to end users and some have not entered the realm of outsourcing technical solutions to cloud solutions providers. This cooperative procurement effort's objective is to provide states, territories, and their authorized political subdivisions with high quality cloud based service providers that have the ability to provide a menu of cloud solutions offerings that will ultimately increase the technology department's overall efficiency, reduce costs, improve operational scalability, provide business continuity, increase collaboration efficiencies, and allow for expanded flexibility in work practices and system improvements.**

**The resulting Master Agreement contract(s) will provide Participating Entities with access to technical capabilities that run in cloud environments and meet the NIST Essential Characteristics. Sub-categories in scope are the three NIST Service Models, Software as a Service (SaaS), Platform as a Service (PaaS), and Infrastructure as a Service (IaaS).**

**The awarded contracts will allow Participating Entities to choose cloud solutions that meet the following descriptions:**

**Commercially available cloud computing services**  
**Meets the National Institute for Standards and Technology (NIST) definition of Cloud Computing**  
**Open to all deployment models (private, public, community or hybrid), vendors specify deployment models**

**Added on Dec 22, 2015:**

Please do not contact the State of Utah Division of Purchasing. All questions must be posted on Bidsync. Attachment H has been uploaded to this solicitation.

Added on Dec 24, 2015:

Solicitation has been revised to include the State of Vermont's Terms and Conditions.

Added on Jan 5, 2016:

This addendum adds the Exhibits to Attachment B as separate documents.

Added on Jan 12, 2016:

The contract signature page has been uploaded as "Vendor Info Form". Please complete this document, sign it, and attach it to your proposal.

Added on Jan 15, 2016:

Louisiana has provided its intent to participate.

And the Commonwealth of Virginia has revised its Intent to Participate which includes Virginia's Terms and Conditions.

Added on Jan 28, 2016:

This addendum is being provided to inform Offerors that the State of Alabama has provided its intent to participate in this RFP.

Added on Feb 1, 2016:

Florida has submitted an Intent to Participate in this solicitation.

Added on Feb 3, 2016:

The following documents have been amended: Cloud Solutions - Request for Proposals - CH16012 (final), Attachment A - NASPO ValuePoint Master Agreement Terms and Conditions (final), Attachment G - Cost Proposal (final), and Attachment H - Identification of Service Models (final). Offerors should review all of the new documents.

The Request for Proposals document was modified in response to questions posted during the Q&A period. In particular Sections 5, 6, 7, 8, and 9 have been modified.

Attachment A, G, and H were modified in response to questions posted during the Q&A period.

Also, Attachment F has been deleted.

In addition, an Acknowledgement of Amendments to the RFP has been created. Offerors must complete and return this document as part of its proposal.

Offerors should download a new packet.

Added on Feb 5, 2016:

The "Cloud Solutions - Request for Proposals - CH16012final.docx" and the "CH16012 - Score Sheet.xls" were modified to reflect that the total possible point for an Offeror's technical response is 1325 points.

Offerors are encouraged to read Section 4.3.2.

Added on Feb 10, 2016:

The End Date for this Solicitation has been extended from February 26, 2016 to March 10, 2016 at 1:00 pm MTN.

The RFP document as been modified and a new document has been uploaded "Cloud Solutions - Request for Proposals - CH16012(final) - 02102016". Offerors should use this document in responding to the solicitation. Also the Acknowledgement of Amendments to the RFP has been updated to "ACKNOWLEDGEMENT OF AMENDMENTS TO RFP (final) - 02102016". Offers should attach this document in responding to this RFP.

#### Addendum # 1

New Documents	Attachment H - Identification of Service Models.docx
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#### Addendum # 2

New Documents	VT terms for BGS multistate procurements 10Dec2015.pdf
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#### Addendum # 3

New Documents	Exhibit 1 to Attachment B - CAIQ v3.0.1-09-16-2014.xlsx Exhibit 2 to Attachment B - CSA_CCM_v3.0.1-09-16-2014.xlsx
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#### Addendum # 4

New Documents

Vendor Info Form.docx

**Addendum # 5**

New Documents

Louisiana - Intent to Participate.pdf  
 Virginia - Intent to Participate - Revision.pdf

**Addendum # 6****Addendum # 7****Addendum # 8**

New Documents

ACKNOWLEDGEMENT OF AMENDMENTS TO RFP final.docx  
 Attachment H - Identification of Service Models final.docx  
 Attachment A - NASPO ValuePoint Master Agreement Terms and Conditions final.docx  
 Attachment G - Cost Proposal final.docx  
 Cloud Solutions - Request for Proposals - CH16012final.docx  
 CH16012 - Score Sheet.xls

Removed Documents

Attachment A - NASPO ValuePoint Master Agreement Terms and Conditions.docx  
 Attachment F - Usage Report Summary - Sample - NASPO ValuePoint.xlsx  
 Attachment G - Cost Proposal.docx  
 CH16012 - Score Sheet.xls  
 Cloud Solutions - Request for Proposals - CH16012.docx  
 Attachment H - Identification of Service Models.docx

**Addendum # 9**

New Documents

Cloud Solutions - Request for Proposals - CH16012final.docx  
 CH16012 - Score Sheet.xls

Removed Documents

Cloud Solutions - Request for Proposals - CH16012final.docx  
 CH16012 - Score Sheet.xls

**Addendum # 10**

New Documents

ACKNOWLEDGEMENT OF AMENDMENTS TO RFP final - 02102016.docx  
 Cloud Solutions - Request for Proposals - CH16012final - 02102016.docx

Removed Documents

ACKNOWLEDGEMENT OF AMENDMENTS TO RFP final.docx  
 Cloud Solutions - Request for Proposals - CH16012final.docx

Previous End Date

Feb 26, 2016 1:00:00 PM MST

New End Date

Mar 10, 2016 1:00:00 PM MST

**Item Response Form**

Item

CH16012--01-01 - Cloud Solutions



Quantity 1 n/a

Unit Price

Delivery Location

**State of Utah**

No Location Specified

**Qty 1**

**Description**

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

# STATE OF UTAH



## **SOLICITATION NO. CH16012**

NASPO ValuePoint Cloud Solutions

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RESPONSES DUE NO LATER THAN:

Mar 10, 2016 1:00:00 PM MST

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RESPONSES MAY BE SUBMITTED ELECTRONICALLY TO:

[www.bidsync.com](http://www.bidsync.com)

RESPONSES MAY BE MAILED OR DELIVERED TO:

State of Utah  
Division of Purchasing  
3150 State Office Building, Capitol Hill  
Salt Lake City, Utah 84114-1061

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# State of Utah

## Request for Proposal

Legal Company Name (include d/b/a if applicable) <input type="text"/>	Federal Tax Identification Number <input type="text"/>	State of Utah Sales Tax ID Number <input type="text"/>	
Ordering Address <input type="text"/>	City <input type="text"/>	State <input type="text"/>	Zip Code <input type="text"/>
Remittance Address (if different from ordering address) <input type="text"/>	City <input type="text"/>	State <input type="text"/>	Zip Code <input type="text"/>
Type <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> Corporation Partnership Proprietorship Government	Company Contact Person <input type="text"/>		
Telephone Number (include area code) <input type="text"/>	Fax Number (include area code) <input type="text"/>		
Company's Internet Web Address <input type="text"/>	Email Address <input type="text"/>		
Discount Terms (for prompt payment discounts): <input type="text"/>	Days Required for Delivery After Receipt of Order (see attached for any required minimums) <input type="text"/>		

By submitting a proposal in response to this RFP, the Offeror acknowledges and agrees that the specifications, terms and conditions, or other elements of the RFP are not ambiguous, confusing, contradictory, unduly restrictive, erroneous, or anticompetitive. The Offeror further acknowledges that it has read this RFP, along with any attached or referenced documents, and this document, including the General Provisions.

Offeror's Authorized Representative's Signature <input type="text"/>	Date <input type="text"/>
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Type or Print Name	Position or Title
<input type="text"/>	<input type="text"/>

## NOTICE

When submitting a proposal electronically through BidSync, it is the sole responsibility of the Offeror to ensure that the proposal is received by BidSync prior to the closing date and time. Each of the following steps in BidSync MUST be completed in order to place an offer:

- A. Login to [www.bidsync.com](http://www.bidsync.com);
- B. Locate the bid (solicitation) to which you are responding;
  - a. Click the "Search" tab on the top left of the page;
  - b. Enter keyword or bid (solicitation) number and click "Search";
- C. Click on the "Bid title/description" to open the Bid (solicitation) Information Page;
- D. "View and Accept" all documents in the document section;
- E. Select "Place Offer" found at the bottom of the page;
- F. Enter your pricing, notes, and other required information and upload attachments to this page;
- G. Click "Submit" at the bottom of the page;
- H. Review Offer(s); and
- I. Enter your password and click "Confirm".

Note that the final step in submitting a proposal involves the Offeror's acknowledgement that the information and documents entered into the BidSync system are accurate and represent the Offeror's actual proposal. This acknowledgement is registered in BidSync when the Offeror clicks "Confirm". BidSync will post a notice that the proposal has been received. This notice from BidSync MUST be recorded prior to the closing date and time or the proposal will be considered late and will not be accepted.

Be aware that entering information and uploading documents into BidSync may take considerable time. Please allow sufficient time to complete the online forms and upload documents. Offerors should not wait until the last minute to submit a proposal. It is recommended that Offerors submit proposals a minimum of 24 hours prior to the closing date and time. The deadline for submitting information and documents will end at the closing time indicated in the solicitation. All information and documents must be fully entered, uploaded, acknowledged (Confirm) and recorded into BidSync before the closing date and time or the system will stop the process and the proposal will be considered late and will not be accepted.

Proposals submitted in BidSync are completely secure. No one (including the Division of Purchasing) can see proposals until after the closing date and time. Offerors may modify or change their proposals at any time prior to the closing date and time. However, all modifications or changes must be completed and acknowledged (Confirm) in the BidSync system prior to the closing date and time. BidSync will post a notice that the modification/change (new offer) has been received. This notice from BidSync MUST be recorded prior to the closing date and time or the response will be considered late and will not be accepted.

Section 46-4-402(2) of the Utah Code provides that unless otherwise agreed between a sender (Offeror) and the recipient (Division of Purchasing), an electronic record is received when: (a) it enters an information processing system that the recipient has designated or uses for the purpose of receiving electronic records or information of the type sent and from which the recipient is able to retrieve the electronic record; and (b) it is in a form capable of being processed by that system

## GENERAL PROVISIONS

- 1. GOVERNING LAWS:** All purchases made under this Request for Proposals (RFP) are subject to the Utah Procurement Code and the applicable State of Utah Administrative Code. These are available at [www.purchasing.utah.gov](http://www.purchasing.utah.gov). By submitting a proposal, the Offeror warrants that it and the procurement item(s) purchased under this RFP comply fully with all applicable Federal and State laws and regulations, including applicable licensure and certification requirements.
- 2. SUBMITTING A PROPOSAL:** By submitting a proposal in response to this RFP, the Offeror acknowledges that the minimum requirements, technical specifications, scope of work, and the evaluation process, outlined in this RFP are fair, equitable, not unduly restrictive, and understood. Any exceptions to the content of this RFP, including the specifications and minimum requirements, must be addressed during the Question and Answer period or protested in writing to the Division of Purchasing before the closing date and time.
- 3. EVALUATION:** The evaluation of the Offeror's proposal shall be conducted in accordance with Part 7 of the Utah Procurement Code. An evaluation committee may ask questions of Offerors to clarify proposals provided the questions are submitted and answered in writing. The record of questions and answers shall be maintained in the file.
- 4. BEST AND FINAL OFFERS:** At any time during the evaluation process, the evaluation committee, with the approval of the director or head of the issuing procurement unit, may request best and final offers from responsible and responsive offerors in accordance with Part 7 of the Utah Procurement Code and applicable administrative rules, and evaluate those offers. If an offeror chooses not to participate in discussion or does not make a timely best and final offer, its immediately previous proposal will be treated as the offeror best and final offer.
- 5. BRAND NAME OR EQUAL SPECIFICATION:** Wherever in this RFP an item is defined by using a trade name, brand name, or a manufacturer and/or model number, it is intended that the words, "or equivalent" apply; and invites the submission of equivalent products by the Offerors.
- 6. SAMPLES:** Samples of item(s) specified in this offer, brochures, etc., when required by this RFP, must be furnished free of expense to the State of Utah. Any item not destroyed by tests may, upon request made at the time the sample is furnished, be returned at the Offeror's expense.
- 7. DEBRIEFING OF UNSUCCESSFUL OFFERORS:** The Utah Division of Purchasing does not conduct debriefings nor collect detailed explanations of evaluator's scores.
- 8. DEBARMENT:** By submitting a proposal, the Offeror certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the Offeror cannot certify this statement, attach a written explanation for review by the State.
- 9. ENERGY CONSERVATION AND RECYCLED PRODUCTS:** The Offeror is encouraged to offer Energy Star certified products or products that meet Federal Energy Management Program (FEMP) standards for energy consumption. The State also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in this RFP.
- 10. SALES TAX ID NUMBER:** Utah Code Annotated (UCA) 59-12-106 requires anyone filing a proposal with the state for the sale of tangible personal property or any other taxable transaction under UCA 59-12-103(1) to include their Utah sales tax license number with their proposal. For information regarding a Utah sales tax license see the Utah State Tax Commission's website at [www.tax.utah.gov/sales](http://www.tax.utah.gov/sales). The Tax Commission is located at 210 North 1950 West, Salt Lake City, UT 84134, and can be reached by phone at (801) 297-2200.
- 11. PROTESTS:** Pursuant to Utah Code §63G-6a-1602, an Offeror may: (1) protest the rejection of their proposal; (2) protest an alleged grievance in connection with the procurement process; or (3) protest an alleged grievance in connection with the award of a contract. Protests must be made to the State of Utah Chief Procurement Officer. A notice of protest must be submitted either: (1) before the closing of date of the proposals, as provided on Bidsync; or (2) if the person filing the protest did not know and should not have known of the facts giving rise to the protest before the closing date for proposals, within seven days after the day on which the person knows or should have known of the facts giving rise to the protest. All protests must be submitted in accordance with Part 16 of Utah Procurement Code and applicable administrative rules.

In accordance with the requirements set forth in Section 63G-6a-1602(2)(b), a person filing a protest must include a concise statement of the grounds upon which the protest is made. A concise statement of the grounds for a protest should include the relevant facts leading a protestor to contend that a grievance has occurred, including but not limited to specifically referencing: (i) an alleged violation of Utah Procurement Code 63G-6a; (ii) an alleged violation of Administrative Rule R33 or other applicable rule; (iii) a provision of the request for proposals, invitation for bids, or other solicitation allegedly not being followed; (iv) a provision of the solicitation alleged to be: ambiguous, confusing, contradictory, unduly restrictive, erroneous, anticompetitive, or unlawful; (v) an alleged error made by the evaluation committee or conducting procurement unity; (vi) an allegation of bias by the committee or an individual committee member; or (vii) a scoring criteria allegedly not being correctly applied or calculated.

None of the following qualify as a concise statement of the grounds for a protest:

- (i) claims made after the opening of bids or closing date of proposals that the specifications, terms and conditions, or other elements of a solicitation are ambiguous, confusing, contradictory, unduly restrictive, erroneous, or anticompetitive;
- (ii) vague or unsubstantiated allegations that do not reference relevant or specific facts including, but not limited to, vague or unsubstantiated allegations by a bidder, offeror, or prospective contractor that: (A) a bidder, offeror, or prospective contractor should have received a higher score or that another bidder, offeror, or prospective contractor should have received a lower score, (B) a service or product provided by a bidder, offeror, or prospective contractor is better than another bidder's, offeror or prospective contractor's service or product, (C) another bidder, offeror, or prospective contractor cannot provide the procurement item for the price bid or perform the services described in the solicitation, or (D) any other item that is not relevant or specific; or
- (iii) filing a protest requesting: (A) a detailed explanation of the thinking and scoring of evaluation committee members, beyond the official justification statement described in Section 63G-6a-708, (B) protected information beyond what is provided under the disclosure provisions of the Utah Procurement Code; or (C) other information, documents, or explanations reasonably deemed to be not in compliance with the Utah Code or Administrative Rule R33 by the protest officer.

In accordance with Section 63G-6a-1603(3)(a), a protest officer may dismiss a protest if the concise statement of the grounds for filing a protest does not provide an adequate basis for the protest.

**12. AUDIT:** Pursuant to Administrative Rule R33-12-605, the State may, at reasonable times and places, audit or cause to be audited by an independent third party firm, by another procurement unit, or by an agent of the procurement unit, the book, records, and performance of the Offeror, if awarded a contract under this RFP.

**13. INSPECTIONS:** Pursuant to Utah Administrative Rule R33-12-701, R33-12-702, R33-12-703, and R33-12-704, the State may, at its discretion, perform an inspection of the Offeror's manufacturing/production facility or place of business, or any location where the work is performed.

**14. MODIFICATION OR WITHDRAWAL OF PROPOSAL:** A proposal may be modified or withdrawn prior to the established closing date and time.

**15. REJECTING A PROPOSAL:** At any time during this RFP, the State may reject a proposal if the State determines that: (a) the person submitting the proposal is not responsible; or (b) the proposal is not responsive or does not meet the mandatory minimum requirements stated in this RFP.

**16. TECHNOLOGY MODIFICATIONS:** The awarded contract(s) may be modified as a result from technological upgrades for the procurement item(s). Any modification for upgraded technology must be substantially within the scope of the original procurement or contract, and if both parties agree to the modification, then the contract may be modified, but not extended beyond the term of the original awarded contract except as provided in the Utah Procurement Code. The awarded contract(s) may be modified for new technology related to the procurement item(s). Any modification for new technology shall not be exercised without: (1) the approval required under Section 63F-1-205 of the Utah Code, (2) the new technology modification has been subject to the review as described in Administrative Rule R33-6-114, and (3) the contracting parties agree to the modification.

**17. PUBLICIZING AWARDS:** The following shall be disclosed after receipt of a proper GRAMA request: (a) the contract(s) entered into as a result of the selection and the successful proposal(s), except for those portions that may not be disclosed under Rule R33-7-105; (b) the unsuccessful proposals, except for those portions that are Protected and the Offeror has submitted a proper Business Confidentiality Claim; (c) the rankings of the proposals; (d) the names of the members of any selection committee (reviewing authority); (e) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores or rankings; and (f) the written justification statement supporting the selection, except for those portions that may not be disclosed under Rule R33-7-105.

After due consideration and public input, the following has been determined by the Procurement Policy Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, and will not be disclosed by the governmental entity at any time to the public, including under any GRAMA request: (a) the names of individual scorers/evaluators in relation to their individual scores or rankings; (b) any individual scorer's/evaluator's notes, drafts, and working documents; (c) non-public financial statements; and (d) past performance and reference information which is not provided by the offeror and which is obtained as a result of the efforts of the governmental entity. To the extent such past performance or reference information is included in the written justification statement, it is subject to public disclosure.

**18. PERFORMANCE AND COST ANALYSIS:** The State reserves the right to review the awarded contract(s) on a regular basis regarding performance and cost, and may negotiate price and service elements during the term of the contract.

**19. AWARDED CONTRACT(S):** Contract(s) awarded from this RFP will include the following documents: the scope of work, the appropriate State of Utah Standard Terms and Conditions, and any other documents listed in this RFP.

(Revision Date: 1 July 2015)



**The State of Utah**  
Division of Purchasing

In conjunction with



**Request for Proposals**

**Utah Solicitation Number CH16012**

**NASPO ValuePoint Master Agreement for**

**Cloud Solutions**

December 21, 2015



## 1 RFP Administrative Information

RFP Title:	Cloud Solutions
RFP Project Description:	The State of Utah, in conjunction with NASPO ValuePoint, is seeking Contract Vendor(s) to provide cloud solutions as described in the RFP.
RFP Lead:	Christopher Hughes, Assistant Director State of Utah, Division of Purchasing christopherhughes@utah.gov (801) 538-3254
Submit sealed proposal (if submitting manually):  MANUAL PROPOSALS MUST BE RECEIVED AT THE PHYSICAL ADDRESS DESIGNATED FOR COURIER SERVICE AND TIME/DATE STAMPED BY THE UTAH DIVISION OF PURCHASING PRIOR TO THE CLOSING DATE AND TIME. PROPOSALS RECEIVED AFTER THE DEADLINE, REGARDLESS OF REASON, WILL NOT BE REVIEWED.	Address for Courier: State of Utah Division of Purchasing 3150 State Office Building, Capitol Hill Salt Lake City, Utah 84114-1061.
Submit electronically via Bidsync:	Electronic Submission: www.bidsync.com
Question and Answer Period:	December 21, 2015 – January 29, 2016
RFP Closing Date:	March 10, 2016 at 1:00 pm MTN
Initial Term of Master Agreement and Renewals:	The term of the Master Agreement will be ten (10) years with no renewal periods. Upon mutual agreement, the Master Agreement may be extended or amended.
<p><b>TAKE NOTE OF THE 0.25% NASPO VALUEPOINT ADMINISTRATIVE FEE WHICH MUST BE INCORPORATED INTO YOUR BASE PRICE. OTHER STATES, INCLUDING THE STATE OF UTAH, MAY NEGOTIATE ADDITIONAL ADMINISTRATIVE FEES IN THEIR PARTICIPATING ADDENDA FOLLOWING AWARD OF A MASTER AGREEMENT.</b></p> <p><b>The Request for Proposal contains the following Attachments and Exhibits:</b></p> <ul style="list-style-type: none"> <li><b>Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions</b> <ul style="list-style-type: none"> <li><b>Exhibit 1 to Attachment A: Software-as-a-Service Terms and Conditions</b></li> <li><b>Exhibit 2 to Attachment A: Platform-as-a-Service Terms and Conditions</b></li> <li><b>Exhibit 3 to Attachment A: Infrastructure-as-a-Service Terms and Conditions</b></li> </ul> </li> <li><b>Attachment B: Explanation Cloud Security Alliance Questionnaires</b> <ul style="list-style-type: none"> <li><b>Exhibit 1 to Attachment B: Consensus Assessments Initiative Questionnaire</b></li> <li><b>Exhibit 2 to Attachment B: Cloud Controls Matrix</b></li> </ul> </li> <li><b>Attachment C: NIST Service Models</b></li> <li><b>Attachment D: Scope of Services</b></li> <li><b>Attachment E: Intent to Participate &amp; State-specific terms and conditions</b></li> <li><b>Attachment F: Intentionally Removed</b></li> <li><b>Attachment G: Cost Proposal Form</b></li> <li><b>Attachment H: Identification of Service Models</b></li> </ul>	

This Request for Proposals ("RFP"), having been determined to be the appropriate procurement method to provide the best value to the State of Utah Division of Purchasing, is designed to provide interested Offerors with sufficient basic information to submit proposals. It is not intended to limit a proposal's content or exclude any relevant or essential data or information. Offerors are at liberty and are encouraged to expand upon the specifications to evidence capability to provide the cloud solutions requested in the RFP. The RFP is issued in accordance with State of Utah Procurement Code, Utah Code Annotated (UCA) Chapter 63G-6a, and applicable Rules found in the Utah Administrative Code (UAC). If any provision of this RFP conflicts with the UCA or UAC, the UCA or UAC will take precedence.

## **2 GENERAL INFORMATION**

This RFP is designed to provide interested Offerors with sufficient information to submit proposals meeting minimum requirements and technical qualifications.

### **2.1 PURPOSE**

The State of Utah, Division of Purchasing (Lead State) is requesting proposals for cloud solutions in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The purpose of this Request for Proposals (RFP) is to establish Master Agreements with qualified Offerors to provide services related to cloud solutions for all Participating Entities. The objective of this RFP is to obtain best value, and 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 shall be extended to state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the individual state procurement director and compliance with local statutory and regulatory provisions. The initial term of the Master Agreement shall be ten (10) years with no renewal provisions; however, Contract Vendors must submit an annual certification that they are still compliant with the mandatory minimum requirements and technical specification of the RFP.

Each state, territory, and participating entity is unique in how they currently employ cloud solutions; some are utilizing cloud solutions to augment services that their technology departments provide to end users and some have not entered the realm of outsourcing technical solutions to cloud solutions providers. This cooperative procurement effort's objective is to provide states, territories, and their authorized political subdivisions with high quality cloud based service providers that have the ability to provide a menu of cloud solutions offerings that will ultimately increase the technology department's overall efficiency, reduce costs, improve operational scalability, provide business continuity, increase collaboration efficiencies, and allow for expanded flexibility in work practices and system improvements.

The resulting Master Agreement contract(s) will provide Participating Entities with access to technical capabilities that run in cloud environments and meet the NIST Essential Characteristics. Sub-categories in scope are the three NIST Service Models, Software as a Service (SaaS), Platform as a Service (PaaS), and Infrastructure as a Service (IaaS).

The awarded contracts will allow Participating Entities to choose cloud solutions that meet the following descriptions:

- Commercially available cloud computing services
- Meets the National Institute for Standards and Technology (NIST) definition of Cloud Computing
- Open to all deployment models (private, public, community or hybrid), vendors specify deployment models

## 2.2 LEAD STATE

The State of Utah Division of Purchasing is the Lead State and issuing office for this solicitation and all subsequent addenda relating to it. The reference number for the transaction is CH16012. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

## 2.3 DEFINITIONS

The following definitions apply to the RFP. **Attachment A** contains the definitions of terms used in the NASPO ValuePoint Master Agreement Terms and Conditions. **Attachment D**, the Scope of Services, contains the definitions for the Service Models, Deployment Models and the NIST Essential Characteristics.

**Contract Vendor** means the Offeror awarded a Master Agreement by the Lead State. The Contract Vendor is the party responsible for delivering the Offerings under the terms and conditions set forth in the Master Agreement.

**Eligible Users** means every agency, political subdivision, or nonprofit that has the statutory authority to purchase from state cooperative contracts established by a Participating Entity to qualify for the cloud solutions described in the RFP. The Participating Entity will have sole discretion to determine who qualifies as an Eligible User.

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

**Lead State** means the State conducting this cooperative procurement, evaluation, and award.

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

**Offeror** means the company or firm which submits a proposal in response to this Request for Proposal.

**Participating Addendum** means a written statement of agreement signed by the Contract Vendor and a Participating State or Participating Entity that clarifies the operation of the Master Agreement for the Participating Entity (e.g. ordering procedures specific to Participating State) and may add other state-specific language or other requirements. A Participating Addendum

evidences the Participating Entity's willingness to purchase and the Contract Vendor's willingness to provide Offerings under the terms and conditions of the Master Agreement with any and all exceptions noted and agreed upon.

**Participating State or Participating Entity** means States that utilize the Master Agreement established by the RFP and enter into a Participating Addendum which further defines their participation.

**Proposal** means the official written response submitted by an Offeror in response to this Request for Proposal.

**Purchasing Entity** means any end-user in a Participating State (or other Participating Entity) that is eligible to use the Master Agreement(s) through the Participating Addendum.

**Request for Proposals or RFP** means the entire solicitation document, including all parts, sections, exhibits, attachments, and amendments.

**Solutions or Offerings** means deployment models (e.g. private, public, community, or hybrid) or the service model of cloud computing (e.g. IaaS, PaaS, SaaS, or a combination thereof), that most closely describes the Offeror's offering for the RFP.

**Subcontractor** means any organization, whether designated as a subcontractor, fulfillment partner, reseller, etc., that will assist an Offeror to provide an Offering if awarded a Master Agreement.

## 2.4 NASPO VALUEPOINT BACKGROUND INFORMATION

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

## 2.5 PARTICIPATING STATES

In addition to the Lead State conducting this solicitation, the following Participating States have requested to be named in the RFP as potential participating entities on the resulting Master Agreement: **See Attachment E**. Other entities may become Participating Entities after award of the Master Agreement. State-specific terms and conditions that will govern each state's Participating Addendum are included in **Attachment E**, and/or may be incorporated into the Participating Addendum after award.

Additional States may be added with the consent of the awarded Contract Vendor and the Lead State (on behalf of NASPO ValuePoint) through execution of a Participating Addendum.

## **2.6 ANTICIPATED USAGE**

This is a new service for the Lead State and NASPO ValuePoint. Therefore, annual usage data is not available. Usage will be dependent on the needs of each Participating Entity. No minimum or maximum level of sales volume is guaranteed or implied in awarded Master Agreements awarded under the RFP.

## **2.7 TERMS AND CONDITIONS GOVERNING SOLICITATION AND RESULTING AGREEMENTS**

### **2.7.1 Solicitation**

The solicitation consists of the RFP document, including all Exhibits and Attachments listed on Bidsync.

### **2.7.2 Master Agreement**

The Master Agreement(s) awarded from this RFP will consist of the negotiated Master Agreement Terms and Conditions, the relevant Scope of Services, the Offeror's Cost Proposal form, and the winning Offeror's Proposal as revised (if permitted) and accepted by the Lead State.

### **2.7.3 Participating Addenda**

Participating Entities, including the State of Utah, may negotiate additional and/or different terms and conditions in a Participating Addendum, which will take precedence over the terms of the Master Agreement in the event of conflict. Participating Entities may not negotiate the addition of services not contemplated by this RFP.

## **2.8 Contract Award**

It is anticipated that the RFP will result in multiple contract awards established by the multiple award methodology.

The multiple award methodology: All offerors that meet/exceed the technical minimum scoring thresholds and all solicitation minimum requirements will be eligible for award - subject to successful terms and conditions negotiations. Participating Entities and Eligible Users may base their "best value" selection of the offeror whose qualifications best meet their needs after reviewing qualifications outlined in the offeror's proposal and considering other information in the solicitation process relevant to their determination of best value (such as the proposals and evaluations).

The awarded Master Agreement(s) may be modified as a result of technological upgrades for the procurement item(s). Any modification for upgraded technology must be substantially within the scope of the original procurement or contract, and if both parties agree to the modification, then the contract may be modified, but it may not extended beyond the term of the original awarded contract unless otherwise permitted by law. The awarded contract(s) may be modified for new technology related to the procurement item(s).

Open-Ended Procurement: Pursuant to Part 4 and 7 of the Utah Procurement Code, it is the intent of the RFP to be for ten years with recertification of the Contract Vendors on an annual basis, as required by Section 5.8. A Contract Vendor's failure to recertify will result in the termination of its Master Agreement.

In addition, on a biennial basis the Lead State may re-issue a solicitation, using this RFP document, to solicit new vendors that can provide additional Cloud Solutions to Participating Entities and Purchasing Entities.

## **2.9 Scope of Services**

The Scope of Services is provided in **Attachment D**. To meet the requirements of many of the Participating Entities the Scope of Services was modeled after NIST, including any definitions, security controls, and mechanisms for implementation. Participating Entities may have to modify definitions and terms in order to comply with federal, state, and local laws, regulations, and guidelines. Proposals should demonstrate their compliance with the standards set forth in **Attachment D**.

## **2.10 Choice of Law, Solicitation Jurisdiction, and Venue**

The provisions of the RFP and all matters, including any dispute or protest, in regard to the RFP that occur prior to the full execution of any contract resulting from the RFP, shall be governed by the laws of the State of Utah. The parties will submit to the jurisdiction of the courts of the State of Utah for any dispute arising out of the RFP or any matter related thereto prior to the full execution of the awarded contract(s). Venue for said dispute or protest shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County. The provisions of the Utah Procurement Code, Title 63G, Chapter 6a, and Utah Administrative Code Rules R33 must be met in regard to any protest. The substantially successful party, including any intervening parties, shall be entitled to their reasonable attorney fees and costs being paid by the substantially unsuccessful party(ies). This paragraph shall not supersede any provision related to a purchasing entity outside the State of Utah.

## **2.11 Other Value-Added Services**

Offerors may propose other Value-Added Services in their response. Such services from an awarded Offeror, if consistent with this Scope of Services, recommended by the Evaluation Team, and accepted by the Lead State, would be added to the final awarded contract.

## **2.12 Service Line Additions and Updates**

During the term of the Master Agreement(s), Offerors may submit a request to update the awarded Solutions as services are introduced or removed from the Offeror's offerings. The Master Agreement Administrator will evaluate requests and update the contract offering via written amendment as appropriate. The Offerors shall update the dedicated website, price lists, and catalogs to reflect approved changes. Pricing must utilize the same pricing structure as was used for services falling into the same service category.

## **2.13 Additional Sources**

In the best interest of the states involved, NASPO ValuePoint, Participating States, and Purchasing Entities reserve the right to competitively solicit additional sources for these commodities during the contract term. Further, Participating States may have existing awards for commodities with the scope of the RFP.

## **2.14 NASPO ValuePoint eMarket Center**

The awarded cloud service contractors will not have any type of catalog within the eMarket Center, they will have Ordering Instructions. These instructions provide visibility to the

contractor within the eMarket Center as well as provide information about the contractor and how to order directly from the contractor, outside of the eMarket Center.

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

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

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

### **3 SOLICITATION REQUIREMENTS, INFORMATION AND INSTRUCTIONS**

#### **3.1 QUESTION AND ANSWER PERIOD**

The RFP is issued by the State of Utah Division of Purchasing via Bidsync. The Division of Purchasing is the only contact for this solicitation. Do not contact any other Participating Entity about the RFP.

All questions **MUST** be submitted through BIDSYNC ([www.bidsync.com](http://www.bidsync.com)) during the designated time for questions ("Q&A period") listed on Bidsync. Questions submitted through any other channel will not be answered. Questions may be answered in the order that they are submitted or may be compiled into one document and answered via an addendum. Answers disseminated by the State through the BidSync system shall serve as the official and binding position of the State and will constitute an addendum to this RFP.

Questions, exceptions, or notification to the State of any ambiguity, inconsistency, excessively restrictive requirement, or error in this RFP, **MUST** be submitted as a question through BidSync during the Q&A period.

Questions may be answered individually or may be compiled into one document. Questions may also be answered via addenda. An answered question or addenda may modify the specification or requirements of this RFP. Answered questions and addendums will be posted on BidSync. Offerors should periodically check BidSync for answered questions and addendums before the closing date. It is the responsibility of the Offerors to submit their proposal as required by this RFP, including any requirements contained in an answered question and/or addendums.

**Exceptions to scope/content of the RFP within an Offeror's proposal that have not been previously addressed within the Q&A period of the procurement are not allowed and may result in the Offeror's proposal being considered non-responsive.**

### 3.2 ADDENDUMS

Offerors are encouraged to periodically check BidSync for posted questions, answers and addendums. Offerors will not be notified by the Lead State or Bidsync for each addendum issued under the RFP.

Any modification to this procurement will be made by addendum issued by the Lead State. Addendums to the RFP may be made for the purpose of making changes to: the scope of work, the schedule, the qualification requirements, the criteria, the weighting, or other requirements of the RFP.

After the due date and time for submitting a proposal to the RFP, at the discretion of the Lead State, addenda to the RFP may be limited to the Offerors that have submitted proposals, provided the addenda does not make a substantial change to the RFP that likely would have impacted the number of Offerors responding to the original publication of the RFP, in the opinion of the Lead State.

Authorized and properly issued addenda shall constitute the official and binding position of the State.

Any response to the RFP which has as its basis any communications or information received from sources other than the RFP or related addenda may be considered non-responsive and be rejected at the sole discretion of the State.

### 3.3 RESTRICTIONS ON COMMUNICATIONS

From the issue date of the RFP until the contract award(s), Offerors are prohibited from communications regarding the RFP with other Participating Entities EXCEPT the Lead State. Failure to comply with this requirement may result in disqualification.

### 3.4 Exceptions to RFP and NASPO ValuePoint Master Agreement Terms and Conditions

Any contract resulting from this RFP will include the NASPO ValuePoint Master Agreement Terms and Conditions (Master Agreement Terms and Conditions), Attachment A, including Exhibits to Attachment A.

Exceptions and/or additions to the Master Agreement Terms and Conditions and other requirements of this RFP are strongly discouraged. Any exception and/or addition regarding the **Master Agreement Terms and Conditions** must be made in the Offeror's proposal. **The Lead State will not consider proposed modifications and/or additions to the Master Agreement Terms and Conditions after the deadline for proposals.** Exceptions and/or additions regarding the Master Agreement Terms and Conditions or other RFP provisions must contain the following:

1. The rationale for the specific requirement being unacceptable to the Offeror submitting the exception and/or addition;
2. Recommended verbiage for the Lead State's consideration that is consistent in content, context, and form with the Master Agreement Terms and Conditions;
3. Explanation of how the Lead State's acceptance of the recommended verbiage is fair and equitable to both the Lead State, the Participating Entities, and to the Offeror submitting the modification and/or exception.

Offerors may not submit requests for exceptions and/or additions by reference to an Offeror's



website or URL. URLs provided with a proposal may result in that proposal being rejected as non-responsive. Offerors may submit questions during the Q&A period regarding the Master Agreement Terms and Conditions.

The Lead State may refuse to negotiate exceptions and/or additions that are determined to be excessive; that are inconsistent with similar contracts; and to warranties, insurance, or indemnification provisions that are necessary to protect the procurement unit after consultation with the Attorney General's Office or other applicable legal counsel, including a Participating Entity.

For the RFP, the Lead State reserves the right to negotiate exceptions and/or additions to terms and conditions in a manner resulting in expeditious resolutions. This process may include beginning negotiations with the qualified Offeror having the least amount of exceptions and/or additions and concluding with the Offeror submitting the greatest number of exceptions and/or additions. Contracts may be executed and become effective as negotiations are completed; however, all of the resulting Master Agreement(s) will terminate on the same date.

If negotiations are required, Offeror must provide all documents **in Microsoft Word format** for redline editing. Offeror must also provide the name, contact information, and access to the person(s) that will be directly involved in legal negotiations.

An award resulting from the RFP is subject to successful contract terms and conditions negotiation (if required). The Lead State, at its sole discretion, will determine when contract terms and conditions negotiations become unproductive and will result in termination of award to that Offeror.

### **3.5 PROPOSAL DUE DATE**

Proposals must be received by the closing date and time as described on Bidsync. Proposals received after the deadline will not be accepted.

### **3.6 CANCELLATION OF PROCUREMENT**

The RFP may be canceled at any time prior to award of the Master Agreement(s), if the Lead State determines such action to be in the collective best interests of potential Participating States.

### **3.7 GOVERNING LAWS AND REGULATIONS**

The RFP is conducted by the Lead State, in accordance with its procurement code and applicable administrative rules, which can be found in Utah Code, Utah Administrative Code, and other policies, available at: <http://purchasing.utah.gov/>.

This procurement shall be governed by the laws and regulations of the Lead State. Venue for any administrative or judicial action relating to the RFP, evaluation, and award shall be in Salt Lake County, Utah. The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in **Attachment A**.

### **3.8 Intentionally Deleted.**

### **3.9 RIGHT TO ACCEPT ALL OR PORTION OF PROPOSAL**

Unless otherwise specified in the solicitation, the Lead State may accept any Offering or

combination of Offerings as specified in the solicitation or of any proposal.

### **3.10 PROPOSAL CONTENT AND FORMAT REQUIREMENTS**

Include a Table of Contents in the Proposal identifying the contents of each section, including page numbers of major sections. Proposals should follow the numerical order of the RFP starting at the beginning and continuing through the end of the RFP. Proposal sections and subsections shall be identified with the corresponding numbers and headings used in the RFP. In your response, restate the RFP section and/or subsection, followed with your response. Offerors are encouraged to use a different color font, bold text, italics, or other indicator to clearly distinguish the RFP section or subsection from the Offeror's response.

Proposals must be detailed and concise. The format is designed to ensure a complete submission of information necessary for an equitable analysis and evaluation of submitted proposals. There is no intent to limit the content of proposals; however, technical responses must focus on responding to the RFP and should not include preprinted advertising materials.

### **3.11 PROPOSAL SUBMISSION INSTRUCTIONS**

Proposals may be submitted manually or electronically. **Proposals must be submitted as described in Section 3.10.**

#### **3.11.1 Electronically Submitted Proposals**

Electronically submitted proposals must be submitted through Bidsync, the Lead State's eProcurement provider, at [www.bidsync.com](http://www.bidsync.com). When submitting through Bidsync, enter your "Total Cost" in Bidsync as "\$0," and **UPLOAD YOUR SEPARATE TECHNICAL PROPOSAL, COST PROPOSAL AND ALL OTHER REQUIRED DOCUMENTS**, including your signed State of Utah Signature Page.

Electronic proposals may require uploading of electronic attachments. BidSync will accept a wide variety of document types as attachments. However, the State is unable to view certain attachments. Therefore, **DO NOT** submit attachments that are embedded (zip files), movies, wmp, encrypted, or mp3 files. All attachments must be uploaded in BidSync as separate files. All attachments shall be submitted in a format acceptable to the Lead State. Acceptable formats include .doc (Microsoft Word document), .xls (Microsoft Excel spreadsheet), and .pdf (Adobe Acrobat portable document format).

Be advised that the "Offeror" for bid evaluation and award purposes is the entity profile you submit under in Bidsync, which must be the same legal entity presented in your attached response materials. Your submission via Bidsync is your electronic signature, acknowledging the statements contained in the State of Utah Signature Page.

Offerors are further advised to upload response materials with descriptive file names, organized and consolidated in a manner which allows evaluators to efficiently navigate their response; as the Lead State will print uploaded documents for evaluation in the manner received via Bidsync.

#### **3.11.2 Manually Submitted Proposals**

Manually submitted proposals must be addressed to the RFP Lead and must be sealed and identified as "**CH16012 – Cloud Solutions.**" The Technical Proposal and separately

sealed Cost Proposal must be submitted at the same time (place all proposal response materials within a larger package).

The Technical portion of the Proposal must be clearly marked "TECHNICAL PROPOSAL – CH16012 - Cloud solutions."

Each proposal must be submitted in one (1) original with eight (8) copies of the Technical Proposal and one (1) original and one (1) copy of the Cost Proposal.

Offerors submitting manually must also submit one (1) electronic copy of the proposal on CD or USB device. Word or Excel format is required (the only exception is for financials, brochures or other information only available in an alternate format). The format and content must be the same as the manually submitted proposal. The electronic version must NOT be password protected or locked in any way.

Offeror should allow sufficient time for delivery of hardcopy proposals. Proposals sent overnight, but not received by the deadline time will not be accepted. When submitting a proposal by physical delivery (U.S. Mail, courier service, hand-delivery, or other physical means), Offerors are solely responsible for meeting the deadline. Delays caused by a delivery service or other physical means will not be considered as an acceptable reason for a proposal being late. All proposals received by physical delivery will be date and time stamped by the Lead State.

If your proposal, whether electronically or manually submitted, contains proprietary or confidential information which you have identified, you must also submit a redacted copy of the Technical Proposal (in electronic format, with the word "redacted" in the file name) with all proprietary or confidential information removed or blacked out; as well as a separate document containing a complete list (per the instructions in Subsection 3.11, below) of all trade secret information which was removed or blacked out in the redacted copy.

3.11.3 Cost proposal will be evaluated independently from the technical proposal, pursuant to Utah Code Annotated (UCA) § 63G-6-707(5), and as such, must be submitted separate from the technical proposal. Failure to submit cost or pricing data separately may result in your proposal being judged as non-responsive and ineligible for contract award. The Cost Proposal must be separately sealed and identified as **"Cost Proposal –CH16012 Cloud solutions."**

### **3.12 SUBMISSION OF PROPOSAL**

By submitting a proposal to the RFP, the Offeror acknowledges and agrees that the requirements, scope of work, and the evaluation process outlined in the RFP are understood, fair, equitable, and are not unduly restrictive. Any exceptions to the content of the RFP, excluding the Master Agreement Terms and Conditions contained in Attachment A, including the Exhibits to Attachment A, must be addressed within the Q&A period. The Offeror further acknowledges that it has read the RFP, along with the Exhibits, Attachments, and any attached or referenced documents, including the General Provisions.

All Proposals must be submitted in the following format. Offerors should title each document with the names listed below. Proposals may be submitted as one document with a separately attached

Cost Proposal form or as individual documents. If an Offeror submits a redacted version of a document it should clearly label the document as redacted. Detailed information on submitting each of these sections is contained later sections of this RFP.

1. **Section Title: RFP Signature Page.** The Lead State's Request for Proposal Signature Page completed and signed. See Section 5.1 of the RFP.
2. **Section Title: Executive Summary.** The one or two page executive summary is to briefly describe the Offeror's Proposal. This summary should highlight the major features of the Proposal. It must indicate any requirements that cannot be met by the Offeror. The Lead State should be able to determine the essence of the Proposal by reading the executive summary. See Section 5.4 of the RFP.
3. **Section Title: Mandatory Minimums:** This section should constitute the Offeror's point-by-point response to each item described in Section 5 of the RFP, except 5.1 (Signature Page) and 5.4 (Executive Summary). An Offeror's response must be a specific point-by-point response, in the order listed, to each requirement in the Section 5 of the RFP.
4. **Section Title: Business Profile:** This section should constitute the Offeror's response to the items described in Section 6 of the RFP. An Offeror's response must be a specific point-by-point response, in the order listed, to each requirement in the Section 6 of the RFP.
5. **Section Title: Organization Profile:** This section should constitute the Offeror's response to the items described in Section 7 of the RFP. An Offeror's response must be a specific point-by-point response, in the order listed, to each requirement in the Section 7 of the RFP.
6. **Section Title: Technical Response.** This section should constitute the Technical response of the proposal and must contain at least the following information:
  - A. A complete narrative of the Offeror's assessment of the Cloud Solutions to be provided, the Offerors ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate the Offeror's understanding of the desired overall performance expectations and clearly indicate any options or alternatives proposed.
  - B. A specific point-by-point response, in the order listed, to each requirement in the Section 8 of the RFP. Offerors should not provide links to a website as part of its response.

Offeror's should focus their proposals on the technical qualifications and capabilities described in the RFP. Offerors should not include sales brochures as part of their response.
7. **Section Title: Confidential, Protected or Proprietary Information.** All confidential, protected or proprietary Information must be included in this section of proposal response. Do not incorporate protected information throughout the Proposal. Rather, provide a reference in the proposal response directing Lead State to the specific area of this protected Information section.

If there is no protected information, write "None" in this section.

Failure to comply with this Section and Section 3.13 of the RFP releases the Lead State, NASPO ValuePoint, and Participating Entities from any obligation or liability arising from the inadvertent release of Offeror information.

8. **Section Title: Exceptions and/or Additions to the Standard Terms and Conditions.** Proposed exceptions and/or additions to the Master Agreement Terms and Conditions, including the exhibits, must be submitted in this section. Offeror must provide all proposed exceptions and/or additions, including an Offeror's terms and conditions, license agreements, or service level agreements in Microsoft Word format for redline editing. Offeror must also provide the name, contact information, and access to the person(s) that will be directly involved in terms and conditions negotiations.

If there are no exceptions or additions to the Master Agreement Terms and Conditions, write "None" in this section.

9. **Section Title: Cost Proposal.** Cost Proposals will be evaluated independently from the technical proposal. Offeror's cost proposal must include the items discussed in Section 9 of the RFP.

Cost will be evaluated independently from the Mandatory Minimum Requirements, and the Technical responses. Inclusion of any cost or pricing data within the Detailed Technical Proposal will result in the proposal being judged as non-responsive for violation of UCA § 63G-6a-707(5).

All costs incurred by an Offeror in the preparation and submission of a proposal, including any costs incurred during interviews, oral presentations, and/or product demonstrations are the responsibility of the Offeror and will not be reimbursed by the Lead State or NASPO ValuePoint.

### 3.13 CONFIDENTIAL OR PROPRIETARY INFORMATION

The Government Records Access and Management Act (GRAMA), UCA § 63G-2-305, provides in part that:

*the following records are protected if properly classified by a government entity:*

*(1) trade secrets as defined in Section 13-24-2, the Utah Uniform Trade Secrets Act, if the person submitting the trade secret has provided the governmental entity with the information specified in UCA § 63G-2-309 (Business Confidentiality Claims);*

*(2) commercial information or non-individual financial information obtained from a person if:*  
*(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;*  
*(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and*  
*(c) the person submitting the information has provided the governmental entity with the information specified in UCA § 63G-2-309;*

*\* \* \* \* \**

*(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been*

*awarded and signed by all parties, ...*

**Pricing may not be classified as confidential or protected and will be considered public information after award of the contract.**

**Process for Requesting Non-Disclosure:** Any Offeror requesting that a record be protected shall include with the proposal a Claim of Business Confidentiality. To protect information under a Claim of Business Confidentiality, the Offeror must complete the Claim of Business Confidentiality form with the following information:

1. Provide a written Claim of Business Confidentiality at the time the information (proposal) is provided to the state, and
2. Include a concise statement of reasons supporting the claim of business confidentiality (UCA § 63G-2-309(1)).
3. Submit an electronic "redacted" (excluding protected information) copy of the record. The redacted copy must clearly be marked "Redacted Version."

The Claim of Business Confidentiality Form may be accessed at:

<http://www.purchasing.utah.gov/contract/documents/confidentialityclaimform.doc>

**An entire proposal cannot be identified as "PROTECTED", "CONFIDENTIAL" or "PROPRIETARY", and if so identified, shall be considered non-responsive unless the Offeror removes the designation.**

**Redacted Copy:** If an Offeror submits a proposal that contains information claimed to be business confidential or protected information, the Offeror must submit two separate proposals: one redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and one non-redacted version for evaluation purposes, clearly marked as "Protected Business Confidential."

The Lead State and NASPO ValuePoint are not liable or responsible for the disclosure of any confidential or proprietary information if the Offeror fails to follow the instructions of this section.

### **3.14 ERRORS IN PROPOSALS**

Pursuant to UAC R33-7-403, the following shall apply to the correction or withdrawal of an unintentionally erroneous proposal, or the cancellation of an award or contract that is based on an unintentionally erroneous proposal. A decision to permit the correction or withdrawal of a proposal or the cancellation of an award or a contract shall be supported in a written document, signed by the chief procurement officer or head of a procurement unit with independent procurement authority.

- (1) Mistakes attributed to an offeror's error in judgment may not be corrected.
- (2) Unintentional errors not attributed to an offeror's error in judgment may be corrected if it is in the best interest of the procurement unit and correcting the error maintains the fair treatment of other offerors.

(a) Examples include:

- (i) missing signatures;
- (ii) missing acknowledgement of an addendum;
- (iii) missing copies of professional licenses, bonds, or insurance certificates, provided that copies are submitted by the deadline

established by the chief procurement officer or head of a procurement unit with independent procurement authority to correct this mistake;  
 (iv) typographical errors;  
 (v) mathematical errors not affecting the total proposed price; or  
 (vi) other errors deemed by the chief procurement officer or head of a procurement unit with independent procurement authority to be immaterial or inconsequential in nature.

(3) Unintentional errors discovered after the award of a contract may only be corrected if, after consultation with the chief procurement officer or head of a procurement unit with independent procurement authority and the attorney general's office or other applicable legal counsel, it is determined that the correction of the error does not violate the requirements of the Utah Procurement Code or applicable administrative rules.

### 3.15 E-RATE

To the extent the services offered are subject to the E-rate discount program, all award Contract Vendors must commit to participation in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications Commission Act of 1996. Participation in, and implementation of, this program must be provided without the addition of any service or administration fee by the Contract Vendor.

In order to participate in E-Rate Offerors must appear on the USAC website as those who have a Service Provider Identification Number or "SPIN."

## 4 EVALUATION AND AWARD

### 4.1 INITIAL REVIEW OF PROPOSALS

4.1.1 All proposals will be reviewed first to ensure that they meet the Mandatory Submission Requirements of the RFP as addressed in **Sections noted with an (M)**. Any proposal(s) not meeting the Mandatory Submission Requirements may be found non-responsive.

4.1.2 The Technical Proposal will be evaluated first as either "pass" or "fail," based on compliance with those requirements listed in the RFP with an **(M), (ME), or (E)**. All proposals which are determined to be responsive will continue in the evaluation process outlined in this section.

(M) means that the requirement is mandatory and a proposal must contain a response to that requirement; however, the proposal response is not evaluated. This is a pass/fail requirement as described in 4.3.1. The majority of these responses will require that the Offeror warrant or represent that it meets a certain requirement<sup>1</sup>. Offerors are encouraged to demonstrate compliance with a mandatory minimum and to demonstrate that they meet or exceed to the requirement.

(ME) means that the requirement is both mandatory, as mentioned above will be reviewed in 4.3.1, and the proposal response will be evaluated and given a score under 4.3.2. If an Offeror's proposal does not address the requirement then it will

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<sup>1</sup> The Lead State reserves the right to verify that an Offeror's proposal meets the mandatory requirement.

fail and therefore be disqualified.

(E) means that the proposal response will be evaluated as described in 4.3.2.

#### 4.2 RIGHT TO WAIVE MINOR IRREGULARITIES

The State of Utah Chief Procurement Officer reserves the right to waive minor informalities as well as minor deviations. The Lead State also reserves the right to seek clarification on any proposal response.

#### 4.3 EVALUATION PROCESS

In responding to this RFP, Offerors must identify and describe all of the Solutions that are contained in their proposals.

- 4.3.1 In the initial phase of the evaluation process, the Lead State will review all proposals timely received. Mandatory and scored on a pass/fail basis. A "Fail" will result in a proposal being deemed non-responsive and, therefore, will be disqualified. Failure to provide a response to each Mandatory requirement where indicated will result in disqualification.

Non-responsive proposals not conforming to the RFP requirements or unable to meet the mandatory minimum requirements will be eliminated from further consideration. The Offerors that meet the requirements and meet the mandatory minimum requirements will move on to the technical evaluation of their proposals.

<u>Mandatory Minimum Requirements</u>	<u>RFP Section</u>	<u>Pass/Fail</u>
Signature Page	5.1	Pass/Fail
Cover Letter	5.2	Pass/Fail
Acknowledgement of Amendments	5.3	Pass/Fail
Executive Summary	5.4	Pass/Fail
General Requirements	5.5	Pass/Fail
Re-Certification	5.7	Pass/Fail
Business Profile	6.1	Pass/Fail
Scope of Experience	6.2	Pass/Fail
Financials	6.3	Pass/Fail
Contract Manager	7.1	Pass/Fail
Cost Proposal Submitted	9.1	Pass/Fail

- 4.3.2 Evaluation of the Proposals will be evaluated and scored by an Evaluation Committee. It is anticipated that several Evaluation Committees will be established in order to evaluate all of the proposals in a reasonable amount of time. Proposals will be scored on the following evaluation criteria:

<u>Evaluation Criteria</u>	<u>RFP Section</u>	<u>Points Possible</u>
<b>BUSINESS INFORMATION</b>	<b>6</b>	
Business Profile	6.1	25.0
Scope of Experience	6.2	25.0
General Information	6.4	25.0
Billing and Pricing Practices	6.5	25.0
Scope and Variety of Cloud Solutions	6.6	25.0



Best Practices	6.7	25.0
<b>ORGANIZATION AND STAFFING</b>	<b>7</b>	
Contract Manager	7.1	25.0
<b>TECHNICAL REQUIREMENTS</b>	<b>8</b>	
Technical Requirements	8.1	50.0
Subcontractors	8.2	50.0
Working with Purchasing Entities	8.3	50.0
Customer Service	8.4	50.0
Security of Information	8.5	50.0
Privacy and Security	8.6	50.0
Migration and Redeployment Plan	8.7	50.0
Service or Data Recovery	8.8	50.0
Data Protection	8.9	50.0
Service Level Agreements	8.10	50.0
Data Disposal	8.11	50.0
Performance Measures and Reporting	8.12	50.0
Cloud Security Alliance	8.13	50.0
Service Provisioning	8.14	50.0
Back up and Disaster Plan	8.15	50.0
Solution Administration	8.16	50.0
Hosting and Provisioning	8.17	50.0
Trial and Testing Periods	8.18	50.0
Integration and Customization	8.19	50.0
Marketing Plan	8.20	50.0
Value-Added Services	8.21	50.0
Supporting Infrastructure	8.22	50.0
Alignment of Cloud Computing	8.23	50.0

Offerors must receive a minimum score of seventy percent (70%) of the total possible points in order to continue to the scoring the cost proposals. Offerors with a score of less than seventy percent (70%) of the total possible points will be deemed non-responsive and ineligible for further consideration. If an Offeror demonstrates that an evaluation criteria is not applicable to its Offering then those points will be deducted from that Offerors total possible points. *For example if an Offeror demonstrates that the evaluation criteria for Privacy and Security in Section 8.6 of this RFP is not applicable to its proposal then 50 points will be removed from that Offeror's total possible points (from 1325 to 1275).* **The Lead State reserves the right to determine whether an evaluation criteria applies to a proposal.**

Offerors that achieve minimum score threshold of seventy percent (70%) of the total possible points, will proceed to the Cost Proposal Evaluation. The evaluation score sheet has been attached to this RFP. The attached evaluation score sheet states the relative weight that will be given to each evaluation criteria.

Each committee member shall independently read and score each proposal based on the technical non-price criteria set forth in the RFP to assess the completeness, quality, and desirability of each proposal. The Evaluation Committee will tally the final scores for criteria other than cost to arrive at a consensus score by the following method: an average

of the individual scores. Each proposal will be evaluated and scored by at least three evaluation committee members.

To clarify, an Offeror's Cloud Solutions (SaaS, IaaS, or PaaS) are not being tested or demonstrated during the technical response; proposals are only being evaluated by the criteria described in the RFP. However, Purchasing Entities in making a "best value" determination may request a test or demonstration of an Offeror's Solution. *To help in the evaluation process Offerors should not include sales brochures as part of their proposals.*

- 4.3.3 Cost Proposals will be opened only after Evaluation of Proposals has been completed. Offerors that provide a price schedule with a minimum discount from its Cloud Solutions will receive 152.8 points. If an Offeror fails to provide a discount or a price schedule as required by Section 9.1 its proposal will be disqualified.

#### **4.4 AWARD OF MASTER AGREEMENT(S)**

Award shall be made to the responsive responsible Offeror(s) whose proposal(s) receive the minimum point thresholds and provides a Cost Proposal form as described in Section 4.3.3. The Lead State anticipates awarding multiple Master Agreements. The award of Master Agreement(s) will be made without regard to any preference for Utah suppliers. Participating Entities, including the State of Utah, may take local preferences into consideration when determining if they will enter into a Participating Addendum with a Contract Vendor to which a Master Agreement has been awarded.

#### **4.5 NOTICE OF INTENT TO AWARD**

After final selections are made, the Lead State will issue an intent-to-award announcement by letter to all responsive Offerors.

#### **4.6 PROTEST PROCESSES**

Offerors are directed to Utah Code Part 16 and Utah Administrative Code Rule R16 available at <http://le.utah.gov/xcode/Title63G/Chapter6a/63G-6a-S1601.html> and <http://www.rules.utah.gov/publicat/code/r033/r033-016.htm> for available protest processes.

#### **4.7 PUBLICIZING AWARD(S)**

The Lead State shall, on the next business day after the award of a contract(s) is announced, make available to each Offeror and to the public a written statement that includes:

- (a) the name of the offeror to which the contract is awarded and the total score awarded by the evaluation committee to that offeror;
- (b) the justification statement under UCA § 63G-6a-708, including any required cost-benefit analysis; and
- (c) the total score awarded by the evaluation committee to each offeror to which the contract is not awarded, without identifying which offeror received which score.

## 5 MANDATORY MINIMUM REQUIREMENTS

If applicable to an Offeror's Solution, an Offeror must provide a point by point responses to each mandatory minimum requirement. If a mandatory minimum requirement is not applicable to an Offeror's Solution then the Offeror must explain why the mandatory minimum requirement is not applicable.

If an Offeror's proposal contains more than one Solution (i.e., SaaS and PaaS) then the Offeror must provide a response for each Solution. However, Offerors do not need to submit a proposal for each Solution.

### 5.1 (M) SIGNATURE PAGE

Proposals must be submitted with a vendor information form, located on Bidsync as an attachment to the RFP, which must contain an **ORIGINAL HANDWRITTEN** signature executed in **INK OR AN ELECTRONIC SIGNATURE**, and be returned with the Offeror's proposal.

### 5.2 (M) COVER LETTER

Proposals must include a cover letter on official letterhead of the Offeror. The cover letter must identify the RFP Title and number, and must be signed by an individual authorized to commit the Offeror to the work proposed. In addition, the cover letter must include:

- 5.2.1 A statement indicating the Offeror's understanding that they may be required to negotiate additional terms and conditions, including additional administrative fees, with Participating Entities when executing a Participating Addendum.
- 5.2.2 A statement naming the firms and/or staff responsible for writing the proposal.
- 5.2.3 A statement that Offeror is not currently suspended, debarred or otherwise excluded from federal or state procurement and non-procurement programs.
- 5.2.4 A statement acknowledging that a 0.25% NASPO ValuePoint Administrative Fee and any Participating Entity Administrative fee will apply to total sales for the Master Agreement(s) awarded from the RFP.
- 5.2.5 A statement identifying the service model(s) (SaaS, IaaS, and/or PaaS) and deployment model(s) that it is capable of providing under the terms of the RFP. See **Attachment C** for a determination of each service model subcategory. The services models, deployment models and risk categories can be found in the Scope of Services, **Attachment D**. *Note: Multiple service and/or deployment model selection is permitted, and at least one service model must be identified. See Attachment H.*
- 5.2.6 A statement identifying the data risk categories that the Offeror is capable of storing and securing. See **Attachment D** and **Attachment H**.

### 5.3 (M) ACKNOWLEDGEMENT OF AMENDMENTS

If the RFP is amended, the Offeror must acknowledge each amendment with a signature on the acknowledgement form provided with each amendment. Failure to return a signed copy of each amendment acknowledgement form with the proposal may result in the proposal being found non-responsive.

### 5.4 (M) EXECUTIVE SUMMARY

Offerors must provide an Executive Summary of its proposal. An Executive Summary should highlight the major features of an Offeror's proposal. Briefly describe the proposal in no more than three (3) pages. The evaluation committee should be able to determine the essence of the proposal by reading the Executive Summary. Any requirements that cannot be met by the Offeror must be included.

**5.5 (M) GENERAL REQUIREMENTS**

- 5.5.1 Offeror must agree that if awarded a contract it will provide a Usage Report Administrator responsible for the quarterly sales reporting described the Master Agreement Terms and Conditions, and if applicable Participating Addendums.
- 5.5.2 Offeror must provide a statement that it agrees to cooperate with NASPO ValuePoint and SciQuest (and any authorized agent or successor entity to SciQuest) with uploading an Offeror's ordering instructions, if awarded a contract.
- 5.5.3 Offeror must at a minimum complete, provide, and maintain a completed CSA STAR Registry Self-Assessment<sup>2</sup>. Offeror must either submit a completed The Consensus Assessments Initiative Questionnaire (CAIQ), **Exhibit 1 to Attachment B**, or submit a report documenting compliance with Cloud Controls Matrix (CCM), **Exhibit 2 to Attachment B**. Offeror must also represent and warrant the accuracy and currency of the information on the completed. Offerors are encouraged to complete and submit both exhibits to Attachment B.
- 5.5.4 Offeror, as part of its proposal, must provide a sample of its Service Level Agreement<sup>3</sup>, which should define the performance and other operating parameters within which the infrastructure must operate to meet IT System and Purchasing Entity's requirements.

**5.7 RECERTIFICATION OF MANDATORY MINIMUMS AND TECHNICAL SPECIFICATIONS**

Offeror must acknowledge that if it is awarded a contract under the RFP that it will annually certify to the Lead State that it still meets or exceeds the technical capabilities discussed in its proposal.

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<sup>2</sup> CSA STAR Self-Assessment documents the security controls provided by an Offeror's offerings, thereby helping Purchasing Entities assess the security of an Offeror, if awarded a Master Agreement, they currently use or are considering using.

<sup>3</sup> SLAs can vary depending on the cloud service being procured as well as the individual ordering activity, and the Lead State does not expect to require a single SLA to all cloud solutions being proposed under the RFP. Additionally, by submitting a sample the Lead State does not agree to its terms and you understand that a Purchasing Entity may revise the SLA to conform to the requirements of its laws.

## 6 BUSINESS INFORMATION

### 6.1 (M)(E) BUSINESS PROFILE

Provide a profile of your business including: year started, organizational structure, client base (including any focus by region, market sector, etc.), growth over the last three (3) years, number of employees, employee retention rates (specific for employees that may be associated with the services related to the RFP) over the last two (2) years, etc. **Businesses must demonstrate a minimum of three (3) years of experience providing cloud solutions for large scale projects, including government experience, to be eligible for award.**

### 6.2 (M)(E) SCOPE OF EXPERIENCE

**Describe in detail** the business' experience with government or large consortium contracts similar to the Master Agreements sought through this RFP. Provide the approximate dollar value of the business' five (5) largest contracts in the last two (2) years, under which the Offeror provided Solutions identical or very similar to those required by this RFP. Government experience is preferred.

### 6.3 (M) FINANCIALS

Offeror must provide audited financial statements, of the last two years, to the State that demonstrate that an Offeror meets at a minimum Dun and Bradstreet (D&B) credit rating of 3A2 or better, or a recognized equivalent rating. Please provide the Respondent's D&B Number and the composite credit rating. The State reserves the right to verify this information. If a branch or wholly owned subsidiary is bidding on this RFP, please provide the D&B Number and score for the parent company that will be financially responsible for performance of the agreement.

### 6.4 (E) GENERAL INFORMATION

6.4.1 Provide any pertinent general information about the depth and breadth of your Solutions and their overall use and acceptance in the cloud marketplace.

6.4.2 Offeror must describe whether or not its auditing capabilities and reports are consistent with SAS 70 or later versions including, SSAE 16 6/2011, or greater.

### 6.5 (E) BILLING AND PRICING PRACTICES

**DO NOT INCLUDE YOUR PRICING CATALOG**, as part of your response to this question.

6.5.1 Describe your billing and pricing practices, including how your billing practices are transparent and easy to understand for Purchasing Entity's.

6.5.2 Identify any typical cost impacts that a Purchasing Entity might need to consider, if any, to implement your cloud solutions.

6.5.3 Offeror must describe how its Solutions are NIST compliant, as defined in NIST Special Publication 800-145, with the service models it offers.

### 6.6 (E) SCOPE AND VARIETY OF CLOUD SOLUTIONS

Specify the scope and variety of the Solutions you offer under this solicitation. You may provide a list of the different SaaS, IaaS, and/or PaaS services and deployment models that you offer.

### 6.7 (E) BEST PRACTICES

Specify your policies and procedures in ensuring visibility, compliance, data security and threat protection for cloud-delivered services; include any implementations of encryption or tokenization to control access to sensitive data.

## **7 ORGANIZATION AND STAFFING**

### **7.1 (ME) CONTRACT MANAGER**

The Offeror must provide a Contract Manager as the single point of contact for management of the NASPO ValuePoint Master Agreement, administered by the State of Utah. **The Contract Manager must have experience managing contracts for cloud solutions.**

- 7.1.1 Provide the name, phone number, email address, and work hours of the person who will act as Contract Manager if you are awarded a Master Agreement.
- 7.1.2 **Describe in detail** the Contract Manager's experience managing contracts of similar size and scope to the one that will be awarded from this RFP. **Provide a detailed resume for the Contract Manager.**
- 7.1.3 **Describe in detail** the roles and responsibilities of the Contract Manager as they apply to the NASPO ValuePoint Master Agreement that will be awarded from this RFP.

## 8 TECHNICAL REQUIREMENTS

If applicable to an Offeror's Solution, an Offeror must provide a point by point responses to each technical requirement demonstrating its technical capabilities. If a technical requirement is not applicable to an Offeror's Solution then the Offeror must explain why the technical requirement is not applicable.

If an Offeror's proposal contains more than one Solution (i.e., SaaS and PaaS) then the Offeror must provide a response for each Solution. However, Offerors do not need to submit a proposal for each Solution.

### 8.1 (M)(E) TECHNICAL REQUIREMENTS

- 8.1.1 Offeror must identify the cloud service model(s) and deployment model(s) it intends to provide to Eligible Users. See **Attachment D**.
- 8.1.2 For the purposes of the RFP, meeting the NIST essential characteristics is a primary concern. As such, describe how your proposed solution(s) meet the following characteristics, as defined in NIST Special Publication 800-145:
  - 8.1.2.1 NIST Characteristic - On-Demand Self-Service: Provide a brief written description of how the cloud solutions proposed satisfies this individual essential NIST Characteristic. Attest capability and briefly describe how self-service technical capability is met.
  - 8.1.2.2 NIST Characteristic - Broad Network Access: Provide a brief written description of how the cloud solutions proposed satisfies this individual essential NIST Characteristic. Attest capability and briefly describe how network access is provided.
  - 8.1.2.3 NIST Characteristic - Resource Pooling: Provide a brief written description of how the cloud solutions proposed satisfies this individual essential NIST Characteristic. Attest capability and briefly describe how resource pooling technical capability is met.
  - 8.1.2.4 NIST Characteristic - Rapid Elasticity: Provide a brief written description of how the cloud solutions proposed satisfies this NIST Characteristic. Attest capability and briefly describe how rapid elasticity technical capability is met.
  - 8.1.2.5 NIST Characteristic - Measured Service: Provide a brief written description of how the cloud solutions proposed satisfies this NIST Characteristic. Attest capability and briefly describe how measured service technical capability is met.
- 8.1.3 Offeror must identify for each Solution the subcategories that it offers for each service model. For example if an Offeror provides a SaaS offering then it should be divided into education SaaS offerings, e-procurement SaaS offerings, information SaaS offering, etc.
- 8.1.4 As applicable to an Offeror's proposal, Offeror must describe its willingness to comply with, the requirements of **Attachments C & D**.
- 8.1.5 As applicable to an Offeror's proposal, Offeror must describe how its offerings adhere to the services, definitions, and deployment models identified in the Scope of Services, in **Attachment D**.

### 8.2 (E) SUBCONTRACTORS

- 8.2.1 Offerors must explain whether they intend to provide all cloud solutions directly or through the use of Subcontractors. Higher points may be earned by providing all services directly or by providing details of highly qualified Subcontractors; lower scores may be

earned for failure to provide detailed plans for providing services or failure to provide detail regarding specific Subcontractors. Any Subcontractor that an Offeror chooses to use in fulfilling the requirements of the RFP must also meet all Administrative, Business and Technical Requirements of the RFP, as applicable to the Solutions provided. Subcontractors do not need to comply with Section 6.3.

- 8.2.2 Offeror must describe the extent to which it intends to use subcontractors to perform contract requirements. Include each position providing service and provide a detailed description of how the subcontractors are anticipated to be involved under the Master Agreement.
- 8.2.3 If the subcontractor is known, provide the qualifications of the subcontractor to provide the services; if not, describe how you will guarantee selection of a subcontractor that meets the experience requirements of the RFP. Include a description of how the Offeror will ensure that all subcontractors and their employees will meet all Statement of Work requirements.

### **8.3 (E) WORKING WITH PURCHASING ENTITIES**

- 8.3.1 Offeror must describe how it will work with Purchasing Entities before, during, and after a Data Breach, as defined in the Attachments and Exhibits. Include information such as:
- Personnel who will be involved at various stages, include detail on how the Contract Manager in Section 7 will be involved;
  - Response times;
  - Processes and timelines;
  - Methods of communication and assistance; and
  - Other information vital to understanding the service you provide.
- 8.3.2 Offeror must describe how it will not engage in nor permit its agents to push adware, software, or marketing not explicitly authorized by the Participating Entity or the Master Agreement.
- 8.3.3 Offeror must describe whether its application-hosting environments support a user test/staging environment that is identical to production.
- 8.3.4 Offeror must describe whether or not its computer applications and Web sites are be accessible to people with disabilities, and must comply with Participating entity accessibility policies and the Americans with Disability Act, as applicable.
- 8.3.5 Offeror must describe whether or not its applications and content delivered through Web browsers are be accessible using current released versions of multiple browser platforms (such as Internet Explorer, Firefox, Chrome, and Safari) at minimum.
- 8.3.6 Offeror must describe how it will, prior to the execution of a Service Level Agreement, meet with the Purchasing Entity and cooperate and hold a meeting to determine whether any sensitive or personal information will be stored or used by the Offeror that is subject to any law, rule or regulation providing for specific compliance obligations.
- 8.3.7 Offeror must describe any project schedule plans or work plans that Offerors use in implementing their Solutions with customers. Offerors should include timelines for developing, testing, and implementing Solutions for customers.

### **8.4 (E) CUSTOMER SERVICE**

- 8.4.1 Offeror must describe how it ensure excellent customer service is provided to Purchasing Entities. Include:
- Quality assurance measures;
  - Escalation plan for addressing problems and/or complaints; and
  - Service Level Agreement (SLA).



- 8.4.2 Offeror must describe its ability to comply with the following customer service requirements:
- a. You must have one lead representative for each entity that executes a Participating Addendum. Contact information shall be kept current.
  - b. Customer Service Representative(s) must be available by phone or email at a minimum, from 7AM to 6PM on Monday through Sunday for the applicable time zones.
  - c. Customer Service Representative will respond to inquiries within one business day.
  - d. You must provide design services for the applicable categories.
  - e. You must provide Installation Services for the applicable categories.

**8.5 (E) SECURITY OF INFORMATION**

- 8.5.1 Offeror must describe the measures it takes to protect data. Include a description of the method by which you will hold, protect, and dispose of data following completion of any contract services.
- 8.5.2 Offeror must describe how it intends to comply with all applicable laws and related to data privacy and security.
- 8.5.3 Offeror must describe how it will not access a Purchasing Entity's user accounts or data, except in the course of data center operations, response to service or technical issues, as required by the express terms of the Master Agreement, the applicable Participating Addendum, and/or the applicable Service Level Agreement.

**8.6 (E) PRIVACY AND SECURITY**

- 8.6.1 Offeror must describe its commitment for its Solutions to comply with NIST, as defined in NIST Special Publication 800-145, and any other relevant industry standards, as it relates to the Scope of Services described in **Attachment D**, including supporting the different types of data that you may receive.
- 8.6.2 Offeror must list all government or standards organization security certifications it currently holds that apply specifically to the Offeror's proposal, as well as those in process at time of response. Specifically include HIPAA, FERPA, CJIS Security Policy, PCI Data Security Standards (DSS), IRS Publication 1075, FISMA, NIST 800-53, NIST SP 800-171, and FIPS 200 if they apply.
- 8.6.3 Offeror must describe its security practices in place to secure data and applications, including threats from outside the service center as well as other customers co-located within the same service center.
- 8.6.4 Offeror must describe its data confidentiality standards and practices that are in place to ensure data confidentiality. This must include not only prevention of exposure to unauthorized personnel, but also managing and reviewing access that administrators have to stored data. Include information on your hardware policies (laptops, mobile etc).
- 8.6.5 Offeror must provide a detailed list of the third-party attestations, reports, security credentials (e.g., FedRamp), and certifications relating to data security, integrity, and other controls.
- 8.6.6 Offeror must describe its logging process including the types of services and devices logged; the event types logged; and the information fields. You should include detailed response on how you plan to maintain security certifications.
- 8.6.7 Offeror must describe whether it can restrict visibility of cloud hosted data and documents to specific users or groups.

- 8.6.8 Offeror must describe its notification process in the event of a security incident, including relating to timing, incident levels. Offeror should take into consideration that Purchasing Entities may have different notification requirements based on applicable laws and the categorization type of the data being processed or stored.
- 8.6.9 Offeror must describe and identify whether or not it has any security controls, both physical and virtual Zones of Control Architectures (ZOCA), used to isolate hosted servers.
- 8.6.10 Provide Security Technical Reference Architectures that support Infrastructure as a Service (IaaS), Software as a Service (SaaS) & Platform as a Service (PaaS).
- 8.6.11 Describe security procedures (background checks, foot printing logging, etc.) which are in place regarding Offeror's employees who have access to sensitive data.
- 8.6.12 Describe the security measures and standards (i.e. NIST) which the Offeror has in place to secure the confidentiality of data at rest and in transit.
- 8.6.13 Describe policies and procedures regarding notification to both the State and the Cardholders of a data breach, as defined in this RFP, and the mitigation of such a breach.

#### **8.7 (E) MIGRATION AND REDEPLOYMENT PLAN**

- 8.7.1 Offeror must describe how it manages the end of life activities of closing down a service to a Purchasing Entity and safely deprovisioning it before the Offeror is no longer contractually obligated to maintain the service, include planned and unplanned activities. An Offeror's response should include detail on how an Offeror maintains security of the data during this phase of an SLA, if the Offeror provides for redundancy during migration, and how portable the data is during migration.
- 8.7.2 Offeror must describe how it intends to provide an orderly return of data back to the Purchasing Entity, include any description in your SLA that describes the return of data to a customer.

#### **8.8 (E) SERVICE OR DATA RECOVERY**

- 8.8.1 Describe how you would respond to the following situations; include any contingency plan or policy.
  - a. Extended downtime.
  - b. Suffers an unrecoverable loss of data.
  - c. Offeror experiences a system failure.
  - d. Ability to recover and restore data within 4 business hours in the event of a severe system outage.
  - e. Describe your Recovery Point Objective (RPO) and Recovery Time Objective (RTO).
- 8.8.2 Describe your methodologies for the following backup and restore services:
  - a. Method of data backups
  - b. Method of server image backups
  - c. Digital location of backup storage (secondary storage, tape, etc.)
  - d. Alternate data center strategies for primary data centers within the continental United States.

#### **8.9 (E) DATA PROTECTION**

- 8.9.1 Specify standard encryption technologies and options to protect sensitive data, depending on the particular service model that you intend to provide under this Master Agreement, while in transit or at rest.
- 8.9.2 Describe whether or not it is willing to sign relevant and applicable Business Associate Agreement or any other agreement that may be necessary to protect data with a Purchasing Entity.

- 8.9.3 Offeror must describe how it will only use data for purposes defined in the Master Agreement, participating addendum, or related service level agreement. Offeror shall not use the government data or government related data for any other purpose including but not limited to data mining. Offeror or its subcontractors shall not resell nor otherwise redistribute information gained from its access to the data received as a result of this RFP.
- 8.10 (E) SERVICE LEVEL AGREEMENTS**
- 8.10.1 Offeror must describe whether your sample Service Level Agreement is negotiable. If not describe how it benefits purchasing entity's not to negotiate your Service Level Agreement.
- 8.10.2 Offeror, as part of its proposal, must provide a sample of its Service Level Agreement, which should define the performance and other operating parameters within which the infrastructure must operate to meet IT System and Purchasing Entity's requirements.
- 8.11 (E) DATA DISPOSAL**
- Specify your data disposal procedures and policies and destruction confirmation process.
- 8.12 (E) PERFORMANCE MEASURES AND REPORTING**
- 8.12.1 Describe your ability to guarantee reliability and uptime greater than 99.5%. Additional points will be awarded for 99.9% or greater availability.
- 8.12.2 Provide your standard uptime service and related Service Level Agreement (SLA) criteria.
- 8.12.3 Specify and provide the process to be used for the participating entity to call/contact you for support, who will be providing the support, and describe the basis of availability.
- 8.12.4 Describe the consequences/SLA remedies if the Respondent fails to meet incident response time and incident fix time.
- 8.12.5 Describe the firm's procedures and schedules for any planned downtime.
- 8.12.6 Describe the consequences/SLA remedies if disaster recovery metrics are not met.
- 8.12.7 Provide a sample of performance reports and specify if they are available over the Web and if they are real-time statistics or batch statistics.
- 8.12.8 Ability to print historical, statistical, and usage reports locally.
- 8.12.9 Offeror must describe whether or not its on-demand deployment is supported 24x365.
- 8.12.10 Offeror must describe its scale-up and scale-down, and whether it is available 24x365.
- 8.13 (E) CLOUD SECURITY ALLIANCE**
- Describe your level of disclosure with CSA Star Registry for each Solution offered.
- Completion of a CSA STAR Self-Assessment, as described in Section 5.5.3.
  - Completion of Exhibits 1 **and** 2 to Attachment B.
  - Completion of a CSA STAR Attestation, Certification, or Assessment.
  - Completion CSA STAR Continuous Monitoring.
- 8.14 (E) SERVICE PROVISIONING**
- 8.14.1 Describe in detail how your firm processes emergency or rush services implementation requests by a Purchasing Entity.
- 8.14.2 Describe in detail the standard lead-time for provisioning your Solutions.
- 8.15 (E) BACK UP AND DISASTER PLAN**
- 8.15.1 Ability to apply legal retention periods and disposition by agency per purchasing entity policy and/or legal requirements.
- 8.15.2 Describe any known inherent disaster recovery risks and provide potential mitigation strategies.

- 8.15.3 Describe the infrastructure that supports multiple data centers within the United States, each of which supports redundancy, failover capability, and the ability to run large scale applications independently in case one data center is lost.
- 8.16 (E) SOLUTION ADMINISTRATION**
- 8.16.1 Ability of the Purchasing Entity to fully manage identity and user accounts.
- 8.16.2 Ability to provide anti-virus protection, for data stores.
- 8.16.3 Ability to migrate all Purchasing Entity data, metadata, and usage data to a successor Cloud Hosting solution provider.
- 8.16.4 Ability to administer the solution in a distributed manner to different participating entities.
- 8.16.5 Ability to apply a participating entity's defined administration policies in managing a solution.
- 8.17 (E) HOSTING AND PROVISIONING**
- 8.17.1 Documented cloud hosting provisioning processes, and your defined/standard cloud provisioning stack.
- 8.17.2 Provide tool sets at minimum for:
1. Deploying new servers (determining configuration for both stand alone or part of an existing server farm, etc.)
  2. Creating and storing server images for future multiple deployments
  3. Securing additional storage space
  4. Monitoring tools for use by each jurisdiction's authorized personnel – and this should ideally cover components of a public (respondent hosted) or hybrid cloud (including Participating entity resources).
- 8.18 (E) TRIAL AND TESTING PERIODS (PRE- AND POST- PURCHASE)**
- 8.18.1 Describe your testing and training periods that your offer for your service offerings.
- 8.18.2 Describe how you intend to provide a test and/or proof of concept environment for evaluation that verifies your ability to meet mandatory requirements.
- 8.18.3 Offeror must describe what training and support it provides at no additional cost.
- 8.19 (E) INTEGRATION AND CUSTOMIZATION**
- 8.19.1 Describe how the Solutions you provide can be integrated to other complementary applications, and if you offer standard-based interface to enable additional integrations.
- 8.19.2 Describe the ways to customize and personalize the Solutions you provide to meet the needs of specific Purchasing Entities.
- 8.20 (E) MARKETING PLAN**
- Describe your how you intend to market your Solutions to NASPO ValuePoint and Participating Entities.
- 8.21 (E) RELATED VALUE-ADDED SERVICES TO CLOUD SOLUTIONS**
- Describe the valued-added services that you can provide as part of an awarded contract, e.g. consulting services pre- and post- implementation. Offerors may detail professional services in the RFP limited to assisting offering activities with initial setup, training and access to the services.
- 8.22 (E) SUPPORTING INFRASTRUCTURE**
- 8.22.1 Describe what infrastructure is required by the Purchasing Entity to support your Solutions or deployment models.
- 8.22.2 If required, who will be responsible for installation of new infrastructure and who will incur those costs?
- 8.23 (E) ALIGNMENT OF CLOUD COMPUTING REFERENCE ARCHITECTURE**

Clarify how your architecture compares to the NIST Cloud Computing Reference Architecture, in particular, to describe how they align with the three domains e.g. Infrastructure as a Service (IaaS), Software as a Service (SaaS), and Platform as a Service (PaaS).

## 9 COST PROPOSAL

### 9.1 (M) COST PROPOSAL

Given that technology products generally depreciate over time and go through typical product lifecycles, it is more favorable for Purchasing Entities to have the Master Agreement be based on minimum discounts off the Offeror's commercially published pricelists versus fixed pricing. In addition, Offerors will have the ability to update and refresh their respective price books, as long as the agreed-upon discounts are fixed. Minimum guaranteed contract discounts do not preclude an Offeror and/or its authorized resellers from providing deeper or additional, incremental discounts at their sole discretion.

Offeror must identify its cost proposal, **Attachment G**, as "Cost Proposal – CH16012 Cloud solutions". No specific format is required for an Offeror's price schedule; however the Offeror must provide and list a discount from its pricing catalog. New discount levels may be offered for new services that become available during the term of the Master Agreement, as allowed by the Lead State.

Pricing catalogs should include the price structures of the cloud solutions models and deployment models that it intends to provide including the types of data it is able to hold under each model. Pricing must be all-inclusive of infrastructure and software costs and management of infrastructure, network, OS, and software.

The Lead State understands that each Offeror may have its own pricing models and schedules for the Services described in the RFP. It is the intent of the RFP to allow price schedules that are viewed in the traditional line item structure or price schedule that have pay-as-you-go characteristics.

An Offeror's price catalog should be clear and readable. Participating Entities, in reviewing an Offeror's Master Agreement, will take into account the discount offered by the Offeror along with the transparent, publicly available, up-to-date pricing and tools that will allow customers to evaluate their pricing.

Individual Participating Addendums will use the cost proposals pricing as a base and may negotiate an adjusted rate.

Offeror's price catalog should be broken into category for each service category. For example if an Offeror provides a SaaS offering then its price catalog should be divided into education SaaS offerings, e-procurement SaaS offerings, information SaaS offering, etc.

Some Participating Entities may desire to use an Offeror for other related application modifications to optimize or deploy cloud solutions applications. Responses to the RFP must include hourly rates by job specialty for use by Participating Entities for these types of database/application administration, systems engineering & configuration services and consulting throughout the contract period. The hourly rates should be a fully burdened rate that includes labor, overhead, and any other costs related to the service. The specific rate (within a range) charged for each proposed contracted service would be the lowest rate shown unless justified in writing and approved by the Lead State. Any of these valued-added services must be included in your cost proposal, e.g., by an hourly rate.

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## **Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions**

### **1. Master Agreement Order of Precedence**

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

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

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

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

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

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

**Data** means all information, whether in oral or written (including electronic) form,

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<sup>1</sup> A Sample Participating Addendum will be published after the contracts have been awarded.

<sup>2</sup> The Exhibits comprise the terms and conditions for the service models: PaaS, IaaS, and SaaS.

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity.

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

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

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

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

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

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

**Security Incident** means the possible or actual unauthorized access to a Purchasing

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

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

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

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

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

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

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

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

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

**6. Discount Guarantee Period:** All discounts must be guaranteed for the entire term of the Master Agreement. Participating Entities and Purchasing Entities shall receive the

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immediate benefit of price or rate reduction of the services provided under this Master Agreement. A price or rate reduction will apply automatically to the Master Agreement and an amendment is not necessary.

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

**8. Confidentiality, Non-Disclosure, and Injunctive Relief**

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

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

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

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

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

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

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

## **10. Defaults and Remedies**

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

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

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

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

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

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

(1) Exercise any remedy provided by law; and

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

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

(4) Suspend Contractor's performance; and

(5) Withhold payment until the default is remedied.

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

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

**12. Force Majeure:** Neither party shall be in default by reason of any failure in performance of this Contract in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual

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capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

### **13. Indemnification**

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

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

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

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

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

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

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

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

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

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

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

## **16. Insurance**

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

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

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$3 million general aggregate;



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## (2) CLOUD MINIMUM INSURANCE COVERAGE:

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

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

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

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

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

e. Contractor shall furnish to the Lead State, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within thirty (30) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment

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of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

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

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

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

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

## **19. Ordering**

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

b. This Master Agreement permits Purchasing Entities to define project-specific requirements and informally compete the requirement among other firms having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to Purchasing Entity rules and policies. The Purchasing Entity may in its sole discretion determine which firms should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

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

d. Contractor shall not begin providing Services without a valid Service Level

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Agreement or other appropriate commitment document compliant with the law of the Purchasing Entity.

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

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

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

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

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

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

## **20. Participants and Scope**

a. Contractor may not deliver Services under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a

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Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

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

c. Unless otherwise stipulated in a Participating Entity's Participating Addendum, specific services accessed through the NASPO ValuePoint cooperative Master Agreements for Cloud Services by state executive branch agencies, as required by a Participating Entity's statutes, are subject to the authority and approval of the Participating Entity's Chief Information Officer's Office<sup>3</sup>.

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

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

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

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

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

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h. Resale. Subject to any explicit permission in a Participating Addendum, Purchasing Entities may not resell goods, software, or Services obtained under this Master Agreement. This limitation does not prohibit: payments by employees of a Purchasing Entity as explicitly permitted under this agreement; sales of goods to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities under cooperative agreements and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

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

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

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

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

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

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

**25. Purchasing Entity Data:** Purchasing Entity retains full right and title to Data provided by it and any Data derived therefrom, including metadata. Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding Purchasing Entity's use of the Service may be disclosed, provided, rented or

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sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. The obligation shall extend beyond the term of this Master Agreement in perpetuity.

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

## **26. Records Administration and Audit.**

- a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder.
- b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or orders or underpayment of fees found as a result of the examination of the Contractor's records.
- c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.
- d. The Contractor shall allow the Purchasing Entity to audit conformance to the Master Agreement and applicable Participating Addendum terms. The purchasing entity may perform this audit or contract with a third party at its discretion and at the purchasing entity's expense.

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

Additionally, some states may require an additional administrative fee be paid directly to

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

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

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

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

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

- a. Contractor has acquired any and all rights, grants, assignments, conveyances, licenses, permissions, and authorization for the Contractor to provide the Services described in this Master Agreement.
- b. Contractor will perform materially as described in this Master Agreement, SLA, Statement of Work, including any performance representations contained in the Contractor's response to the Solicitation by the Lead State.
- c. Contractor represents and warrants that the representations contained in its response to the Solicitation by the Lead State.
- d. The Contractor will not interfere with a Purchasing Entity's access to and use of the Services it acquires from this Master Agreement.
- e. The Services provided by the Contractor are compatible with and will operate successfully with any environment (including web browser and operating system) specified by the Contractor in its response to the Solicitation by the Lead State.
- f. The Contractor warrants that the Products it provides under this Master Agreement

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are free of malware. The Contractor must use industry-leading technology to detect and remove worms, Trojans, rootkits, rogues, dialers, spyware, etc.

**32. Transition Assistance:**

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

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

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

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

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



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

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

### **37. Governing Law and Venue**

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

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

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

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

**38. No Guarantee of Service Volumes:** The Contractor acknowledges and agrees that the Lead State and NASPO ValuePoint makes no representation, warranty or condition

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as to the nature, timing, quality, quantity or volume of business for the Services or any other products and services that the Contractor may realize from this Master Agreement, or the compensation that may be earned by the Contractor by offering the Services. The Contractor acknowledges and agrees that it has conducted its own due diligence prior to entering into this Master Agreement as to all the foregoing matters.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**4. Security Incident or Data Breach Notification:**

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

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

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

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

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

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

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

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

**7. Termination and Suspension of Service:**

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**7. Termination and Suspension of Service:**

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

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

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

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

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

## **8. Background Checks:**

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

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

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

## **9. Access to Security Logs and Reports:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

**7. Termination and Suspension of Service:**

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

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

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

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

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

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

#### **8. Background Checks:**

- a. Upon the request of the Purchasing Entity, the Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Master Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the Purchasing Entity's information among the Contractor's employees and agents.
- b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.
- c. If any of the stated personnel providing services under a Participating Addendum is not acceptable to the Purchasing Entity in its sole opinion as a result of the background or criminal history investigation, the Purchasing Entity, in its' sole option shall have the right to either (1) request immediate replacement of the person, or (2) immediately terminate the Participating Addendum and any related service agreement.

#### **9. Access to Security Logs and Reports:**

- a. The Contractor shall provide reports on a schedule specified in the SLA to the Contractor directly related to the infrastructure that the Contractor controls upon which the Purchasing Entity's account resides. Unless otherwise agreed to in the SLA, the Contractor shall provide the public jurisdiction a history or all API calls for the Purchasing Entity account that includes the identity of the API caller, the time of the API call, the source IP address of the API caller, the request parameters and the response elements returned by the Contractor. The report will be sufficient to enable the Purchasing Entity to perform security analysis, resource change tracking and compliance auditing
- b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **Attachment B: Cloud Security Alliance Questionnaires**

Cloud providers can submit two different types of reports to indicate their compliance with CSA best practices:

- The Consensus Assessments Initiative Questionnaire (CAIQ), which provides industry-accepted ways to document what security controls exist in IaaS, PaaS and SaaS offerings. The questionnaire (CAIQ) provides a set of over 140 questions a cloud consumer and cloud auditor may wish to ask of a cloud provider. Providers may opt to submit a completed Consensus Assessments Initiative Questionnaire.
- The Cloud Controls Matrix (CCM), which provides a controls framework that gives detailed understanding of security concepts and principles that are aligned to the Cloud Security Alliance guidance in 13 domains. As a framework, the CSA CCM provides organizations with the needed structure, detail and clarity relating to information security tailored to the cloud industry. Providers may choose to submit a report documenting compliance with Cloud Controls Matrix.

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**CONSENSUS ASSESSMENTS INITIATIVE QUESTIONNAIRE (CAIQ) V3.0.1 GUIDING DOCUMENT PRINCIPLES**

**INTENT OF THIS TAB:** To assist reviewers/users of document to understand both the intent and structure of CAIQ

**GUIDING PRINCIPLES:**

- Questionnaire is organized using CSA 16 governing & operating domains divided into “control areas” within CSA’s Controls Matrix structure
- Questions are to assist both cloud providers in general principles of cloud security and clients in vetting cloud providers on the security of their offering and company security profile
- CAIQ is not intended to duplicate or replace existing industry security assessments but to contain questions unique or critical to the cloud computing model in each control area
- Each question should be able to be answered yes or no
- If a question can’t be answered yes or no then it was separated into two or more questions to allow yes or no answers.
- Questions are intended to foster further detailed questions to provider by client specific to client’s cloud security needs. This was done to limit number of questions to make the assessment feasible and since each client may have unique follow-on questions or may not be concerned with all follow-on questions

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### **ATTACHMENT C: NIST Service Models**

Offerors may optionally document the service model of cloud computing (e.g. IaaS, PaaS, SaaS, or a combination thereof, that most closely describes their offering, using the definitions in The NIST Definition of Cloud Computing SP 800-145. The following guidance is offered for the proper selection of service models.

NIST's service models provide the RFP with a set of consistent sub-categories to assist ordering activities in locating and comparing services of interest. Service model is primarily concerned with the nature of the service offered and the staff and activities most likely to interact with the service. Offerors should select a single service model most closely corresponding to their proposed service based on the guidance below. It is understood that cloud services can technically incorporate multiple service models and the intent is to provide the single best categorization of the service.

Offerors should take care to select the NIST service model most closely corresponding to each service offered. Offerors should not invent, proliferate or select multiple cloud service model sub-categories to distinguish their offerings, because ad-hoc categorization prevents consumers from comparing similar offerings. Instead Offerors should make full use of the existing NIST categories to the fullest extent possible.

For example, in the RFP an offering branded by a contractor as "Storage as a Service" would be properly characterized as Infrastructure as a Service (IaaS), storage being a subset of infrastructure. Services branded as "LAMP as a Service" or "Database as a Service" would be properly characterized under the RFP as Platform as a Service (PaaS), as they deliver two kinds of platform services. Services branded as "Travel Facilitation as a Service" or "Email as a Service" would be properly characterized as species of Software as a Service (SaaS) for the RFP. However, Offerors must include branded descriptions of the service in the full descriptions of the service's capabilities.

When choosing between equally plausible service model sub-categories, Offerors should consider several factors:

- 1) Visibility to the Purchasing Entities. The service model sub-categories in the RFP exist to help Purchasing Entities match their requirements with service characteristics. Offerors should select the most intuitive and appropriate service model from the point of view of a Purchasing Entity.
- 2) Primary Focus of the Service. Services may offer a mix of capabilities that span service models in the strict technical sense. For example, a service may offer both IaaS capabilities for processing and storage with some PaaS capabilities for application deployment, or SaaS capabilities for specific applications. In a service mix situation the Offerors should select the service model that is their primary focus.
- 3) Purchasing Entity Role. Offerors should consider the operational role of the Purchasing Entity's primary actual consumer or operator of the service. For example services most often consumed by system managers are likely to fit best as IaaS; services most often consumed by

application deployers or developers as PaaS, and services most often consumed by business users as SaaS.

4) Lowest Level of Configurability. Offerors can consider IaaS, PaaS and SaaS as an ascending hierarchy of complexity, and select the model with the lowest level of available Purchasing Entity interaction. As an example, virtual machines are an IaaS service often bundled with a range of operating systems, which are PaaS services. The Purchasing Entity usually has access to configure the lower level IaaS service, and the overall service should be considered IaaS. In cases where the Purchasing Entity cannot configure the speed, memory, network configuration, or any other aspect of the IaaS component, consider categorizing as a PaaS service.

## Cloud Service Types for SaaS, IaaS and PaaS

Cloud Service Providers should identify and describe their service offerings by Cloud Service Model (i.e. SaaS, IaaS or PaaS), along with additional sub-categories and descriptors. The following sub-categories and descriptors do not make up the complete list. Cloud Service Providers must either identify the category of service from the list below or provide the sub-category and descriptors of their service offering within one of the three Cloud Service Models.

### SaaS

- Analytics
  - Data Analytics
  - Business Intelligence
- Business Continuity/Disaster Recovery
- Cloud and Infrastructure Management Tools
- Collaboration
- Customer Relationship Management
- Citizen Relationship Management
- Data Management
- E-Discovery
- Electronic Records Management
- 
- ERP
  - HR
  - Finance
    - Assume Accounts Payable / Receivable
    - General Ledger
  - Budget
  - Procurement
- GIS
- Human Resource
  - Payroll
  - Time, Attendance and Scheduling
  - Recruitment and Hiring
- Internet Filtering
- Licensing and Registration Systems

- Office Productivity
  - Word Processing
  - Document Tracking
  - E-mail
  - Spread sheets
  - Presentation
- Message Filtering
- Meeting Planning, hosting, conferencing
- Mobile Data Management
- Point of Sale (POS)
- Procurement Systems
- [Project and Portfolio Management \(PPM\) Tools.](#)
- Security
- Travel Management
- Workflow and Electronic Signature
- Other (identify additional sub-categories and/or descriptors)

#### **PaaS**

- Analytics
  - Hadoop
  - Business Intelligence
  - Data Warehouse
- Database
  - Relational
  - NoSQL
- Development, Testing and Deployment
  - Containers
  - Services and APIs
  - Mobile
  - Internet of Things
  - Tools
  - Runtime environments
- Electronic Records Management
- E-Discovery
- GIS
- Integration (iPaaS)
- Open Source
- Other (identify additional sub-categories and/or descriptors)

#### **IaaS**

- Computer/Infrastructure Services
  - Operating systems
  - Hypervisors
- Disaster Recovery
  - Business Continuity
  - High Availability / Failover
- GIS

- Storage
  - File
  - Block
  - Object
  - Archive
  - Cache
  - Content Delivery Networks (CDN)
  - Litigation Hold
- Network
  - Virtual network
  - Load balancer
  - DNS
  - Gateway (e.g. VPN or Application)
  - Firewall
  - Traffic manager
  - Direct link
- PC/Desktop “aaS”
- Security
  - Identity & Access Management
  - Encryption
  - Data Loss Prevention (DLP)
  - Web Security
  - Email Security
  - Network Security
  - Security Information and Event Management (SIEM)
  - Intrusion Management
  - DDOS Monitoring / Management
- Other (identify additional sub-categories and/or descriptors)



## **Attachment D: Scope of Services**

### **1.0 General Business Environment & Solicitation Overview:**

Cloud computing is a model for enabling ubiquitous, convenient, on-demand network access to a share pool of configurable computing resources (e.g., networks, servers, storage, applications, and services) that can be rapidly provisioned and released with minimal management effort or service provider interaction.

#### **1.1 Definitions:**

Cloud based services terminology varies greatly within the information technology industry. In an effort to clarify the target audience and the intent of this solicitation effort, the following definitions are offered:

##### **1.1.1 Cloud Based Services Providers**

**Definition** - A cloud based services provider is a person, an organization; it is the entity responsible for making a service available to interested parties. A cloud based service provider acquires and manages the computing infrastructure required for providing the services, runs the cloud software that provides the services, and makes arrangement to deliver the cloud services to the cloud consumers through network access.

A cloud based service provider may utilize subcontractors and/or third parties to fulfill parts of the cloud service delivery ("authorized partners").

##### **1.1.2 Categorization of Risk**

Successful cloud based services providers will have the ability to store and secure one, all, or a combination of data<sup>1</sup>. Risk categories of the data are defined as:

###### **Low Risk Data**

**Definition:** FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems ("Low Impact Data").

Low Impact levels are defined in FIPS 199 as follows:

The potential impact is low if the loss of confidentiality, integrity, or availability could be expected to have a limited adverse effect on organizational operations, organizational assets, or individuals. A limited adverse effect could mean that the loss of confidentiality, integrity, or availability might:

---

<sup>1</sup> Data types and classifications may vary depending on the Participating State's laws and regulations. Participating States may change the classification levels, types, names, and restrictions for certain data during the participating addendum stage.

- Cause a degradation in mission capability to an extent and duration that the organization is able to perform its primary functions, but the effectiveness of the functions is noticeably reduced;
- Result in minor damage to organizational assets, minor financial loss, or minor harm to individuals.

#### **Moderate Risk Data**

**Definition:** FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems ("Moderate Impact Data").

The potential impact is moderate if the loss of confidentiality, integrity, or availability could be expected to have a serious adverse effect on organizational operations, organizational assets, or individuals. A serious adverse effect could mean that the loss of confidentiality, integrity, or availability might:

- Cause a significant degradation in mission capability to an extent and duration that the organization is able to perform its primary functions, but the effectiveness of the functions is significantly reduced;
- Result in significant damage to organizational assets, significant financial loss, or significant harm to individuals, but not loss of life or serious life threatening injuries.

#### **High Risk Data**

**Definition:** FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems ("High Impact Data").

The potential impact is high if the loss of confidentiality, integrity, or availability could be expected to have a severe or catastrophic adverse effect on organizational operations, organizational assets, or individuals. A severe or catastrophic adverse effect could mean that the loss of confidentiality, integrity, or availability might:

- Cause a severe degradation in or loss of mission capability to an extent and duration that the organization is not able to perform one or more of its primary functions;
- Result in major damage to organizational assets, major financial loss, or severe or catastrophic harm to individuals involving loss of life or serious life threatening injuries.

Prior to signing a Participating Addendum, a Contractor and a Participating State must cooperate and determine what type of risk categories of the data are going to be utilized in the Participating Addendum.

#### **1.1.3 Services & Models**

All of the Cloud Service Based Models must follow the NIST definition of cloud computing found in NIST Special Publication 800-145. This cloud model is composed of five essential characteristics, three service models, and four deployment models.

A successful Offeror's cloud based service model(s) must meet the five essential characteristics which include:

**On-demand self-service.** A consumer can unilaterally provision computing capabilities, such as server time and network storage, as needed automatically without requiring human interaction with each service provider.

**Broad network access.** Capabilities are available over the network and accessed through standard mechanisms that promote use by heterogeneous thin or thick client platforms (e.g., mobile phones, tablets, laptops, and workstations).

**Resource pooling.** The provider's computing resources are pooled to serve multiple consumers using a multi-tenant model, with different physical and virtual resources dynamically assigned and reassigned according to consumer demand. There is a sense of location independence in that the customer generally has no control or knowledge over the exact location of the provided resources but may be able to specify location at a higher level of abstraction (e.g., country, state, or datacenter). Examples of resources include storage, processing, memory, and network bandwidth.

**Rapid elasticity.** Capabilities can be elastically provisioned and released, in some cases automatically, to scale rapidly outward and inward commensurate with demand. To the consumer, the capabilities available for provisioning often appear to be unlimited and can be appropriated in any quantity at any time.

**Measured service.** Cloud systems automatically control and optimize resource use by leveraging a metering capability<sup>1</sup> at some level of abstraction appropriate to the type of service (e.g., storage, processing, bandwidth, and active user accounts). Resource usage can be monitored, controlled, and reported, providing transparency for both the provider and consumer of the utilized service.

A successful Offeror must provide at least one of the following cloud based service models in order to be considered for award. These three cloud based service models align with NIST requirements and standards. The cloud based services models are defined as:

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

**Infrastructure as a Service (IaaS)** - as used in this Master Agreement is defined the capability provided to the consumer is to provision processing, storage, networks, and other fundamental

computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems, storage, deployed applications; and possibly limited control of select networking components (e.g., host firewalls).

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

A successful Offeror will have the ability to provide cloud based services through the following deployment methods:

- **Private cloud.** The cloud infrastructure is provisioned for exclusive use by a single organization comprising multiple consumers (e.g., business units). It may be owned, managed, and operated by the organization, a third party, or some combination of them, and it may exist on or off premises.
- **Community cloud.** The cloud infrastructure is provisioned for exclusive use by a specific community of consumers from organizations that have shared concerns (e.g., mission, security requirements, policy, and compliance considerations). It may be owned, managed, and operated by one or more of the organizations in the community, a third party, or some combination of them, and it may exist on or off premises.
- **Public cloud.** The cloud infrastructure is provisioned for open use by the general public. It may be owned, managed, and operated by a business, academic, or government organization, or some combination of them. It exists on the premises of the cloud provider.
- **Hybrid cloud.** The cloud infrastructure is a composition of two or more distinct cloud infrastructures (private, community, or public) that remain unique entities, but are bound together by standardized or proprietary technology that enables data and application portability (e.g., cloud bursting for load balancing between clouds)

Note: In order to comply with NIST Standards and Requirements, but encourage the development and use of new technologies and as new definitions or modifications of NIST Standards and Requirements are established, the scope of services for the RFP may be modified to align with those definitions, pursuant to Utah Administrative Code R33-12-502. The scope of services may be modified for each awarded contract if both parties agree to the modification. No contract may be extended beyond the terms of the contract included in this solicitation as a result of a modification.

**Exhibit E: Intent to Participate**

The States listed below have of submitted signed and submitted the Intent to Participate form to the State of Utah. Some of the States have attached additional information, including state specific terms and conditions that need to be posted as part of this RFP. The below listed States reserve the right to modify the terms and conditions of any awarded Master Agreement in a Participating Addendum.

Alaska	Oklahoma
California	Rhode Island
Colorado	South Dakota
Connecticut	Tennessee
Delaware	Utah
Georgia	Vermont
Hawaii	Virginia
Idaho	Washington
Illinois	West Virginia
Iowa	Wisconsin
Maine	
Massachusetts	
Minnesota	
Mississippi	
Missouri	
Montana	
Nevada	
New Hampshire	
New Jersey	
New Mexico	
North Dakota	

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

1. **DEFINITIONS:** Unless otherwise specified in the Statement of Work, the following terms shall be given the meaning shown, unless context requires otherwise.
  - a) **"Acceptance Tests"** means those tests performed during the Performance Period which are intended to determine compliance of Equipment and Software with the specifications and all other Attachments incorporated herein by reference and to determine the reliability of the Equipment.
  - b) **"Application Program"** means a computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the Hardware/Software system, but they may be supplied by the Contractor.
  - c) **"Attachment"** means a mechanical, electrical, or electronic interconnection to the Contractor-supplied Machine or System of Equipment, manufactured by other than the original Equipment manufacturer that is not connected by the Contractor.
  - d) **"Business entity"** means any individual, business, partnership, joint venture, corporation, S-corporation, limited liability company, sole proprietorship, joint stock company, consortium, or other private legal entity recognized by statute.
  - e) **"Buyer"** means the State's authorized contracting official.
  - f) **"Commercial Hardware"** means Hardware developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
  - g) **"Commercial Software"** means Software developed or regularly used that: (i) has been sold, leased, or licensed to the general public; (ii) has been offered for sale, lease, or license to the general public; (iii) has not been offered, sold, leased, or licensed to the public but will be available for commercial sale, lease, or license in time to satisfy the delivery requirements of this Contract; or (iv) satisfies a criterion expressed in (i), (ii), or (iii) above and would require only minor modifications to meet the requirements of this Contract.
  - h) **"Contract"** means this Contract or agreement (including any purchase order), by whatever name known or in whatever format used.
  - i) **"Custom Software"** means Software that does not meet the definition of Commercial Software.
  - j) **"Contractor"** means the Business Entity with whom the State enters into this Contract. Contractor shall be synonymous with "supplier", "vendor" or other similar term.
  - k) **"Data Processing Subsystem"** means a complement of Contractor-furnished individual Machines, including the necessary controlling elements (or the functional equivalent), Operating Software and Software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
  - l) **"Data Processing System (System)"** means the total complement of Contractor-furnished Machines, including one or more central processors (or instruction processors), Operating Software which are acquired to operate as an integrated group.
  - m) **"Deliverables"** means Goods, Software, Information Technology, telecommunications technology, Hardware, and other items (e.g. reports) to be delivered pursuant to this Contract, including any such items furnished incident to the provision of services.
  - n) **"Designated CPU(s)"** means for each product, if applicable, the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific "Designated CPU(s)" are specified on the Contract, the term shall mean any and all CPUs located at the site specified therein.
  - o) **"Documentation"** means manuals and other printed materials necessary or useful to the State in its use or maintenance of the Equipment or Software provided hereunder. Manuals and other printed materials customized for the State hereunder constitute Work Product if such materials are required by the Statement of Work.
  - p) **"Equipment"** is an all-inclusive term which refers either to individual Machines or to a complete Data Processing System or Subsystem, including its Hardware and Operating Software (if any).
  - q) **"Equipment Failure"** is a malfunction in the Equipment, excluding all external factors, which prevents the accomplishment of the Equipment's intended function(s). If microcode or Operating Software residing in the Equipment is necessary for the proper operation of the Equipment, a failure of such microcode or Operating Software which prevents the accomplishment of the Equipment's intended functions shall be deemed to be an Equipment Failure.
  - r) **"Facility Readiness Date"** means the date specified in the Statement of Work by which the State must have the site prepared and available for Equipment delivery and installation.
  - s) **"Goods"** means all types of tangible personal property, including but not limited to materials, supplies, and Equipment (including computer and telecommunications Equipment).
  - t) **"Hardware"** usually refers to computer Equipment and is contrasted with Software. See also Equipment.
  - u) **"Installation Date"** means the date specified in the Statement of Work by which the Contractor must have the ordered Equipment ready (certified) for use by the State.
  - v) **"Information Technology"** includes, but is not limited to, all electronic technology systems and services, automated information handling, System design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite System controls, simulation, electronic commerce, and all related interactions between people and Machines.
  - w) **"Machine"** means an individual unit of a Data Processing System or Subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary Software, e.g., central processing unit, memory module, tape unit, card reader, etc.
  - x) **"Machine Alteration"** means any change to a Contractor-supplied Machine which is not made by the Contractor, and which results in the Machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
  - y) **"Maintenance Diagnostic Routines"** means the diagnostic programs customarily used by the Contractor to test Equipment for proper functioning and reliability.
  - z) **"Manufacturing Materials"** means parts, tools, dies, jigs, fixtures, plans, drawings, and information produced or acquired, or rights acquired, specifically to fulfill obligations set forth herein.
  - aa) **"Mean Time Between Failure (MTBF)"** means the average expected or observed time between consecutive failures in a System or component.
  - bb) **"Mean Time to Repair (MTTR)"** means the average expected or observed time required to repair a System or component and return it to normal operation.

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

- cc) **"Operating Software"** means those routines, whether or not identified as Program Products, that reside in the Equipment and are required for the Equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the Equipment.
- dd) **"Operational Use Time"** means for performance measurement purposes, that time during which Equipment is in actual operation by the State. For maintenance Operational Use Time purposes, that time during which Equipment is in actual operation and is not synonymous with power on time.
- ee) **"Period of Maintenance Coverage"** means the period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- ff) **"Preventive Maintenance"** means that maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the Equipment in proper operating condition.
- gg) **"Principal Period of Maintenance"** means any nine consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- hh) **"Programming Aids"** means Contractor-supplied programs and routines executable on the Contractor's Equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).
- ii) **"Program Product"** means programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- jj) **"Remedial Maintenance"** means that maintenance performed by the Contractor which results from Equipment (including Operating Software) failure, and which is performed as required, i.e., on an unscheduled basis.
- kk) **"Software"** means an all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including Operating Software, Programming Aids, Application Programs, and Program Products.
- ll) **"Software Failure"** means a malfunction in the Contractor-supplied Software, other than Operating Software, which prevents the accomplishment of work, even though the Equipment (including its Operating Software) may still be capable of operating properly. For Operating Software failure, see definition of Equipment Failure.
- mm) **"State"** means the government of the State of California, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the State of California.
- nn) **"System"** means the complete collection of Hardware, Software and services as described in this Contract, integrated and functioning together, and performing in accordance with this Contract.
- oo) **"U.S. Intellectual Property Rights"** means intellectual property rights enforceable in the United States of America, including without limitation rights in trade secrets, copyrights, and U.S. patents.

### 2. CONTRACT FORMATION:

- a) If this Contract results from a sealed bid offered in response to a solicitation conducted pursuant to Chapters 2 (commencing with Section 10290), 3 (commencing with

Section 12100), and 3.6 (commencing with Section 12125) of Part 2 of Division 2 of the Public Contract Code (PCC), then Contractor's bid is a firm offer to the State which is accepted by the issuance of this Contract and no further action is required by either party.

- b) If this Contract results from a solicitation other than described in paragraph a), above, the Contractor's quotation or proposal is deemed a firm offer and this Contract document is the State's acceptance of that offer.
  - c) If this Contract resulted from a joint bid, it shall be deemed one indivisible Contract. Each such joint Contractor will be jointly and severally liable for the performance of the entire Contract. The State assumes no responsibility or obligation for the division of orders or purchases among joint Contractors.
3. **COMPLETE INTEGRATION:** This Contract, including any documents incorporated herein by express reference, is intended to be a complete integration and there are no prior or contemporaneous different or additional agreements pertaining to the subject matter of the Contract.
  4. **SEVERABILITY:** The Contractor and the State agree that if any provision of this Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of the presumed non-applicability of such provision.
  5. **INDEPENDENT CONTRACTOR:** Contractor and the agents and employees of the Contractor, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State.
  6. **APPLICABLE LAW:** This Contract shall be governed by and shall be interpreted in accordance with the laws of the State of California; venue of any action brought with regard to this Contract shall be in Sacramento County, Sacramento, California. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Contract.
  7. **COMPLIANCE WITH STATUTES AND REGULATIONS:**
    - a) The State and the Contractor warrants and certifies that in the performance of this Contract, it will comply with all applicable statutes, rules, regulations and orders of the United States and the State of California. The Contractor agrees to indemnify the State against any loss, cost, damage or liability by reason of the Contractor's violation of this provision.
    - b) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
    - c) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
    - d) If this Contract is in excess of \$554,000, it is subject to the requirements of the World Trade Organization (WTO) Government Procurement Agreement (GPA).
    - e) To the extent that this Contract falls within the scope of Government Code Section 11135, the Contractor hereby agrees to respond to and resolve any complaint brought to

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

its attention, regarding accessibility of its products or services.

8. **CONTRACTOR'S POWER AND AUTHORITY:** The Contractor warrants that it has full power and authority to grant the rights herein granted and will hold the State harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, the Contractor avers that it will not enter into any arrangement with any third party which might abridge any rights of the State under this Contract.
  - a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
  - b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.
9. **ASSIGNMENT:** This Contract shall not be assignable by the Contractor in whole or in part without the written consent of the State. The State's consent shall not be unreasonably withheld or delayed. For the purpose of this paragraph, the State will not unreasonably prohibit the Contractor from freely assigning its right to payment, provided that the Contractor remains responsible for its obligations hereunder.
10. **WAIVER OF RIGHTS:** Any action or inaction by the State or the failure of the State on any occasion, to enforce any right or provision of the Contract, shall not be construed to be a waiver by the State of its rights hereunder and shall not prevent the State from enforcing such provision or right on any future occasion. The rights and remedies of the State herein are cumulative and are in addition to any other rights or remedies that the State may have at law or in equity.
11. **ORDER OF PRECEDENCE:** In the event of any inconsistency between the articles, attachments, specifications or provisions which constitute this Contract, the following order of precedence shall apply:
  - a) These General Provisions – Information Technology (In the instances provided herein where the paragraph begins: "Unless otherwise specified in the Statement of Work" provisions specified in the Statement of Work replacing these paragraphs shall take precedence over the paragraph referenced in these General Provisions);
  - b) Contract form, i.e., Purchase Order STD 65, Standard Agreement STD 213, etc., and any amendments thereto;
  - c) Other Special Provisions;
  - d) Statement of Work, including any specifications incorporated by reference herein;
  - e) Cost worksheets; and
  - f) All other attachments incorporated in the Contract by reference.
12. **PACKING AND SHIPMENT:**
  - a) All Goods are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:
    - i) show the number of the container and the total number of containers in the shipment; and
    - ii) the number of the container in which the packing sheet has been enclosed.
  - b) All shipments by the Contractor or its subcontractors must include packing sheets identifying: the State's Contract number; item number; quantity and unit of measure; part number and description of the Goods shipped; and appropriate evidence of inspection, if required. Goods for different Contracts shall be listed on separate packing sheets.
  - c) Shipments must be made as specified in this Contract, as it may be amended, or otherwise directed in writing by the State's Transportation Management Unit within the Department of General Services, Procurement Division.
13. **TRANSPORTATION COSTS AND OTHER FEES OR EXPENSES:** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by the State unless expressly included and itemized in the Contract.
  - a) The Contractor must strictly follow Contract requirements regarding Free on Board (F.O.B.), freight terms and routing instructions. The State may permit use of an alternate carrier at no additional cost to the State with advance written authorization of the Buyer.
  - b) If "prepay and add" is selected, supporting freight bills are required when over \$50, unless an exact freight charge is approved by the Transportation Management Unit within the Department of General Services Procurement Division and a waiver is granted.
  - c) On "F.O.B. Shipping Point" transactions, should any shipments under the Contract be received by the State in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers be wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper such as inadequate packaging or loading or some inherent defect in the Equipment and/or material, the Contractor, on request of the State, shall at Contractor's own expense assist the State in establishing carrier liability by supplying evidence that the Equipment and/or material was properly constructed, manufactured, packaged, and secured to withstand normal transportation conditions.
14. **DELIVERY:** The Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract. Time, if stated as a number of days, shall mean calendar days unless otherwise specified. The quantities specified herein are the only quantities required. If the Contractor delivers in excess of the quantities specified herein, the State shall not be required to make any payment for the excess Deliverables, and may return them to Contractor at the Contractor's expense or utilize any other rights available to the State at law or in equity.
15. **SUBSTITUTIONS:** Substitution of Deliverables may not be tendered without advance written consent of the Buyer. The Contractor shall not use any specification in lieu of those contained in the Contract without written consent of the Buyer.
16. **INSPECTION, ACCEPTANCE AND REJECTION:** Unless otherwise specified in the Statement of Work:
  - a) When acquiring Commercial Hardware or Commercial Software, the State shall rely on Contractor's existing quality assurance system as a substitute for State inspection and testing. For all other acquisitions, Contractor and its subcontractors will provide and maintain a quality assurance system acceptable to the State covering Deliverables and services under this Contract and will tender to the State only those Deliverables that have been inspected and found to conform to this Contract's requirements. The Contractor will keep records evidencing inspections and their result, and will make these records available to the State during Contract performance and for three years after final payment. The Contractor shall permit the State to review procedures, practices, processes, and related documents to determine the acceptability of the Contractor's quality assurance System or other similar business practices related to performance of the Contract.



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- b) All Deliverables may be subject to inspection and test by the State or its authorized representatives.
- c) The Contractor and its subcontractors shall provide all reasonable facilities for the safety and convenience of inspectors at no additional cost to the State. The Contractor shall furnish to inspectors all information and data as may be reasonably required to perform their inspection.
- d) Subject to subsection 16 (a) above, all Deliverables may be subject to final inspection, test and acceptance by the State at destination, notwithstanding any payment or inspection at source..
- e) The State shall give written notice of rejection of Deliverables delivered or services performed hereunder within a reasonable time after receipt of such Deliverables or performance of such services. Such notice of rejection will state the respects in which the Deliverables do not substantially conform to their specifications. If the State does not provide such notice of rejection within fifteen (15) days of delivery for purchases of Commercial Hardware or Commercial Software or thirty (30) days of delivery for all other purchases, such Deliverables and services will be deemed to have been accepted. Acceptance by the State will be final and irreversible, except as it relates to latent defects, fraud, and gross mistakes amounting to fraud. Acceptance shall not be construed to waive any warranty rights that the State might have at law or by express reservation in this Contract with respect to any nonconformity.
- f) Unless otherwise specified in the Statement of Work, title to Equipment shall remain with the Contractor and assigns, if any, until such time as successful acceptance testing has been achieved. Title to a special feature installed on a Machine and for which only a single installation charge was paid shall pass to the State at no additional charge, together with title to the Machine on which it was installed.

### 17. SAMPLES:

- a) Samples of items may be required by the State for inspection and specification testing and must be furnished free of expense to the State. The samples furnished must be identical in all respects to the products bid and/or specified in the Contract.
- b) Samples, if not destroyed by tests, may, upon request made at the time the sample is furnished, be returned at the Contractor's expense.

### 18. WARRANTY:

- a) Unless otherwise specified in the Statement of Work, the warranties in this subsection a) begin upon delivery of the goods or services in question and end one (1) year thereafter. The Contractor warrants that (i) Deliverables and services furnished hereunder will substantially conform to the requirements of this Contract (including without limitation all descriptions, specifications, and drawings identified in the Statement of Work), and (ii) the Deliverables will be free from material defects in materials and workmanship. Where the parties have agreed to design specifications (such as a Detailed Design Document) and incorporated the same or equivalent in the Statement of Work directly or by reference, the Contractor will warrant that it's Deliverables provide all material functionality required thereby. In addition to the other warranties set forth herein, where the Contract calls for delivery of Commercial Software, the Contractor warrants that such Software will perform in accordance with its license and accompanying Documentation. The State's approval of designs or specifications furnished by Contractor shall not relieve the Contractor of its obligations under this warranty.
- b) The Contractor warrants that Deliverables furnished hereunder (i) will be free, at the time of delivery, of harmful code (i.e. computer viruses, worms, trap doors, time bombs, disabling code, or any similar malicious mechanism designed to interfere with the intended operation of, or cause damage to, computers, data, or Software); and (ii) will not infringe or violate any U.S. Intellectual Property Right.

Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any Commercial Software delivered hereunder, the Contractor will, upon the State's request, provide a new or clean install of the Software.

- c) Unless otherwise specified in the Statement of Work:
  - (i) The Contractor does not warrant that any Software provided hereunder is error-free or that it will run without immaterial interruption.
  - (ii) The Contractor does not warrant and will have no responsibility for a claim to the extent that it arises directly from (A) a modification made by the State, unless such modification is approved or directed by the Contractor, (B) use of Software in combination with or on products other than as specified by the Contractor, or (C) misuse by the State.
  - (iii) Where the Contractor resells Commercial Hardware or Commercial Software it purchased from a third party, Contractor, to the extent it is legally able to do so, will pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth above.
- d) All warranties, including special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and governmental users of the Deliverables or services.
- e) Except as may be specifically provided in the Statement of Work or elsewhere in this Contract, for any breach of the warranties provided in this Section, the State's exclusive remedy and the Contractor's sole obligation will be limited to:
  - (i) re-performance, repair, or replacement of the nonconforming Deliverable (including without limitation an infringing Deliverable) or service; or
  - (ii) should the State in its sole discretion consent, refund of all amounts paid by the State for the nonconforming Deliverable or service and payment to the State of any additional amounts necessary to equal the State's Cost to Cover. "Cost to Cover" means the cost, properly mitigated, of procuring Deliverables or services of equivalent capability, function, and performance. The payment obligation in subsection (e)(ii) above will not exceed the limits on the Contractor's liability set forth in the Section entitled "Limitation of Liability."
- f) EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED IN THIS SECTION, THE CONTRACTOR MAKES NO WARRANTIES EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**19. SAFETY AND ACCIDENT PREVENTION:** In performing work under this Contract on State premises, the Contractor shall conform to any specific safety requirements contained in the Contract or as required by law or regulation. The Contractor shall take any additional precautions as the State may reasonably require for safety and accident prevention purposes. Any violation of such rules and requirements, unless promptly corrected, shall be grounds for termination of this Contract in accordance with the default provisions hereof.

**20. INSURANCE:** The Contractor shall maintain all commercial general liability insurance, workers' compensation insurance and any other insurance required under the Contract. The Contractor shall furnish insurance certificate(s) evidencing required insurance coverage acceptable to the State, including endorsements showing the State as an "additional insured" if required under the Contract. Any required endorsements requested by the State must be separately provided; merely referring to such coverage on the certificates(s) is insufficient for this purpose. When performing work on state owned or controlled property, Contractor shall provide a waiver of subrogation in favor of the State for its workers' compensation policy.

### 21. TERMINATION FOR NON-APPROPRIATION OF FUNDS:

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

- a) If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the Legislature. If funds to effect such continued payment are not appropriated, the Contractor agrees to take back any affected Deliverables furnished under this Contract, terminate any services supplied to the State under this Contract, and relieve the State of any further obligation therefor.
  - b) The State agrees that if it appears likely that subsection a) above will be invoked, the State and Contractor shall agree to take all reasonable steps to prioritize work and Deliverables and minimize the incurrence of costs prior to the expiration of funding for this Contract.
  - c) THE STATE AGREES THAT IF PARAGRAPH a) ABOVE IS INVOKED, COMMERCIAL HARDWARE AND SOFTWARE THAT HAS NOT BEEN PAID FOR SHALL BE RETURNED TO THE CONTRACTOR IN SUBSTANTIALLY THE SAME CONDITION IN WHICH DELIVERED TO THE STATE, SUBJECT TO NORMAL WEAR AND TEAR. THE STATE FURTHER AGREES TO PAY FOR PACKING, CRATING, TRANSPORTATION TO THE CONTRACTOR'S NEAREST FACILITY AND FOR REIMBURSEMENT TO THE CONTRACTOR FOR EXPENSES INCURRED FOR THEIR ASSISTANCE IN SUCH PACKING AND CRATING.
- but excluding any cost attributable to Deliverables or services paid or to be paid;
- B) The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Contract; and
  - C) Reasonable storage, transportation, demobilization, unamortized overhead and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.
  - f) The Contractor will use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this clause.
- 23. TERMINATION FOR DEFAULT:**
- a) The State may, subject to the clause titled "Force Majeure" and to sub-section d) below, by written notice of default to the Contractor, terminate this Contract in whole or in part if the Contractor fails to:
    - i) Deliver the Deliverables or perform the services within the time specified in the Contract or any amendment thereto;
    - ii) Make progress, so that the lack of progress endangers performance of this Contract; or
    - iii) Perform any of the other provisions of this Contract.
  - b) The State's right to terminate this Contract under sub-section a) above, may be exercised only if the failure constitutes a material breach of this Contract and if the Contractor does not cure such failure within the time frame stated in the State's cure notice, which in no event will be less than fifteen (15) days, unless the Statement of Work calls for a different period.
  - c) If the State terminates this Contract in whole or in part pursuant to this Section, it may acquire, under terms and in the manner the Buyer considers appropriate, Deliverables or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those Deliverables and services, including without limitation costs third party vendors charge for Manufacturing Materials (but subject to the clause entitled "Limitation of Liability"). However, the Contractor shall continue the work not terminated.
  - d) If the Contract is terminated for default, the State may require the Contractor to transfer title, or in the case of licensed Software, license, and deliver to the State, as directed by the Buyer, any:
    - (i) completed Deliverables,
    - (ii) partially completed Deliverables, and,
    - (iii) subject to provisions of sub-section e) below, Manufacturing Materials related to the terminated portion of this Contract. Nothing in this sub-section d) will be construed to grant the State rights to Deliverables that it would not have received had this Contract been fully performed. Upon direction of the Buyer, the Contractor shall also protect and preserve property in its possession in which the State has an interest.
  - e) The State shall pay Contract price for completed Deliverables delivered and accepted and items the State requires the Contractor to transfer under section (d) above. Unless the Statement of Work calls for different procedures or requires no-charge delivery of materials, the Contractor and Buyer shall attempt to agree on the amount of payment for Manufacturing Materials and other materials delivered and accepted by the State for the protection and preservation of the property; provided that where the Contractor has billed the State for any such materials, no additional charge will apply. Failure to agree will constitute a dispute under the Disputes clause. The State may withhold from these amounts any sum it determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.
- 22. TERMINATION FOR THE CONVENIENCE OF THE STATE:**
- a) The State may terminate performance of work under this Contract for its convenience in whole or, from time to time, in part, if the Department of General Services, Deputy Director Procurement Division, or designee, determines that a termination is in the State's interest. The Department of General Services, Deputy Director, Procurement Division, or designee, shall terminate by delivering to the Contractor a Notice of Termination specifying the extent of termination and the effective date thereof.
  - b) After receipt of a Notice of Termination, and except as directed by the State, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:
    - (i) Stop work as specified in the Notice of Termination.
    - (ii) Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Contract.
    - (iii) Terminate all subcontracts to the extent they relate to the work terminated.
    - (iv) Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts;
  - c) After termination, the Contractor shall submit a final termination settlement proposal to the State in the form and with the information prescribed by the State. The Contractor shall submit the proposal promptly, but no later than 90 days after the effective date of termination, unless a different time is provided in the Statement of Work or in the Notice of Termination.
  - d) The Contractor and the State may agree upon the whole or any part of the amount to be paid as requested under subsection (c) above.
  - e) Unless otherwise set forth in the Statement of Work, if the Contractor and the State fail to agree on the amount to be paid because of the termination for convenience, the State will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Contract had been fully performed:
    - (i) The Contract price for Deliverables or services accepted or retained by the State and not previously paid for, adjusted for any savings on freight and other charges; and
    - (ii) The total of:
      - A) The reasonable costs incurred in the performance of the work terminated, including initial costs and preparatory expenses allocable thereto,

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- f) If, after termination, it is determined by a final decision that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of the State.
- g) Both parties, State and Contractor, upon any termination for default, have a duty to mitigate the damages suffered by it.
- h) The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or under this Contract, and are subject to the clause titled "Limitation of Liability."

**24. FORCE MAJEURE:** Except for defaults of subcontractors at any tier, the Contractor shall not be liable for any excess costs if the failure to perform the Contract arises from causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include, but are not limited to:

- a) Acts of God or of the public enemy, and
- b) Acts of the federal or State government in either its sovereign or contractual capacity.

If the failure to perform is caused by the default of a subcontractor at any tier, and if the cause of the default is beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either, the Contractor shall not be liable for any excess costs for failure to perform.

**25. RIGHTS AND REMEDIES OF STATE FOR DEFAULT:**

- a) In the event any Deliverables furnished or services provided by the Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by the Contractor, the State may reject the same, and it shall become the duty of the Contractor to reclaim and remove the item promptly or to correct the performance of services, without expense to the State, and immediately replace all such rejected items with others conforming to the Contract.
- b) In addition to any other rights and remedies the State may have, the State may require the Contractor, at Contractor's expense, to ship Deliverables via air freight or expedited routing to avoid or minimize actual or potential delay if the delay is the fault of the Contractor.
- c) In the event of the termination of the Contract, either in whole or in part, by reason of default or breach by the Contractor, any loss or damage sustained by the State in procuring any items which the Contractor agreed to supply shall be borne and paid for by the Contractor (but subject to the clause entitled "Limitation of Liability").
- d) The State reserves the right to offset the reasonable cost of all damages caused to the State against any outstanding invoices or amounts owed to the Contractor or to make a claim against the Contractor therefore.

**26. LIMITATION OF LIABILITY:**

- a) Except as may be otherwise approved by the Department of General Services Deputy Director, Procurement Division or their designee, Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price. For purposes of this sub-section a), "Purchase Price" will mean the aggregate Contract price; except that, with respect to a Contract under which multiple purchase orders will be issued (e.g., a Master Agreement or Multiple Award Schedule contract), "Purchase Price" will mean the total price of the purchase order for the Deliverable(s) or service(s) that gave rise to the loss, such that the Contractor will have a separate limitation of liability for each purchase order.
- b) The foregoing limitation of liability shall not apply (i) to any liability under the General Provisions entitled "Compliance with Statutes and Regulations" (ii) to liability under the General Provisions, entitled "Patent, Copyright, and Trade Secret Indemnity" or to any other liability (including without limitation indemnification obligations) for infringement of third party intellectual property rights; (iii) to claims arising under provisions herein calling for indemnification for third party claims against the State for death, bodily injury to persons or damage to real or tangible personal property caused by the

Contractor's negligence or willful misconduct; or (iv) to costs or attorney's fees that the State becomes entitled to recover as a prevailing party in any action.

- c) The State's liability for damages for any cause whatsoever, and regardless of the form of action, whether in Contract or in tort, shall be limited to the Purchase Price, as that term is defined in subsection a) above. Nothing herein shall be construed to waive or limit the State's sovereign immunity or any other immunity from suit provided by law.
- d) In no event will either the Contractor or the State be liable for consequential, incidental, indirect, special, or punitive damages, even if notification has been given as to the possibility of such damages, except (i) to the extent that the Contractor's liability for such damages is specifically set forth in the Statement of Work or (ii) to the extent that the Contractor's liability for such damages arises out of subsection b)(i), b)(ii), or b)(iv) above.

**27. CONTRACTOR'S LIABILITY FOR INJURY TO PERSONS OR DAMAGE TO PROPERTY:**

- a) The Contractor shall be liable for damages arising out of injury to the person and/or damage to the property of the State, employees of the State, persons designated by the State for training, or any other person(s) other than agents or employees of the Contractor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Contractor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Contractor.
- b) The Contractor shall not be liable for damages arising out of or caused by an alteration or an Attachment not made or installed by the Contractor, or for damage to alterations or Attachments that may result from the normal operation and maintenance of the Deliverables provided by the Contractor during the Contract.

**28. INDEMNIFICATION:** The Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses due to the injury or death of any individual, or the loss or damage to any real or tangible personal property, resulting from the willful misconduct or negligent acts or omissions of the Contractor or any of its affiliates, agents, subcontractors, employees, suppliers, or laborers furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract. Such defense and payment will be conditional upon the following:

- a) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- b) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (i) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (ii) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (iii) the State will reasonably cooperate in the defense and in any related settlement negotiations.

**29. INVOICES:** Unless otherwise specified, invoices shall be sent to the address set forth herein. Invoices shall be submitted in triplicate and shall include the Contract number; release order number (if applicable); item number; unit price, extended item price and invoice total amount. State sales tax and/or use tax shall be itemized separately and added to each invoice as applicable.

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30. **REQUIRED PAYMENT DATE:** Payment will be made in accordance with the provisions of the California Prompt Payment Act, Government Code Section 927 et. seq. Unless expressly exempted by statute, the Act requires State agencies to pay properly submitted, undisputed invoices not more than 45 days after (i) the date of acceptance of Deliverables or performance of services; or (ii) receipt of an undisputed invoice, whichever is later.
31. **TAXES:** Unless otherwise required by law, the State of California is exempt from Federal excise taxes. The State will only pay for any State or local sales or use taxes on the services rendered or Goods supplied to the State pursuant to this Contract.
32. **NEWLY MANUFACTURED GOODS:** All Goods furnished under this Contract shall be newly manufactured Goods or certified as new and warranted as new by the manufacturer; used or reconditioned Goods are prohibited, unless otherwise specified.
33. **CONTRACT MODIFICATION:** No amendment or variation of the terms of this Contract shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or agreement not incorporated in the Contract is binding on any of the parties.
34. **CONFIDENTIALITY OF DATA:** All financial, statistical, personal, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Contractor in order to carry out this Contract, or which become available to the Contractor in carrying out this Contract, shall be protected by the Contractor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Contractor. If the methods and procedures employed by the Contractor for the protection of the Contractor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this paragraph. The Contractor shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in the Contractor's possession without obligation of confidentiality, is independently developed by the Contractor outside the scope of this Contract, or is rightfully obtained from third parties.
35. **NEWS RELEASES:** Unless otherwise exempted, news releases, endorsements, advertising, and social media content pertaining to this Contract shall not be made without prior written approval of the Department of General Services.
36. **DOCUMENTATION:**
- a) The Contractor agrees to provide to the State, at no charge, all Documentation as described within the Statement of Work, and updated versions thereof, which are necessary or useful to the State in its use of the Equipment or Software provided hereunder. The Contractor agrees to provide additional Documentation at prices not in excess of charges made by the Contractor to its other customers for similar Documentation.
  - b) If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on Equipment purchased under this Contract then upon written notice by the State the Contractor will provide at Contractor's then current rates and fees adequate and reasonable assistance including relevant Documentation to allow the State to maintain the Equipment based on the Contractor's methodology. The Contractor agrees that the State may reproduce such Documentation for its own use in maintaining the Equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the Equipment to use the above noted Documentation. The State agrees to include the Contractor's copyright notice on any such Documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.
37. **RIGHTS IN WORK PRODUCT:**
- a) All inventions, discoveries, intellectual property, technical communications and records originated or prepared by the Contractor pursuant to this Contract including papers, reports, charts, computer programs, and other Documentation or improvements thereto, and including the Contractor's administrative communications and records relating to this Contract (collectively, the "Work Product"), shall be the Contractor's exclusive property. The provisions of this sub-section a) may be revised in a Statement of Work.
  - b) Software and other materials developed or otherwise obtained by or for the Contractor or its affiliates independently of this Contract or applicable purchase order ("Pre-Existing Materials") do not constitute Work Product. If the Contractor creates derivative works of Pre-Existing Materials, the elements of such derivative works created pursuant to this Contract constitute Work Product, but other elements do not. Nothing in this Section 37 will be construed to interfere with the Contractor's or its affiliates' ownership of Pre-Existing Materials.
  - c) The State will have Government Purpose Rights to the Work Product as Deliverable or delivered to the State hereunder. "Government Purpose Rights" are the unlimited, irrevocable, worldwide, perpetual, royalty-free, non-exclusive rights and licenses to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product. "Government Purpose Rights" also include the right to release or disclose the Work Product outside the State for any State government purpose and to authorize recipients to use, modify, reproduce, perform, release, display, create derivative works from, and disclose the Work Product for any State government purpose. Such recipients of the Work Product may include, without limitation, State Contractors, California local governments, the U.S. federal government, and the State and local governments of other states. "Government Purpose Rights" do not include any rights to use, modify, reproduce, perform, release, display, create derivative works from, or disclose the Work Product for any commercial purpose.
  - d) The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Contract by the Contractor or jointly by the Contractor and the State may be used by either party without obligation of notice or accounting.
  - e) This Contract shall not preclude the Contractor from developing materials outside this Contract that are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Contract.
38. **SOFTWARE LICENSE:** Unless otherwise specified in the Statement of Work, the Contractor hereby grants to the State and the State accepts from the Contractor, subject to the terms and conditions of this Contract, a perpetual, irrevocable, royalty-free, non-exclusive, license to use the Software Products in this Contract (hereinafter referred to as "Software Products").
- a) The State may use the Software Products in the conduct of its own business, and any division thereof
  - b) The license granted above authorizes the State to use the Software Products in machine-readable form on the Computer System located at the site(s) specified in the Statement of Work. Said Computer System and its associated units (collectively referred to as CPU) are as designated in the Statement of Work. If the designated CPU is inoperative due to malfunction, the license herein granted shall be temporarily extended to authorize the State to use the Software Products, in machine-readable form, on any other State CPU until the designated CPU is returned to operation.

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- c) By prior written notice, the State may redesignate the CPU in which the Software Products are to be used provided that the redesignated CPU is substantially similar in size and scale at no additional cost. The redesignation shall not be limited to the original site and will be effective upon the date specified in the notice of redesignation.
- d) Acceptance of Commercial Software (including third party Software) and Custom Software will be governed by the terms and conditions of this Contract.

### 39. PROTECTION OF PROPRIETARY SOFTWARE AND OTHER PROPRIETARY DATA:

- a) The State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for the State's exclusive use for the purposes of this Contract only. All such proprietary data shall remain the property of the Contractor. The State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor, subject to the California Public Records Act.
- b) The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c) The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations in this Contract with respect to use, copying, modification, protection and security of proprietary software and other proprietary data.

### 40. RIGHT TO COPY OR MODIFY:

- a) Any Software Product provided by the Contractor in machine-readable form may be copied, in whole or in part, in printed or machine-readable form for use by the State with the designated CPU, to perform one-time benchmark tests, for archival or emergency restart purposes, to replace a worn copy, to understand the contents of such machine-readable material, or to modify the Software Product as provided below; provided, however, that no more than the number of printed copies and machine-readable copies as specified in the Statement of Work will be in existence under this Contract at any time without prior written consent of the Contractor. Such consent shall not be unreasonably withheld by the Contractor. The original, and any copies of the Software Product, in whole or in part, which are made hereunder shall be the property of the Contractor.
- b) The State may modify any non-personal computer Software Product, in machine-readable form, for its own use and merge it into other program material. Any portion of the Software Product included in any merged program material shall be used only on the designated CPUs and shall be subject to the terms and conditions of the Contract.

41. **FUTURE RELEASES:** Unless otherwise specifically provided in this Contract, or the Statement of Work, if improved versions, e.g., patches, bug fixes, updates or releases, of any Software Product are developed by the contractor, and are made available to other licensees, they will be made available to the State at no additional cost only if such are made available to other licensees at no additional cost. If the Contractor offers new versions or upgrades to the Software Product, they shall be made available to the State at the State's option at a price no greater than the Contract price plus a price increase proportionate to the increase from the list price of the original version to that of the new version, if any. If the Software Product has no list price, such price increase will be proportionate to the increase in average price from the original to the new version, if any, as estimated by the Contractor in good faith.

### 42. ENCRYPTION/CPU ID AUTHORIZATION CODES:

- a) When Encryption/CPU Identification (ID) authorization codes are required to operate the Software Products, the

Contractor will provide all codes to the State with delivery of the Software.

- b) In case of an inoperative CPU, the Contractor will provide a temporary encryption/CPU ID authorization code to the State for use on a temporarily authorized CPU until the designated CPU is returned to operation.
- c) When changes in designated CPUs occur, the State will notify the Contractor via telephone and/or facsimile/e-mail of such change. Upon receipt of such notice, the Contractor will issue via telephone and/or facsimile/e-mail to the State within 24 hours, a temporary encryption ID authorization code for use on the newly designated CPU until such time as permanent code is assigned.

### 43. PATENT, COPYRIGHT AND TRADE SECRET INDEMNITY:

- a) Contractor will indemnify, defend, and save harmless the State, its officers, agents, and employees, from any and all third party claims, costs (including without limitation reasonable attorneys' fees), and losses for infringement or violation of any U.S. Intellectual Property Right by any product or service provided hereunder. With respect to claims arising from computer Hardware or Software manufactured by a third party and sold by Contractor as a reseller, Contractor will pass through to the State such indemnity rights as it receives from such third party ("Third Party Obligation") and will cooperate in enforcing them; provided that if the third party manufacturer fails to honor the Third Party Obligation, Contractor will provide the State with indemnity protection equal to that called for by the Third Party Obligation, but in no event greater than that called for in the first sentence of this Section ). The provisions of the preceding sentence apply only to third party computer Hardware or Software sold as a distinct unit and accepted by the State.

Unless a Third Party Obligation provides otherwise, the defense and payment obligations set forth in this Section will be conditional upon the following:

- (i) The State will notify the Contractor of any such claim in writing and tender the defense thereof within a reasonable time; and
- (ii) The Contractor will have sole control of the defense of any action on such claim and all negotiations for its settlement or compromise; provided that (a) when substantial principles of government or public law are involved, when litigation might create precedent affecting future State operations or liability, or when involvement of the State is otherwise mandated by law, the State may participate in such action at its own expense with respect to attorneys' fees and costs (but not liability); (b) where a settlement would impose liability on the State, affect principles of California government or public law, or impact the authority of the State, the Department of General Services will have the right to approve or disapprove any settlement or compromise, which approval will not unreasonably be withheld or delayed; and (c) the State will reasonably cooperate in the defense and in any related settlement negotiations.

- b) Should the Deliverables, or the operation thereof, become, or in the Contractor's opinion are likely to become, the subject of a claim of infringement or violation of a U.S. Intellectual Property Right, the State shall permit the Contractor, at its option and expense, either to procure for the State the right to continue using the Deliverables, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Deliverables by the State shall be prevented by injunction, the Contractor agrees to take back such Deliverables and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such

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infringing Deliverables makes the retention of other Deliverables acquired from the Contractor under this Contract impractical, the State shall then have the option of terminating such Contracts, or applicable portions thereof, without penalty or termination charge. The Contractor agrees to take back such Deliverables and refund any sums the State has paid the Contractor less any reasonable amount for use or damage.

- c) The Contractor shall have no liability to the State under any provision of this clause with respect to any claim of patent, copyright or trade secret infringement which is based upon:
  - (i) The combination or utilization of Deliverables furnished hereunder with Equipment, Software or devices not made or furnished by the Contractor; or,
  - (ii) The operation of Equipment furnished by the Contractor under the control of any Operating Software other than, or in addition to, the current version of Contractor-supplied Operating Software; or
  - (iii) The modification initiated by the State, or a third party at the State's direction, of any Deliverable furnished hereunder; or
  - (iv) The combination or utilization of Software furnished hereunder with non-contractor supplied Software.
- d) The Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Contract for the acquisition, operation or maintenance of computer Software in violation of copyright laws.

### 44. DISPUTES:

- a) The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute persists, the Contractor shall submit to the contracting Department Director or designee a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to or involving this Contract. Contractor's written demand shall be fully supported by factual information, and if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by an authorized person indicating that the demand is made in good faith, that the supporting data are accurate and complete and that the amount requested accurately reflects the Contract adjustment for which Contractor believes the State is liable. The contracting Department Director or designee shall have 30 days after receipt of Contractor's written demand invoking this Section "Disputes" to render a written decision. If a written decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a decision adverse to the Contractor's contention. If the Contractor is not satisfied with the decision of the contracting Department Director or designee, the Contractor may appeal the decision, in writing, within 15 days of its issuance (or the expiration of the 30 day period in the event no decision is rendered by the contracting department), to the Department of General Services, Deputy Director, Procurement Division, who shall have 45 days to render a final decision. If the Contractor does not appeal the decision of the contracting Department Director or designee, the decision shall be conclusive and binding regarding the dispute and the Contractor shall be barred from commencing an action in court, or with the Victims Compensation Government Claims Board, for failure to exhaust Contractor's administrative remedies.
- b) Pending the final resolution of any dispute arising under, related to or involving this Contract, Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of Goods or providing of services in accordance with the State's instructions regarding this Contract. Contractor's failure to diligently proceed in accordance with the State's instructions regarding this Contract shall be considered a material breach of this Contract.

- c) Any final decision of the State shall be expressly identified as such, shall be in writing, and shall be signed by the Deputy Director, Procurement Division if an appeal was made. If the Deputy Director, Procurement Division fails to render a final decision within 45 days after receipt of the Contractor's appeal for a final decision, it shall be deemed a final decision adverse to the Contractor's contentions. The State's final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- d) For disputes involving purchases made by the Department of General Services, Procurement Division, the Contractor shall submit to the Department Director or designee a written demand for a final decision, which shall be fully supported in the manner described in subsection a above. The Department Director or designee shall have 30 days to render a final decision. If a final decision is not rendered within 30 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contention. The final decision shall be conclusive and binding regarding the dispute unless the Contractor commences an action in a court of competent jurisdiction to contest such decision within 90 days following the date of the final decision or one (1) year following the accrual of the cause of action, whichever is later.
- e) The dates of decision and appeal in this section may be modified by mutual consent, as applicable, excepting the time to commence an action in a court of competent jurisdiction.

### 45. STOP WORK:

- a) The State may, at any time, by written Stop Work Order to the Contractor, require the Contractor to stop all, or any part, of the work called for by this Contract for a period up to 45 days after the Stop Work Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this clause. Upon receipt of the Stop Work Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the Stop Work Order during the period of work stoppage. Within a period of 45 days after a Stop Work Order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the State shall either:
  - (i) Cancel the Stop Work Order; or
  - (ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.
- b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Contractor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:
  - (i) The Stop Work Order results in an increase in the time required for, or in the Contractor's cost properly allocable to the performance of any part of this Contract; and
  - (ii) The Contractor asserts its right to an equitable adjustment within 60 days after the end of the period of work stoppage; provided, that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.
- c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for the Convenience of the State, the State shall allow reasonable costs resulting from the Stop Work Order in arriving at the termination settlement.



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- d) The State shall not be liable to the Contractor for loss of profits because of a Stop Work Order issued under this clause.
- 46. EXAMINATION AND AUDIT:** The Contractor agrees that the State or its designated representative shall have the right to review and copy any records and supporting documentation directly pertaining to performance of this Contract. The Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. The Contractor agrees to allow the auditor(s) access to such records during normal business hours and in such a manner so as to not interfere unreasonably with normal business activities and to allow interviews of any employees or others who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Contract. The State shall provide reasonable advance written notice of such audit(s) to the Contractor.
- 47. FOLLOW-ON CONTRACTS:**
- a) If the Contractor or its affiliates provides Technical Consulting and Direction (as defined below), the Contractor and its affiliates:
- will not be awarded a subsequent Contract to supply the service or system, or any significant component thereof, that is used for or in connection with any subject of such Technical Consulting and Direction; and
  - will not act as consultant to any person or entity that does receive a Contract described in sub-section (i). This prohibition will continue for one (1) year after termination of this Contract or completion of the Technical Consulting and Direction, whichever comes later.
- b) "Technical Consulting and Direction" means services for which the Contractor received compensation from the State and includes:
- development of or assistance in the development of work statements, specifications, solicitations, or feasibility studies;
  - development or design of test requirements;
  - evaluation of test data;
  - direction of or evaluation of another Contractor;
  - provision of formal recommendations regarding the acquisition of Information Technology products or services; or
  - provisions of formal recommendations regarding any of the above. For purposes of this Section, "affiliates" are employees, directors, partners, joint venture participants, parent corporations, subsidiaries, or any other entity controlled by, controlling, or under common control with the Contractor. Control exists when an entity owns or directs more than fifty percent (50%) of the outstanding shares or securities representing the right to vote for the election of directors or other managing authority.
- c) To the extent permissible by law, the Director of the Department of General Services, or designee, may waive the restrictions set forth in this Section by written notice to the Contractor if the Director determines their application would not be in the State's best interest. Except as prohibited by law, the restrictions of this Section will not apply:
- to follow-on advice given by vendors of commercial off-the-shelf products, including Software and Hardware, on the operation, integration, repair, or maintenance of such products after sale; or
  - where the State has entered into a master agreement for Software or services and the scope of work at the time of Contract execution expressly calls for future recommendations among the Contractor's own products.
- d) The restrictions set forth in this Section are in addition to conflict of interest restrictions imposed on public Contractors by California law ("Conflict Laws"). In the event of any inconsistency, such Conflict Laws override the provisions of this Section, even if enacted after execution of this Contract.
- 48. PRIORITY HIRING CONSIDERATIONS:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with PCC Section 10353.
- 49. COVENANT AGAINST GRATUITIES:** The Contractor warrants that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the State with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the State shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the State in procuring on the open market any items which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or in equity.
- 50. NONDISCRIMINATION CLAUSE:**
- a) During the performance of this Contract, the Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. The Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Contract by reference and made a part hereof as if set forth in full. The Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- b) The Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.
- 51. NATIONAL LABOR RELATIONS BOARD CERTIFICATION:** The Contractor swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two-year period because of the Contractor's failure to comply with an order of the National Labor Relations Board. This provision is required by, and shall be construed in accordance with, PCC Section 10296.
- 52. ASSIGNMENT OF ANTITRUST ACTIONS:** Pursuant to Government Code Sections 4552, 4553, and 4554, the following provisions are incorporated herein:
- a) In submitting a bid to the State, the supplier offers and agrees that if the bid is accepted, it will assign to the State all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. 15) or under the Cartwright Act (Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of Goods, material or other items, or services by the supplier for sale to the State pursuant to the solicitation. Such assignment shall

## GENERAL PROVISIONS – INFORMATION TECHNOLOGY

- be made and become effective at the time the State tenders final payment to the supplier.
- b) If the State receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the State any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the State as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.
  - c) Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and
    - (i) the assignee has not been injured thereby, or
    - (ii) the assignee declines to file a court action for the cause of action.
- 53. DRUG-FREE WORKPLACE CERTIFICATION:** The Contractor certifies under penalty of perjury under the laws of the State of California that the Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:
- a) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a).
  - b) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(b) to inform employees about all of the following:
    - (i) the dangers of drug abuse in the workplace;
    - (ii) the person's or organization's policy of maintaining a drug-free workplace;
    - (iii) any available counseling, rehabilitation and employee assistance programs; and,
    - (iv) penalties that may be imposed upon employees for drug abuse violations.
  - c) Provide, as required by Government Code Section 8355(c), that every employee who works on the proposed or resulting Contract:
    - (i) will receive a copy of the company's drug-free policy statement; and,
    - (ii) will agree to abide by the terms of the company's statement as a condition of employment on the Contract.
- 54. FOUR-DIGIT DATE COMPLIANCE:** Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date Compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.
- 55. SWEATFREE CODE OF CONDUCT:**
- a) Contractor declares under penalty of perjury that no equipment, materials, or supplies furnished to the State pursuant to the Contract have been produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The Contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and Public Contract Code Section 6108.
    - b) The Contractor agrees to cooperate fully in providing reasonable access to its records, documents, agents or employees, or premises if reasonably required by authorized officials of the State, the Department of Industrial Relations, or the Department of Justice to determine the Contractor's compliance with the requirements under paragraph (a).
- 56. RECYCLED CONTENT REQUIREMENTS:** The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material (as defined in the Public Contract Code (PCC) Section 12200-12209), in products, materials, goods, or supplies offered or sold to the State that fall under any of the statutory categories regardless of whether the product meets the requirements of Section 12209. The certification shall be provided by the contractor, even if the product or good contains no postconsumer recycled material, and even if the postconsumer content is unknown. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (PCC 12205 (b)(2)). A state agency contracting officer may waive the certification requirements if the percentage of postconsumer material in the products, materials, goods, or supplies can be verified in a written advertisement, including, but not limited to, a product label, a catalog, or a manufacturer or vendor Internet web site. Contractors are to use, to the maximum extent economically feasible in the performance of the contract work, recycled content products (PCC 12203(d)).
- 57. CHILD SUPPORT COMPLIANCE ACT:** For any Contract in excess of \$100,000, the Contractor acknowledges in accordance with PCC Section 7110, that:
- a) The Contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code; and
  - b) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 58. AMERICANS WITH DISABILITIES ACT:** The Contractor assures the State that the Contractor complies with the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.).
- 59. ELECTRONIC WASTE RECYCLING ACT OF 2003:** The Contractor certifies that it complies with the applicable requirements of the Electronic Waste Recycling Act of 2003, Chapter 8.5, Part 3 of Division 30, commencing with Section 42460 of the Public Resources Code. The Contractor shall maintain documentation and provide reasonable access to its records and documents that evidence compliance.
- 60. USE TAX COLLECTION:** In accordance with PCC Section 10295.1, the Contractor certifies that it complies with the requirements of Section 7101 of the Revenue and Taxation Code. Contractor further certifies that it will immediately advise the State of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration as described in subdivision (a) of PCC Section 10295.1.
- 61. EXPATRIATE CORPORATIONS:** Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC Sections 10286 and 10286.1, and is eligible to contract with the State.
- 62. DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that the contractor is in compliance with Public Contract Code Section 10295.3.



**GENERAL PROVISIONS – INFORMATION TECHNOLOGY****63. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:**

- a) If for this Contract the Contractor made a commitment to achieve small business participation, then the Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)
- b) If for this Contract the Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

**64. LOSS LEADER:** It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 12104.5(b).)

## STATE MODEL CLOUD COMPUTING SERVICES SPECIAL PROVISIONS (Software as a Service)

THESE SPECIAL PROVISIONS ARE ONLY TO BE USED FOR SOFTWARE AS A SERVICE (SaaS), AS DEFINED BELOW. THESE SPECIAL PROVISIONS ARE TO BE ATTACHED TO THE GENERAL PROVISIONS – INFORMATION TECHNOLOGY AND ACCOMPANIED BY, AT MINIMUM, A STATEMENT OF WORK (SOW) AND SERVICE LEVEL AGREEMENT (SLA). STATE AGENCIES MUST FIRST:

- A. CLASSIFY THEIR DATA PURSUANT TO THE CALIFORNIA STATE ADMINISTRATIVE MANUAL (SAM) 5305.5;
- B. CONSIDER THE FACTORS TO BE TAKEN INTO ACCOUNT WHEN SELECTING A PARTICULAR TECHNOLOGICAL APPROACH, IN ACCORDANCE WITH SAM 4981.1, 4983 AND 4983.1 AND THEN;
- C. MODIFY THESE SPECIAL PROVISIONS THROUGH THE SOW AND/OR SLA TO MEET THE NEEDS OF EACH ACQUISITION.

### 1. Definitions

- a) **"Cloud Software as a Service (SaaS)"** - The capability provided to the consumer is to use applications made available by the provider running on a cloud infrastructure. The applications are accessible from various client devices through a thin client interface such as a web browser (e.g., web-based email). The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- b) **"Cloud Platform as a Service (PaaS)"** - The capability provided to the consumer is to deploy onto the cloud infrastructure consumer-created or acquired applications created using programming languages and tools supported by the provider. The consumer does not manage or control the underlying cloud infrastructure including network, servers, operating systems, or storage, but has control over the deployed applications and possibly application hosting environment configurations.
- c) **"Cloud Infrastructure as a Service (IaaS)"** - The capability provided to the consumer is to provision processing, storage, networks, and other fundamental computing resources where the consumer is able to deploy and run arbitrary software, which can include operating systems and applications. The consumer does not manage or control the underlying cloud infrastructure but has control over operating systems; storage, deployed applications, and possibly limited control of select networking components (e.g., host firewalls).
- d) **"Data"** - means any information, formulae, algorithms, or other content that the State, the State's employees, agents and end users upload, create or modify using the SaaS pursuant to this Contract. Data also includes user identification information and metadata which may contain Data or from which the State's Data may be ascertainable.
- e) **"Data Breach"** - means any access, destruction, loss, theft, use, modification or disclosure of Data by an unauthorized party or that is in violation of Contract terms and/or applicable state or federal law.
- f) **"Recovery Point Objective (RPO)"** - means the point in time to which Data can be recovered and/or systems restored when service is restored after an interruption. The Recovery Point Objective is expressed as a length of time between the interruption and the most proximate backup of Data immediately preceding the interruption. The RPO is detailed in the SLA.
- g) **"Recovery Time Objective (RTO)"** - means the period of time within which information technology services, systems, applications and functions must be recovered following an unplanned interruption. The RTO is detailed in the SLA.

**STATE MODEL  
CLOUD COMPUTING SERVICES SPECIAL PROVISIONS  
(Software as a Service)**

**Terms**

**2. SaaS AVAILABILITY:** Unless otherwise stated in the Statement of Work,

- a) The SaaS shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the Statement of Work.
- c) If SaaS monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the State may terminate the contract for material breach in accordance with the Termination for Default provision in the General Provisions – Information Technology.
- d) Contractor shall provide advance written notice to the State in the manner set forth in the Statement of Work of any major upgrades or changes that will affect the SaaS availability.

**3. DATA AVAILABILITY:** Unless otherwise stated in the Statement of Work,

- a) The Data shall be available twenty-four (24) hours per day, 365 days per year (excluding agreed-upon maintenance downtime).
- b) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), the State shall be entitled to recover damages, apply credits or use other contractual remedies as set forth in the Statement of Work if the State is unable to access the Data as a result of:
  - 1) Acts or omission of Contractor;
  - 2) Acts or omissions of third parties working on behalf of Contractor;
  - 3) Network compromise, network intrusion, hacks, introduction of viruses, disabling devices, malware and other forms of attack that can disrupt access to Contractor's server, to the extent such attack would have been prevented by Contractor taking reasonable industry standard precautions;
  - 4) Power outages or other telecommunications or Internet failures, to the extent such outages were within Contractor's direct or express control.
- c) If Data monthly availability averages less than 99.9% (excluding agreed-upon maintenance downtime), for three (3) or more months in a rolling twelve-month period, the State may terminate the contract for material breach in accordance with the Termination for Default provision in the General Provisions – Information Technology.

**4. SaaS and DATA SECURITY:**

- a) In addition to the Compliance with Statutes and Regulations provision set forth in the General Provisions – Information Technology, Contractor shall certify to the State:
  - 1) The sufficiency of its security standards, tools, technologies and procedures in providing SaaS under this Contract;
  - 2) Compliance with the following:
    - i. The California Information Practices Act (Civil Code Sections 1798 et seq.);
    - ii. Security provisions of the California State Administrative Manual (Chapters 5100 and 5300) and the California Statewide Information Management Manual (Sections 58C, 58D, 66B, 5305A, 5310A and B, 5325A and B, 5330A, B and C, 5340A, B and C, 5360B);
    - iii. Undergo an annual Statement on Standards for Attestation Engagements (SSAE) No. 16 Service Organization Control (SOC) 2 Type II audit. Audit results and Contractor's plan to correct any negative findings shall be made available to the State upon request; and
    - iv. Privacy provisions of the Federal Privacy Act of 1974;

## STATE MODEL CLOUD COMPUTING SERVICES SPECIAL PROVISIONS (Software as a Service)

- 3) Compliance with applicable industry standards and guidelines, including but not limited to relevant security provisions of the Payment Card Industry (PCI) Data Security Standard (PCIDSS) including the PCIDSS Cloud Computing Guidelines.
- b) Contractor shall implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with section a) above at all times during the term of this Contract to secure such Data from Data Breach, protect the Data and the SaaS from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt the State's access to its Data.
- c) Contractor shall allow the State reasonable access to SaaS security logs, latency statistics, and other related SaaS security data that affect this Contract and the State's Data, at no cost to the State.
- d) Contractor assumes responsibility for the security and confidentiality of the Data under its control.
- e) No Data shall be copied, modified, destroyed or deleted by Contractor other than for normal operation or maintenance of SaaS during the Contract period without prior written notice to and written approval by the State.
- f) Remote access to Data from outside the continental United States, including remote access to Data by authorized SaaS support staff in identified support centers, is prohibited unless approved in advance by the State Chief Information Security Officer.

**5. ENCRYPTION:** Confidential, sensitive or personal information shall be encrypted in accordance with California State Administrative Manual 5350.1 and California Statewide Information Management Manual 5305-A.

**6. DATA LOCATION:** Unless otherwise stated in the Statement of Work and approved in advance by the State Chief Information Security Officer, the physical location of Contractor's data center where the Data is stored shall be within the continental United States.

**7. RIGHTS TO DATA:** The parties agree that as between them, all rights, including all intellectual property rights, in and to Data shall remain the exclusive property of the State, and Contractor has a limited, non-exclusive license to access and use the Data as provided to Contractor solely for performing its obligations under the Contract. Nothing herein shall be construed to confer any license or right to the Data, including user tracking and exception Data within the system, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of Data by Contractor or third parties is prohibited. For the purposes of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized.

**8. TRANSITION PERIOD:**

- a) For ninety (90) days prior to the expiration date of this Contract, or upon notice of termination of this Contract, Contractor shall assist the State in extracting and/or transitioning all Data in the format determined by the State ("Transition Period").
- b) The Transition Period may be modified in the SOW or as agreed upon in writing by the parties in a contract amendment.
- c) During the Transition Period, SaaS and Data access shall continue to be made available to the State without alteration.
- d) Contractor agrees to compensate the State for damages or losses the State incurs as a result of Contractor's failure to comply with this section in accordance with the Limitation of Liability provision set forth in the General Provisions - Information Technology.
- e) Unless otherwise stated in the SOW, the Contractor shall permanently destroy or render inaccessible any portion of the Data in Contractor's and/or subcontractor's possession or control following the expiration of all

**STATE MODEL  
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obligations in this section. Within thirty (30) days, Contractor shall issue a written statement to the State confirming the destruction or inaccessibility of the State's Data.

- f) The State at its option, may purchase additional transition services as agreed upon in the SOW.

**9. DATA BREACH:** Unless otherwise stated in the Statement of Work,

- a) Upon discovery or reasonable belief of any Data Breach, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency. Contractor shall provide such notification within forty-eight (48) hours after Contractor reasonably believes there has been such a Data Breach. Contractor's notification shall identify:
- 1) The nature of the Data Breach;
  - 2) The Data accessed, used or disclosed;
  - 3) The person(s) who accessed, used, disclosed and/or received Data (if known);
  - 4) What Contractor has done or will do to quarantine and mitigate the Data Breach; and
  - 5) What corrective action Contractor has taken or will take to prevent future Data Breaches.
- b) Contractor will provide daily updates, or more frequently if required by the State, regarding findings and actions performed by Contractor until the Data Breach has been effectively resolved to the State's satisfaction.
- c) Contractor shall quarantine the Data Breach, ensure secure access to Data, and repair SaaS as needed in accordance with the SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
- d) Notwithstanding anything to the contrary in the General Provisions - Information Technology, in performing services under this Contract, and to the extent authorized by the State in the Statement of Work, Contractor may be permitted by the State to use systems, or may be granted access to the State systems, which store, transmit or process State owned, licensed or maintained computerized Data consisting of personal information, as defined by Civil Code Section 1798.29 (g). If the Contractor causes or knowingly experiences a breach of the security of such Data, Contractor shall immediately report any breach of security of such system to the State following discovery or notification of the breach in the security of such Data. The State's Chief Information Security Officer, or designee, shall determine whether notification to the individuals whose Data has been lost or breached is appropriate. If personal information of any resident of California was, or is reasonably believed to have been acquired by an unauthorized person as a result of a security breach of such system and Data that is not due to the fault of the State or any person or entity under the control of the State, Contractor shall bear any and all costs associated with the State's notification obligations and other obligations set forth in Civil Code Section 1798.29 (d) as well as the cost of credit monitoring, subject to the dollar limitation, if any, agreed to by the State and Contractor in the applicable Statement of Work. These costs may include, but are not limited to staff time, material costs, postage, media announcements, and other identifiable costs associated with the breach of the security of such personal information.
- e) Contractor shall conduct an investigation of the Data Breach and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the State, its agents and law enforcement.

**10. DISASTER RECOVERY/BUSINESS CONTINUITY:** Unless otherwise stated in the Statement of Work,

- a) In the event of disaster or catastrophic failure that results in significant Data loss or extended loss of access to Data, Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency.

## STATE MODEL CLOUD COMPUTING SERVICES SPECIAL PROVISIONS (Software as a Service)

Contractor shall provide such notification within twenty-four (24) hours after Contractor reasonably believes there has been such a disaster or catastrophic failure. In the notification, Contractor shall inform the State of:

- 1) The scale and quantity of the Data loss;
  - 2) What Contractor has done or will do to recover the Data and mitigate any deleterious effect of the Data loss; and
  - 3) What corrective action Contractor has taken or will take to prevent future Data loss.
  - 4) If Contractor fails to respond immediately and remedy the failure, the State may exercise its options for assessing damages or other remedies under this Contract.
- b) Contractor shall restore continuity of SaaS, restore Data in accordance with the RPO and RTO as set forth in the SLA, restore accessibility of Data, and repair SaaS as needed to meet the performance requirements stated in the SLA. Failure to do so may result in the State exercising its options for assessing damages or other remedies under this Contract.
- c) Contractor shall conduct an investigation of the disaster or catastrophic failure and shall share the report of the investigation with the State. The State and/or its authorized agents shall have the right to lead (if required by law) or participate in the investigation. Contractor shall cooperate fully with the State, its agents and law enforcement.

**11. EXAMINATION AND AUDIT:** In addition to the Examination and Audit provision set forth in the General Provisions - Information Technology, unless otherwise stated in the Statement of Work:

- a) Upon advance written request, Contractor agrees that the State or its designated representative shall have access to Contractor's SaaS, operational documentation, records and databases, including online inspections, that relate to the SaaS purchased by the State.
- b) The online inspection shall allow the State, its authorized agents, or a mutually acceptable third party to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
  - 1) Operating system/network vulnerability scans,
  - 2) Web application vulnerability scans,
  - 3) Database application vulnerability scans, and
  - 4) Any other scans to be performed by the State or representatives on behalf of the State.
- c) After any significant Data loss or Data Breach or as a result of any disaster or catastrophic failure, Contractor will at its expense have an independent, industry-recognized, State-approved third party perform an information security audit. The audit results shall be shared with the State within seven (7) days of Contractor's receipt of such results. Upon Contractor receiving the results of the audit, Contractor will provide the State with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract.

**12. DISCOVERY:** Contractor shall promptly notify the State upon receipt of any requests which in any way might reasonably require access to the Data of the State or the State's use of the SaaS. Contractor shall notify the State by the fastest means available and also in writing, with additional notification provided to the Chief Information Security Officer or designee of the contracting agency, unless prohibited by law from providing such notification. Contractor shall provide such notification within forty-eight (48) hours after Contractor receives the request. Contractor shall not respond to subpoenas, service of process, Public Records Act requests, and other legal requests directed at Contractor regarding this Contract without first notifying the State unless prohibited by law from providing such notification. Contractor agrees to provide its intended responses to the State with adequate time for the State to review, revise and, if necessary, seek a protective order in a court of competent jurisdiction. Contractor shall not respond to legal requests directed at the State unless authorized in writing to do so by the State.

# STATE OF COLORADO FISCAL RULES

## SPECIAL PROVISIONS

These Special Provisions apply to all contracts except where noted in *italics*.

**1. CONTROLLER'S APPROVAL. CRS §24-30-202(1).** This contract shall not be valid until it has been approved by the Colorado State Controller or designee.

**2. FUND AVAILABILITY. CRS §24-30-202(5.5).** Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**3. GOVERNMENTAL IMMUNITY.** No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

**4. INDEPENDENT CONTRACTOR.** Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Unemployment insurance benefits will be available to Contractor and its employees and agents only if such coverage is made available by Contractor or a third party. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this contract. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Contractor shall **(a)** provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, **(b)** provide proof thereof when requested by the State, and **(c)** be solely responsible for its acts and those of its employees and agents.

**5. COMPLIANCE WITH LAW.** Contractor shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**6. CHOICE OF LAW.** Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this contract, to the extent capable of execution.

**7. BINDING ARBITRATION PROHIBITED.** The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

**8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.** State or other public funds payable under this contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this contract, including, without limitation, immediate termination of this contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**9. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. CRS §§24-18-201 and 24-50-507.** The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this contract. Contractor has no interest and

## STATE OF COLORADO FISCAL RULES

shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

**10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4. [Not Applicable to intergovernmental agreements]** Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(a)** unpaid child support debts or child support arrearages; **(b)** unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; **(c)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(d)** amounts required to be paid to the Unemployment Compensation Fund; and **(e)** other unpaid debts owing to the State as a result of final agency determination or judicial action.

**11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101. [Not Applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]** Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this contract, through participation in the E-Verify Program or the Department program established pursuant to CRS §8-17.5-102(5)(c), Contractor shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a subcontractor that fails to certify to Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract. Contractor **(a)** shall not use E-Verify Program or Department program procedures to undertake pre-employment screening of job applicants while this contract is being performed, **(b)** shall notify the subcontractor and the contracting State agency within three days if Contractor has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this contract, **(c)** shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and **(d)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this contract for breach and, if so terminated, Contractor shall be liable for damages.

**12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.** Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she **(a)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(b)** shall comply with the provisions of CRS §24-76.5-101 et seq., and **(c)** has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this contract.



**The parties agree that the following provisions of this Participating Addendum shall apply to any action, purchase or purchase order issued by the State of Connecticut or any of its participating entities.**

## **1. Definitions**

The following definitions apply to this Participating Addendum:

- a) Claims: All actions, suits, claims, demands, investigations and proceedings of any kind, open, pending or threatened, whether mature, unmatured, contingent, known or unknown, at law or in equity, in any forum.
- b) Confidential Information: Any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that the Department classifies as "confidential" or "restricted." Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.
- c) Confidential Information Breach: This shall mean, generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the client, the Contractor, the Department or State.
- d) Contract: **Identify Contract name and number** and this participating addendum
- e) Contractor: A person or entity who executes the Contract.
- f) Contractor Parties: A Contractor's members, directors, officers, shareholders, partners, managers, principal officers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity of oral or written contract and the Contractor intends for such other person or entity to Perform under the Contract in any capacity.
- g) DAS: Department of Administrative Services.

- h) Department: Any and all departments, commissions, boards, bureaus, agencies, institutions, public authorities, offices, councils, associations, instrumentalities, entities or political subdivisions of the State that issue duly authorized purchase orders against the Contract.
- i) Records: All working papers and such other information and materials as may have been accumulated by the Contractor in performing the Contract, including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.

**2. Whistleblowing.** This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

**3. Forum and Choice of Law.** The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

**4. Sovereign Immunity.** The parties acknowledge and agree that nothing in the solicitation or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.

**5. Summary of State Ethics Laws.** Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

**6. Campaign Contribution Restriction.** For all State contracts, defined in Conn. Gen. Stat. §9-612(g)(1) as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice, as set forth in "Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations," attached to this Participating Addendum.

**7. Executive Orders.** This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to the applicable parts of Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, Executive Order No. 19 of Governor M. Jodi Rell, promulgated June 19, 2008 concerning use of System Development, in accordance with their respective terms and conditions, and to Executive Order No. 49 of Governor Dannel P. Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office. If Executive Orders 14, 19, and 49 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Department shall provide a copy of these orders to the Contractor.

**8. Nondiscrimination.**

(a) For purposes of this Section, the following terms are defined as follows:

- i. "Commission" means the Commission on Human Rights and Opportunities;
- ii. "Contract" and "contract" include any extension or modification of the Contract or contract;
- iii. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
- iv. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose;
- v. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
- vi. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or

- substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
- vii. "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;
  - viii. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
  - ix. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
  - x. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or

workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

- (c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a

notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.

- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

## **9. Indemnification.**

- (a) The Contractor shall indemnify, defend and hold harmless the State and its officers, representatives, agents, servants, employees, successors and assigns from and against any and all (1) Claims arising, directly or indirectly, in connection with the Contract, including the acts of commission or omission (collectively, the "Acts") of the Contractor or Contractor Parties; and (2) liabilities, damages, losses, costs and expenses, including but not limited to, attorneys' and other professionals' fees, arising, directly or indirectly, in connection with Claims, Acts or the Contract. The Contractor shall use counsel reasonably acceptable to the State in carrying out its obligations under this section. The Contractor's obligations under this section to indemnify, defend and hold harmless against Claims includes Claims concerning confidentiality of any part of or all of the Contractor's bid, proposal or any Records, any intellectual property rights, other proprietary rights of any person or entity, copyrighted or uncopyrighted compositions, secret processes, patented or unpatented inventions, articles or appliances furnished or used in the performance.
- (b) The Contractor shall not be responsible for indemnifying or holding the State harmless from any liability arising due to the negligence of the State or any other person or entity acting under the direct control or supervision of the State.
- (c) The Contractor shall reimburse the State for any and all damages to the real or personal property of the State caused by the Acts of the Contractor or any Contractor Parties. The State shall give the Contractor reasonable notice of any such Claims.
- (d) The Contractor's duties under this section shall remain fully in effect and binding in accordance with the terms and conditions of the Contract, without being lessened or compromised in any way, even where the Contractor is alleged or is found to have merely contributed in part to the Acts giving rise

to the Claims and/or where the State is alleged or is found to have contributed to the Acts giving rise to the Claims.

- (e) The Contractor shall carry and maintain at all times during the term of the Contract, and during the time that any provisions survive the term of the Contract, sufficient general liability insurance to satisfy its obligations under this Contract. The Contractor shall name the State as an additional insured on the policy and shall provide a copy of the policy to the Agency prior to the effective date of the Contract. The Contractor shall not begin performance until the delivery of the policy to the Agency. The Agency shall be entitled to recover under the insurance policy even if a body of competent jurisdiction determines that the Agency or the State is contributorily negligent.
- (f) The rights provided in this section for the benefit of the State shall encompass the recovery of attorneys' and other professionals' fees expended in pursuing a Claim against a third party.
- (g) This section shall survive the Termination of the Contract and shall not be limited by reason of any insurance coverage.

#### **10. Tangible Personal Property.**

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
  - (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.

- (c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

**11. Audit and Inspection of Plants, Places of Business and Records.**

- (a) The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Contract, or (ii) the expiration or earlier termination of this Contract, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

**12. Protection of Confidential Information.**

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law



and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:

- (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.
- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.
- 13. Financial Audit for State Grants.** For purposes of this paragraph, the word "contractor" shall be deemed to mean "nonstate entity," as that term is defined in Section 4-230 of the Connecticut General Statutes. The contractor shall provide for an annual financial audit acceptable to the Department for any expenditure of state-awarded funds made by the contractor. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all

records and accounts for the fiscal year(s) in which the award was made. The contractor will comply with federal and state single audit standards as applicable.

**14. State Comptroller Specifications.** In accordance with Conn. Gen. Stat. § 4d-31, this Contract is deemed to have incorporated within it, and the Contractor shall deliver the Goods and Services in compliance with, all specifications established by the State Comptroller to ensure that all policies, procedures, processes and control systems, including hardware, software and protocols, which are established or provided by the Contractor or Contractor Parties, are compatible with and support the State's core financial systems, including but not limited to, accounting, payroll, time and attendance, and retirement systems.

**15. CIO Subcontract Approval.** In accordance with Conn. Gen. Stat. § 4d-32, the Contractor shall not award a subcontract for work under this Contract without having first obtained the written approval of the Chief Information Officer of the Department of Information Technology or their designee of the selection of the subcontractor and of the provisions of the subcontract. The Contractor shall deliver a copy of each executed subcontract or amendment to the subcontract to the Chief Information Officer, who shall maintain the subcontract or amendment as a public record, as defined in Conn. Gen. Stat. § 1-200.

**16. Rights to and Integrity of Public Records.** In accordance with Conn. Gen. Stat. § 4d-34, (a) neither the Contractor nor Contractor Parties shall have any Title in or to (1) any public records which the Contractor or Contractor Parties possess, modify or create pursuant to a contract, subcontract or amendment to a contract or subcontract, or (2) any modifications by such contractor, subcontractor, employee or agent to such public records; (b) neither the Contractor nor Contractor Parties shall impair the integrity of any public records which they possess or create; and (c) public records which the Contractor or Contractor Parties possess, modify or create pursuant to this Contract or other contract, subcontract or amendment to a contract or subcontract shall at all times and for all purposes remain the property of the State. For purposes of this section, "public records" shall have the meaning set forth in Conn. Gen. Stat. § 4-33, as it may be modified from time to time.

**17. Public Records and FOIA.** In accordance with Conn. Gen. Stat. § 4d-35, any public record which a state agency provides to the Contractor or Contractor Parties shall remain a public record for the purposes of subsection (a) of section 1-210 and as to such public records, the State, the Contractor and Contractor Parties shall have a joint and several obligation to comply with the obligations of the state agency under the Freedom of Information Act, as defined in section 1-200, provided that the determination of whether or not to disclose a particular record or type of record shall be made by such state agency.

**18. Disclosure of Public Records.** In accordance with Conn. Gen. Stat. § 4d-36, neither the Contractor nor Contractor Parties shall disclose to the public any public records (a) which they possess, modify or create pursuant to this Contract or any contract, subcontract or amendment to a contract or subcontract and (b) which a state agency (1) is prohibited from disclosing pursuant to state or federal law in all cases, (2) may disclose pursuant to state or federal law only to certain entities or individuals or under certain conditions or (3) may withhold from disclosure pursuant to state or federal law. This provision shall not be construed to prohibit the Contractor from disclosing such public records to any Contractor Parties to carry out the purposes of its subcontract. For purposes of this section, "public records" shall have the meaning set forth in Conn. Gen. Stat. § 1-200, as it may be modified from time to time.

**19. Profiting from Public Records.** In accordance with Conn. Gen. Stat. § 4d-37, neither the Contractor nor Contractor Parties shall sell, market or otherwise profit from the disclosure or use of any public records which are in their possession pursuant to this Contract or any contract, subcontract or amendment to a contract or subcontract, except as authorized in this Contract. For purposes of this

section, "public records" shall have the meaning set forth in Conn. Gen. Stat. § 1-200, as it may be modified from time to time.

**20. Contractor's Obligation to Notify DAS commissioner Concerning Public Records.** In accordance with Conn. Gen. Stat. § 4d-38, if the Contractor or Contractor Parties learn of any violation of the provisions of Conn. Gen. Stat. §§ 4d-36 or 4d-37 they shall, no later than seven calendar days after learning of such violation, notify the commissioner of such violation.

**21. General Assembly Access to Records.** In accordance with Conn. Gen. Stat. § 4d-40, the Joint Committee on Legislative Management and each nonpartisan office of the General Assembly shall continue to have access to state agency records that is not less than the access that said committee and such offices have on July 1, 1997.

**22. Continuity of Systems.** This Section is intended to comply with Conn. Gen. Stat. §4d-44.

- (a) The Contractor acknowledges that the Systems and associated services are important to the function of State government and that they must continue without interruption. Pursuant to Conn. Gen. Stat. §4d-44, if the work under the Contract, any subcontract, or amendment to either, is transferred back to the State or to another contractor at any time for any reason, then the Contractor shall cooperate fully with the State, and do and perform all acts and things that DAS deems to be necessary or appropriate, to ensure continuity of state agency information system and telecommunication system facilities, equipment and services so that there is no disruption or interruption in performance as required or permitted in the Contract. The Contractor shall not enter into any subcontract for any part of the performance under the Contract without approval of such subcontract by DAS, as required by Conn. Gen. Stat. §4d-32, and without such subcontract including a provision that obligates the subcontractor to comply fully with Conn. Gen. Stat. §4d-44 as if the subcontractor were in fact the Contractor. The Contractor shall make a full and complete disclosure of and delivery to DAS or its representatives of all Records and "Public Records," as that term is defined in Conn. Gen. Stat. §4d-33, as it may be amended, in whatever form they exist or are stored and maintained and wherever located, directly or indirectly concerning the Contract.
- (b) The parties shall follow the following applicable and respective procedures in order to ensure the orderly transfer to the State of:
  - (1) such facilities and equipment: \_\_\_\_\_;
  - (2) all software created or modified pursuant to the Contract, subcontract or amendment: \_\_\_\_\_; and
  - (3) all public records, as defined in Conn. Gen. Stat. §4d-33, which the Contractor or Contractor Parties possess or create pursuant to the Contract, subcontract or amendment: \_\_\_\_\_.

If the Contractor employs former State employees, the Contractor shall facilitate the exercising of any reemployment rights that such State employees may have with the State, including, but not limited to, affording them all reasonable opportunities during the workday to interview for State jobs. The Contractor shall include language similar to this section in all of its contracts with its subcontractors and applicable Contractor Parties so that they are similarly obligated.

**23. Lead State Terms that shall not apply to Connecticut.** The parties hereby agree that any provision in the Standard Terms and Conditions of the \_\_\_\_\_, shall not apply to Connecticut or any of the participating entities from Connecticut if the provision violates sovereign immunity or conflicts with this Participating Addendum. Further the parties agree that in any instance where a provision requires the State to indemnify the Contractor or that the parties are bound by binding arbitration that constitutes a violation of sovereign immunity, and therefore is not applicable.



**STATE OF ILLINOIS**  
**NASPO ValuePoint Cloud Solutions 2016-2026 Participating Agreement**  
**Specific Terms and Conditions**

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1. Participating Addendum executed by the State of Illinois will be designated as available to governmental units in Illinois. "Governmental unit" means State of Illinois, any State agency as defined in Section 1-15.100 of the Illinois Procurement Code (30 ILCS 500/), officers of the State of Illinois, any public authority which has the power to tax, or any other public entity created by statute. 30ILCS 525/.
2. In no event will the total term of any Participating Addendum, including the initial term and any extensions or amendments, exceed ten (10) years.
3. This contract and all related public records maintained by, provided to, or required to be provided to the State are subject to the Illinois Freedom of Information Act notwithstanding any provision to the contrary that may be found in this contract. 5 ILCS 140.
4. Any Participating Addendum executed by the State of Illinois is contingent upon and subject to the availability of funds. The State of Illinois, at its sole option, may terminate or suspend any Participating Addendum, in whole or in part, without penalty or further payment being required, if (1) the Illinois General Assembly or the Federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason (30 ILCS 500/20-60), (2) the Governor of Illinois decreases the Agency's funding by reserving some or all of the Agency's appropriation(s) pursuant to power delegated to the Governor by the Illinois General Assembly, that a reduction is necessary or advisable based upon actual or projected budgetary considerations. Vendor will be notified in writing of the failure of appropriation or of a reduction or decrease.
5. Any claim against any State of Illinois, any State of Illinois agency as defined in Section 1-15.100 of the Illinois Procurement Code (30 ILCS 500/), or officers of the State of Illinois arising out of any Participating Addendum must be filed exclusively with the Illinois Court of Claims. 705 ILCS 505/1. Payments, including late payment charges, will be paid in accordance with the State Prompt Payment Act and rules when applicable. 30 ILCS 540; 74 Ill. Adm. Code 900. This shall be Vendor's sole remedy for late payments by the State of Illinois. Payment terms contained in Vendor's invoices shall have no force or effect. The State of Illinois shall not enter into binding arbitration to resolve any dispute arising out of any Participating Addendum. The State of Illinois does not waive sovereign immunity.
6. Any Vendor with a Participating Addendum must complete the Standard Certifications herein attached as Attachment IL-A.
7. Vendor with a Participating Addendum must complete the Financial Disclosures and Conflicts of Interest herein attached Attachment IL-B.

**STATE OF ILLINOIS**  
**NASPO ValuePoint Cloud Solutions 2016-2026 Participating Agreement**  
**Specific Terms and Conditions**

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SIGNATURE

State of Illinois

Ellen H. Daley, Chief Procurement Officer for General Services

**Printed Name and Title**

*Ellen H. Daley by John Morrow*

**Signature**

12/10/15

**Date**

**STATE OF ILLINOIS**  
**STANDARD CERTIFICATIONS**  
**NASPO ValuePoint Cooperative Procurement CLOUD SOLUTIONS 2016-2026**  
**Attachment IL-A**

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Vendor acknowledges and agrees that compliance with this subsection in its entirety for the term of the contract and any renewals is a material requirement and condition of this contract. By executing this contract Vendor certifies compliance with this subsection in its entirety, and is under a continuing obligation to remain in compliance and report any non-compliance.

This subsection, in its entirety, applies to subcontractors used on this contract. Vendor shall include these Standard Certifications in any subcontract used in the performance of the contract using the Standard Certification form provided by the State.

If this contract extends over multiple fiscal years, including the initial term and all renewals, Vendor and its subcontractors shall confirm compliance with this section in the manner and format determined by the State by the date specified by the State and in no event later than July 1 of each year that this contract remains in effect.

If the Parties determine that any certification in this section is not applicable to this contract it may be stricken without affecting the remaining subsections.

1. As part of each certification, Vendor acknowledges and agrees that should Vendor or its subcontractors provide false information, or fail to be or remain in compliance with the Standard Certification requirements, one or more of the following sanctions will apply:
  - the contract may be void by operation of law,
  - the State may void the contract, and
  - the Vendor and its subcontractors may be subject to one or more of the following: suspension, debarment, denial of payment, civil fine, or criminal penalty.

Identifying a sanction or failing to identify a sanction in relation to any of the specific certifications does not waive imposition of other sanctions or preclude application of sanctions not specifically identified.

2. Vendor certifies it and its employees will comply with applicable provisions of the United States Civil Rights Act, Section 504 of the Federal Rehabilitation Act, the Americans with Disabilities Act, and applicable rules in performance of this contract.
3. Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies he/she is not in default on an educational loan. 5 ILCS 385/3.
4. Vendor, if an individual, sole proprietor, partner or an individual as member of a LLC, certifies it he/she has not received (i) an early retirement incentive prior to 1993 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code or (ii) an early retirement incentive on or after 2002 under Section 14-108.3 or 16-133.3 of the Illinois Pension Code. 30 ILCS 105/15a; 40 ILCS 5/14-108.3; 40 ILCS 5/16-133.
5. Vendor certifies that it is a legal entity authorized to do business in Illinois prior to submission of a bid, offer, or proposal. 30 ILCS 500/1-15.80, 20-43.

6. To the extent there was a current Vendor providing the services covered by this contract and the employees of that Vendor who provided those services are covered by a collective bargaining agreement, Vendor certifies (i) that it will offer to assume the collective bargaining obligations of the prior employer, including any existing collective bargaining agreement with the bargaining representative of any existing collective bargaining unit or units performing substantially similar work to the services covered by the contract subject to its bid or offer; and (ii) that it shall offer employment to all employees currently employed in any existing bargaining unit who perform substantially similar work to the work that will be performed pursuant to this contract. This does not apply to heating, air conditioning, plumbing and electrical service contracts. 30 ILCS 500/25-80.
7. Vendor certifies it has neither been convicted of bribing or attempting to bribe an officer or employee of the State of Illinois or any other State, nor made an admission of guilt of such conduct that is a matter of record. 30 ILCS 500/50-5.
8. If Vendor has been convicted of a felony, Vendor certifies at least five years have passed after the date of completion of the sentence for such felony, unless no person held responsible by a prosecutor's office for the facts upon which the conviction was based continues to have any involvement with the business. 30 ILCS 500/50-10.
9. If Vendor or any officer, director, partner, or other managerial agent of Vendor has been convicted of a felony under the Sarbanes-Oxley Act of 2002, or a Class 3 or Class 2 felony under the Illinois Securities Law of 1953, Vendor certifies at least five years have passed since the date of the conviction. Vendor further certifies that it is not barred from being awarded a contract and acknowledges that the State shall declare the contract void if this certification is false. 30 ILCS 500/50-10.5.
10. Vendor certifies it is not barred from having a contract with the State based upon violating the prohibitions related to either submitting/writing specifications or providing assistance to an employee of the State of Illinois by reviewing, drafting, directing, or preparing any invitation for bids, a request for proposal, or request of information, or similar assistance (except as part of a public request for such information). 30 ILCS 500/50-10.5(e), *amended* by Pub. Act No. 97-0895 (August 3, 2012).
11. Vendor certifies that it and its affiliates are not delinquent in the payment of any debt to the State (or if delinquent has entered into a deferred payment plan to pay the debt), and Vendor and its affiliates acknowledge the State may declare the contract void if this certification is false or if Vendor or an affiliate later becomes delinquent and has not entered into a deferred payment plan to pay off the debt. 30 ILCS 500/50-11, 50-60.
12. Vendor certifies that it and all affiliates shall collect and remit Illinois Use Tax on all sales of tangible personal property into the State of Illinois in accordance with provisions of the Illinois Use Tax Act and acknowledges that failure to comply may result in the contract being declared void. 30 ILCS 500/50-12.
13. Vendor certifies that it has not been found by a court or the Pollution Control Board to have committed a willful or knowing violation of the Environmental Protection Act within the last five years, and is therefore not barred from being awarded a contract. 30 ILCS 500/50-14.
14. Vendor certifies it has neither paid any money or valuable thing to induce any person to refrain from bidding on a State contract, nor accepted any money or other valuable thing, or acted upon the promise of same, for not bidding on a State contract. 30 ILCS 500/50-25.



15. Vendor certifies it is not in violation of the "Revolving Door" provisions of the Illinois Procurement Code. 30 ILCS 500/50-30.
16. Vendor certifies that it has not retained a person or entity to attempt to influence the outcome of a procurement decision for compensation contingent in whole or in part upon the decision or procurement. 30 ILCS 500/50-38.
17. Vendor certifies that if it has hired a person required to register under the Lobbyist Registration Act to assist in obtaining any State contract, that none of the lobbyist's costs, fees, compensation, reimbursements, or other remuneration were billed to the State. 30 ILCS 500\50-38.
18. Vendor certifies it will report to the Illinois Attorney General and the Chief Procurement Officer any suspected collusion or other anti-competitive practice among any bidders, offerors, contractors, proposers, or employees of the State. 30 ILCS 500/50-40, 50-45, 50-50.
19. Vendor certifies steel products used or supplied in the performance of a contract for public works shall be manufactured or produced in the United States, unless the executive head of the procuring Agency/University grants an exception. 30 ILCS 565.
20. Drug Free Workplace
  - 20.1 If Vendor employs 25 or more employees and this contract is worth more than \$5,000, Vendor certifies it will provide a drug free workplace pursuant to the Drug Free Workplace Act.
  - 20.2 If Vendor is an individual and this contract is worth more than \$5000, Vendor certifies it shall not engage in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance during the performance of the contract. 30 ILCS 580.
21. Vendor certifies that neither Vendor nor any substantially owned affiliate is participating or shall participate in an international boycott in violation of the U.S. Export Administration Act of 1979 or the applicable regulations of the United States. Department of Commerce. 30 ILCS 582.
22. Vendor certifies it has not been convicted of the offense of bid rigging or bid rotating or any similar offense of any state or of the United States. 720 ILCS 5/33 E-3, E-4.
23. Vendor certifies it complies with the Illinois Department of Human Rights Act and rules applicable to public contracts, which include providing equal employment opportunity, refraining from unlawful discrimination, and having written sexual harassment policies. 775 ILCS 5/2-105.
24. Vendor certifies it does not pay dues to or reimburse or subsidize payments by its employees for any dues or fees to any "discriminatory club." 775 ILCS 25/2.
25. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been or will be produced in whole or in part by forced labor or indentured labor under penal sanction. 30 ILCS 583.
26. Vendor certifies that no foreign-made equipment, materials, or supplies furnished to the State under the contract have been produced in whole or in part by the labor of any child under the age of 12. 30 ILCS 584.

27. Vendor certifies that any violation of the Lead Poisoning Prevention Act, as it applies to owners of residential buildings, has been mitigated. 410 ILCS 45.
28. Vendor warrants and certifies that it and, to the best of its knowledge, its subcontractors have and will comply with Executive Order No. 1 (2007). The Order generally prohibits Vendors and subcontractors from hiring the then-serving Governor's family members to lobby procurement activities of the State, or any other unit of government in Illinois including local governments if that procurement may result in a contract valued at over \$25,000. This prohibition also applies to hiring for that same purpose any former State employee who had procurement authority at any time during the one-year period preceding the procurement lobbying activity.
29. Vendor certifies that information technology, including electronic information, software, systems and equipment, developed or provided under this contract comply with the applicable requirements of the Illinois Information Technology Accessibility Act Standards as published at ([www.dhs.state.il.us/iitaa](http://www.dhs.state.il.us/iitaa)) 30 ILCS 587.
30. Vendor certifies that it has read, understands, and is in compliance with the registration requirements of the Elections Code (10 ILCS 5/9-35) and the restrictions on making political contributions and related requirements of the Illinois Procurement Code. 30 ILCS 500/20-160 and 50-37. Vendor will not make a political contribution that will violate these requirements.

In accordance with section 20-160 of the Illinois Procurement Code, Vendor certifies as applicable:

☐ Vendor is not required to register as a business entity with the State Board of Elections.

or

☐ Vendor has registered with the State Board of Elections. As a registered business entity, Vendor acknowledges a continuing duty to update the registration as required by the Act.

31. Vendor certifies that if it is awarded a contract through the use of the preference required by the Procurement of Domestic Products Act, then it shall provide products pursuant to the contract or a subcontract that are manufactured in the United States. 30 ILCS 517.
32. A person (other than an individual acting as a sole proprietor) must be a duly constituted legal entity and authorized to transact business or conduct affairs in Illinois prior to submitting a bid or offer. 30 ILCS 500/20-43. If you do not meet these criteria, then your bid or offer will be disqualified.

Vendor must make one of the following two certifications by checking the appropriate box.

- A. ☐ Vendor certifies it is an individual acting as a sole proprietor and is therefore not subject to the requirements of section 20-43 of the Procurement Code.
- B. ☐ Vendor certifies that it is a legal entity, and was authorized to transact business or conduct affairs in Illinois as of the date for submitting this bid or offer. The State may require Vendor to provide evidence of compliance before award.

33. Vendor certifies that, for the duration of this contract it will:

- post its employment vacancies in Illinois and border states on the Department of Employment Security's IllinoisJobLink.com website or its successor system; or
- will provide an online link to these employment vacancies so that this link is accessible through the IllinoisJobLink.com website or successor system; or
- is exempt from 20 ILCS 1005/1005-47 because the contract is for construction-related services as that term is defined in section 1-15.20 of the Procurement Code; or the contract is for construction and vendor is a party to a contract with a bona fide labor organization and performs construction. (20 ILCS 1005/1005-47).

**STATE OF ILLINOIS**  
**FINANCIAL DISCLOSURES AND CONFLICTS OF INTEREST**  
**NASPO ValuePoint Cooperative Procurement CLOUD SOLUTIONS 2016-2026**  
**Attachment IL-B**

The Financial Disclosures and Conflicts of Interest form ("form") must be accurately completed and submitted by the vendor, parent entity(ies), and subcontractors. There are **nine** steps to this form and each must be completed as instructed in the step heading and within the step. A bid or offer that does not include this form shall be considered non-responsive. The Agency/University will consider this form when evaluating the bid or offer or awarding the contract.

The requirement of disclosure of financial interests and conflicts of interest is a continuing obligation. If circumstances change and the disclosure is no longer accurate, then disclosing entities must provide an updated form.

Separate forms are required for the vendor, parent entity(ies), and subcontractors.

**This disclosure is submitted for:**

- ☐ Vendor
- ☐ Vendor's Parent Entity(ies) (100% ownership)
- ☐ Subcontractor(s) >\$50,000 (annual value)
- ☐ Subcontractor's Parent Entity(ies) (100% ownership) > \$50,000 (annual value)

Project Name	Click here to enter text.
Illinois Procurement Bulletin Number	Click here to enter text.
Contract Number	Click here to enter text.
Vendor Name	Click here to enter text.
Doing Business As (DBA)	Click here to enter text.
Disclosing Entity	Click here to enter text.
Disclosing Entity's Parent Entity	Click here to enter text.
Subcontractor	Click here to enter text.
Instrument of Ownership or Beneficial Interest	Choose an item. <input type="checkbox"/> If you selected Other, please describe: Click here to enter text.

**FINANCIAL DISCLOSURES AND CONFLICTS OF INTERESTS****STEP 1****SUPPORTING DOCUMENTATION SUBMITTAL**

(All vendors complete regardless of annual bid, offer, or contract value)  
 (Subcontractors with subcontract annual value of more than \$50,000 must complete)

You must select one of the six options below and select the documentation you are submitting. You must provide the documentation that the applicable section requires with this form.

☐ Option 1 – Publicly Traded Entities

- 1.A. ☐ Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$106,447.20) of the annual salary of the Governor.

OR

- 1.B. ☐ Attach a copy of the Federal 10-K or provide a web address of an electronic copy of the Federal 10-K, and skip to Step 3.

☐ Option 2 – Privately Held Entities with more than 100 Shareholders

- 2.A. ☐ Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$106,447.20) of the annual salary of the Governor.

OR

- 2.B. ☐ Complete Step 2, Option A for each qualifying individual or entity holding any ownership share in excess of 5% and attach the information Federal 10-K reporting companies are required to report under 17 CFR 229.401.

☐ Option 3 – All other Privately Held Entities, not including Sole Proprietorships

- 3.A. ☐ Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$106,447.20) of the annual salary of the Governor.

☐ Option 4 – Foreign Entities

- 4.A. ☐ Complete Step 2, Option A for each qualifying individual or entity holding any ownership or distributive income share in excess of 5% or an amount greater than 60% (\$106,447.20) of the annual salary of the Governor.

OR

- 4.B. ☐ Attach a copy of the Securities Exchange Commission Form 20-F or 40-F and skip to Step 3.

☐ Option 5 – Not-for-Profit Entities

- ☐ Complete Step 2, Option B.

☐ Option 6 – Sole Proprietorships

- ☐ Skip to Step 3.

**FINANCIAL DISCLOSURES AND CONFLICTS OF INTERESTS****STEP 2****DISCLOSURE OF FINANCIAL INTEREST OR BOARD OF DIRECTORS**

(All vendors, except sole proprietorships, must complete regardless of annual bid, offer, or contract value)  
 (Subcontractors with subcontract annual value of more than \$50,000 must complete)

Complete **either** Option A (for all entities other than not-for-profits) or Option B (for not-for-profits). Additional rows may be inserted into the tables or an attachment may be provided if needed.

**OPTION A – Ownership Share and Distributive Income**

**Ownership Share** – If you selected Option 1.A., 2.A., 2.B., 3.A., or 4.A. in Step 1, provide the name and address of each individual or entity and their percentage of ownership if said percentage exceeds 5%, or the dollar value of their ownership if said dollar value exceeds \$106,447.20.

☐ Check here if including an attachment with requested information in a format substantially similar to the format below.

<b>TABLE – X</b>			
<b>Name</b>	<b>Address</b>	<b>Percentage of Ownership</b>	<b>\$ Value of Ownership</b>
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

**Distributive Income** – If you selected Option 1.A., 2.A., 3.A., or 4.A. in Step 1, provide the name and address of each individual or entity and their percentage of the disclosing vendor's total distributive income if said percentage exceeds 5% of the total distributive income of the disclosing entity, or the dollar value of their distributive income if said dollar value exceeds \$106,447.20.

☐ Check here if including an attachment with requested information in a format substantially similar to the format below.

<b>TABLE – Y</b>			
<b>Name</b>	<b>Address</b>	<b>% of Distributive Income</b>	<b>\$ Value of Distributive Income</b>
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.
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Click here to enter text.	Click here to enter text.	Click here to enter text.	Click here to enter text.

## FINANCIAL DISCLOSURES AND CONFLICTS OF INTERESTS

Please certify that the following statements are true.

I have disclosed all individuals or entities that hold an ownership interest of greater than 5% or greater than \$106,447.20.

☐ Yes ☐ No

I have disclosed all individuals or entities that were entitled to receive distributive income in an amount greater than \$106,447.20 or greater than 5% of the total distributive income of the disclosing entity.

☐ Yes ☐ No

### OPTION B – Disclosure of Board of Directors (Not-for-Profits)

If you selected Option 5 in Step 1, list members of your board of directors. Please include an attachment if necessary.

TABLE – Z	
Name	Address
Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.
Click here to enter text.	Click here to enter text.

### STEP 3

#### DISCLOSURE OF LOBBYIST OR AGENT

(Complete only if bid, offer, or contract has an annual value over \$50,000)  
(Subcontractors with subcontract annual value of more than \$50,000 must complete)

☐ Yes ☐ No. Is your company represented by or do you employ a lobbyist required to register under the Lobbyist Registration Act (lobbyist must be registered pursuant to the Act with the Secretary of State) or other agent who is not identified through Step 2, Option A above and who has communicated, is communicating, or may communicate with any State/Public University officer or employee concerning the bid or offer? If yes, please identify each lobbyist and agent, including the name and address below.

If you have a lobbyist that does not meet the criteria, then you do not have to disclose the lobbyist's information.

Name	Address	Relationship to Disclosing Entity
Click here to enter text.	Click here to enter text.	Click here to enter text.

Describe all costs/fees/compensation/reimbursements related to the assistance provided by each representative lobbyist or other agent to obtain this Agency/University contract: Click here to enter text.

**FINANCIAL DISCLOSURES AND CONFLICTS OF INTERESTS****STEP 4****PROHIBITED CONFLICTS OF INTEREST**

(All vendors must complete regardless of annual bid, offer, or contract value)  
 (Subcontractors with subcontract annual value of more than \$50,000 must complete)

Step 4 must be completed for each person disclosed in Step 2, Option A and for sole proprietors identified in Step 1, Option 6 above. Please provide the name of the person for which responses are provided: [Click here to enter text.](#)

1. Do you hold or are you the spouse or minor child who holds an elective office in the State of Illinois or hold a seat in the General Assembly? ☐ Yes ☐ No
2. Have you, your spouse, or minor child been appointed to or employed in any offices or agencies of State government and receive compensation for such employment in excess of 60% (\$106,447.20) of the salary of the Governor? ☐ Yes ☐ No
3. Are you or are you the spouse or minor child of an officer or employee of the Capital Development Board or the Illinois Toll Highway Authority? ☐ Yes ☐ No
4. Have you, your spouse, or an immediate family member who lives in your residence currently or who lived in your residence within the last 12 months been appointed as a member of a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor? ☐ Yes ☐ No
5. If you answered yes to any question in 1-4 above, please answer the following: Do you, your spouse, or minor child receive from the vendor more than 7.5% of the vendor's total distributable income or an amount of distributable income in excess of the salary of the Governor (\$177,412.00)? ☐ Yes ☐ No
6. If you answered yes to any question in 1-4 above, please answer the following: Is there a combined interest of self with spouse or minor child more than 15% in the aggregate of the vendor's distributable income or an amount of distributable income in excess of two times the salary of the Governor (\$354,824.00)? ☐ Yes ☐ No

**STEP 5****POTENTIAL CONFLICTS OF INTEREST RELATING TO PERSONAL RELATIONSHIPS**

(Complete only if bid, offer, or contract has an annual value over \$50,000)  
 (Subcontractors with subcontract annual value of more than \$50,000 must complete)

Step 5 must be completed for each person disclosed in Step 2, Option A and for sole proprietors identified in Step 1, Option 6 above.

Please provide the name of the person for which responses are provided: [Click here to enter text.](#)

1. Do you currently have, or in the previous 3 years have you had State employment, including contractual employment of services? ☐ Yes ☐ No
2. Has your spouse, father, mother, son, or daughter, had State employment, including contractual employment for services, in the previous 2 years? ☐ Yes ☐ No



## FINANCIAL DISCLOSURES AND CONFLICTS OF INTERESTS

3. Do you hold currently or have you held in the previous 3 years elective office of the State of Illinois, the government of the United States, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois? ☐ Yes ☐ No
4. Do you have a relationship to anyone (spouse, father, mother, son, or daughter) holding elective office currently or in the previous 2 years? ☐ Yes ☐ No
5. Do you hold or have you held in the previous 3 years any appointive government office of the State of Illinois, the United States of America, or any unit of local government authorized by the Constitution of the State of Illinois or the statutes of the State of Illinois, which office entitles the holder to compensation in excess of expenses incurred in the discharge of that office? ☐ Yes ☐ No
6. Do you have a relationship to anyone (spouse, father, mother, son, or daughter) holding appointive office currently or in the previous 2 years? ☐ Yes ☐ No
7. Do you currently have or in the previous 3 years had employment as or by any registered lobbyist of the State government? ☐ Yes ☐ No
8. Do you currently have or in the previous 2 years had a relationship to anyone (spouse, father, mother, son, or daughter) that is or was a registered lobbyist? ☐ Yes ☐ No
9. Do you currently have or in the previous 3 years had compensated employment by any registered election or re-election committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections? ☐ Yes ☐ No
10. Do you currently have or in the previous 2 years had a relationship to anyone (spouse, father, mother, son, or daughter) who is or was a compensated employee of any registered election or reelection committee registered with the Secretary of State or any county clerk in the State of Illinois, or any political action committee registered with either the Secretary of State or the Federal Board of Elections? ☐ Yes ☐ No

### STEP 6

### EXPLANATION OF AFFIRMATIVE RESPONSES

(All vendors must complete regardless of annual bid, offer, or contract value)  
(Subcontractors with subcontract annual value of more than \$50,000 must complete)

If you answered "Yes" in Step 4 or Step 5, please provide on an additional page a detailed explanation that includes, but is not limited to the name, salary, State agency or university, and position title of each individual.

**FINANCIAL DISCLOSURES AND CONFLICTS OF INTERESTS**

**STEP 7**  
**POTENTIAL CONFLICTS OF INTEREST**  
**RELATING TO DEBARMENT & LEGAL PROCEEDINGS**

(Complete only if bid, offer, or contract has an annual value over \$50,000)  
 (Subcontractors with subcontract annual value of more than \$50,000 must complete)

This step must be completed for each person disclosed in Step 2, Option A, Step 3, and for each entity and sole proprietor disclosed in Step 1.

Please provide the name of the person or entity for which responses are provided: [Click here to enter text.](#)

1. Within the previous ten years, have you had debarment from contracting with any governmental entity? ☐ Yes ☐ No
2. Within the previous ten years, have you had any professional licensure discipline? ☐ Yes ☐ No
3. Within the previous ten years, have you had any bankruptcies? ☐ Yes ☐ No
4. Within the previous ten years, have you had any adverse civil judgments and administrative findings? ☐ Yes ☐ No
5. Within the previous ten years, have you had any criminal felony convictions? ☐ Yes ☐ No

If you answered "Yes", please provide a detailed explanation that includes, but is not limited to the name, State agency or university, and position title of each individual. [Click here to enter text.](#)

**STEP 8**  
**DISCLOSURE OF CURRENT AND PENDING CONTRACTS**

(Complete only if bid, offer, or contract has an annual value over \$50,000)  
 (Subcontractors with subcontract annual value of more than \$50,000 must complete)

If you selected Option 1, 2, 3, 4, or 6 in Step 1, do you have any contracts, pending contracts, bids, proposals, subcontracts, leases or other ongoing procurement relationships with units of State of Illinois government?

☐ Yes ☐ No.

If "Yes", please specify below. Additional rows may be inserted into the table or an attachment may be provided if needed.

Agency/University	Project Title	Status	Value	Contract Reference/P.O./Illinois Procurement Bulletin #
<a href="#">Click here to enter</a>	<a href="#">Click here to enter text.</a>	<a href="#">Click here to enter</a>	<a href="#">Click here to enter</a>	<a href="#">Click here to enter text.</a>

text.		text.	text.	
-------	--	-------	-------	--

Please explain the procurement relationship: [Click here to enter text.](#)

## STEP 9

### SIGN THE DISCLOSURE

(All vendors must complete regardless of annual bid, offer, or contract value)  
(Subcontractors with subcontract annual value of more than \$50,000 must complete)

This disclosure is signed, and made under penalty of perjury for all for-profit entities, by an authorized officer or employee on behalf of the bidder or offeror pursuant to Sections 50-13 and 50-35 of the Illinois Procurement Code. This disclosure information is submitted on behalf of:

Name of Disclosing Entity: [Click here to enter text.](#)

Signature: \_\_\_\_\_

Date: [Click here to enter text.](#)

Printed Name: [Click here to enter text.](#)

Title: [Click here to enter text.](#)

Phone Number: [Click here to enter text.](#)

Email Address: [Click here to enter text.](#)



## COMMONWEALTH TERMS AND CONDITIONS

This Commonwealth Terms and Conditions form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of Massachusetts ("State") Departments and Contractors. ***Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.*** Upon execution of these Commonwealth Terms and Conditions by the Contractor and filing as prescribed by the Office of the Comptroller, these Commonwealth Terms and Conditions will be incorporated by reference into any Contract for Commodities and Services executed by the Contractor and any State Department, in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

**1. Contract Effective Start Date.** Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

**2. Payments And Compensation.** The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. C. 29, §26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. C. 7A, §3 and 815 CMR 9.00. Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.

**3. Contractor Payment Mechanism.** All Contractors will be paid using the Payment Voucher System unless a different payment mechanism is required. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System, shall be used only for "Individual Contractors" who have been determined to be "Contract Employees" as a result of the Department's completion of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.

**4. Contract Termination Or Suspension.** A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor

failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

**5. Written Notice.** Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

**6. Confidentiality.** The Contractor shall comply with M.G.L. C. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Department's public records, documents, files, software, equipment or systems.

**7. Record-keeping And Retention, Inspection Of Records.** The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

**8. Assignment.** The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

**9. Subcontracting By Contractor.** Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

**10. Affirmative Action, Non-Discrimination In Hiring And Employment.** The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

**11. Indemnification.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated



## COMMONWEALTH TERMS AND CONDITIONS

settlement agreement or judgment. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.

**12. Waivers.** Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

**13. Risk Of Loss.** The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, Department personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Department.

**14. Forum, Choice of Law And Mediation.** Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The Department, with the approval of the Attorney General's Office, and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

**15. Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration.** Any amendment or attachment to any Contract which contains conflicting language or has the affect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially

published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 1. of these Commonwealth Terms and Conditions and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

**IN WITNESS WHEREOF, The Contractor certify under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory below:**

CONTRACTOR AUTHORIZED SIGNATORY: \_\_\_\_\_  
(signature)

Print Name:

Title:

Date:

(Check One): ☐ Organization ☐ Individual

Full Legal Organization or Individual Name:

Doing Business As: Name (If Different):

Tax Identification Number:

Address:

Telephone: FAX:

### ***INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS***

A "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the Contractor's correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously filed this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS must be submitted with the Response to RFR or as specified in the RFR. Otherwise, Departments or Contractors must timely submit the completed and properly executed COMMONWEALTH TERMS AND CONDITIONS (and the W-9 form if applicable) to the: ***Payee and Payments Unit, Office of the Comptroller, 9th Floor, One Ashburton Place, Boston, MA 02108*** in order to record the filing of this form on the MMARS Vendor File. Contractors are required to execute and file this form only once.

State of Utah  
**COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM**



This form is jointly issued and published by the [Executive Office for Administration and Finance \(ANF\)](#), the [Office of the Comptroller \(CTR\)](#) and the [Operational Services Division \(OSD\)](#) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors may not require any additional agreements, engagement letters, contract forms or other additional terms as part of this Contract without prior Department approval. Click on hyperlinks for definitions, instructions and legal requirements that are incorporated by reference into this Contract. An electronic copy of this form is available at [www.mass.gov/osc](http://www.mass.gov/osc) under [Guidance For Vendors - Forms](#) or [www.mass.gov/osd](http://www.mass.gov/osd) under [OSD Forms](#).

<b>CONTRACTOR LEGAL NAME:</b> (and d/b/a):		<b>COMMONWEALTH DEPARTMENT NAME:</b> <b>MMARS Department Code:</b>	
<b>Legal Address:</b> (W-9, W-4,T&C):		<b>Business Mailing Address:</b>	
<b>Contract Manager:</b>		<b>Billing Address</b> (if different):	
<b>E-Mail:</b>		<b>Contract Manager:</b>	
<b>Phone:</b>	<b>Fax:</b>	<b>E-Mail:</b>	
<b>Contractor Vendor Code:</b>		<b>Phone:</b>	<b>Fax:</b>
<b>Vendor Code Address ID</b> (e.g. "AD001"): AD ____ (Note: The Address Id Must be set up for <a href="#">EFT</a> payments.)		<b>MMARS Doc ID(s):</b>	
		<b>RFR/Procurement or Other ID Number:</b>	

  

<p style="text-align: center;"><b>NEW CONTRACT</b></p> <p><b>PROCUREMENT OR EXCEPTION TYPE:</b> (Check one option only)</p> <p><input type="checkbox"/> <b>Statewide Contract</b> (OSD or an OSD-designated Department)</p> <p><input type="checkbox"/> <b>Collective Purchase</b> (Attach OSD approval, scope, budget)</p> <p><input type="checkbox"/> <b>Department Procurement</b> (includes State or Federal grants <a href="#">815 CMR 2.00</a>) (Attach RFR and Response or other procurement supporting documentation)</p> <p><input type="checkbox"/> <b>Emergency Contract</b> (Attach justification for emergency, scope, budget)</p> <p><input type="checkbox"/> <b>Contract Employee</b> (Attach <a href="#">Employment Status Form</a>, scope, budget)</p> <p><input type="checkbox"/> <b>Legislative/Legal or Other:</b> (Attach authorizing language/justification, scope and budget)</p>	<p style="text-align: center;"><b>CONTRACT AMENDMENT</b></p> <p>Enter <b>Current Contract End Date</b> <u>Prior</u> to Amendment: ____, 20 ____.</p> <p>Enter <b>Amendment Amount:</b> \$ _____. (or "no change")</p> <p><b>AMENDMENT TYPE:</b> (Check one option only. Attach details of Amendment changes.)</p> <p><input type="checkbox"/> <b>Amendment to Scope or Budget</b> (Attach updated scope and budget)</p> <p><input type="checkbox"/> <b>Interim Contract</b> (Attach justification for Interim Contract and updated scope/budget)</p> <p><input type="checkbox"/> <b>Contract Employee</b> (Attach any updates to scope or budget)</p> <p><input type="checkbox"/> <b>Legislative/Legal or Other:</b> (Attach authorizing language/justification and updated scope and budget)</p>
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The following **COMMONWEALTH TERMS AND CONDITIONS** (T&C) has been executed, filed with CTR and is incorporated by reference into this Contract.  
☐ Commonwealth Terms and Conditions    ☐ Commonwealth Terms and Conditions For Human and Social Services

**COMPENSATION:** (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00.  
☐ **Rate Contract** (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.)  
☐ **Maximum Obligation Contract** Enter Total Maximum Obligation for total duration of this Contract (or **new** Total if Contract is being amended). \$ \_\_\_\_\_.

**PROMPT PAYMENT DISCOUNTS (PPD):** Commonwealth payments are issued through [EFT](#) 45 days from invoice receipt. Contractors requesting **accelerated** payments must identify a PPD as follows: Payment issued within 10 days \_\_% PPD; Payment issued within 15 days \_\_ % PPD; Payment issued within 20 days \_\_ % PPD; Payment issued within 30 days \_\_% PPD. If PPD percentages are left blank, identify reason: \_\_agree to standard 45 day cycle \_\_ statutory/legal or Ready Payments ([G.L. c. 29, § 23A](#)); \_\_ only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See [Prompt Pay Discounts Policy](#).)

**BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT:** (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.)

**ANTICIPATED START DATE:** (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations:  
 \_\_ 1. may be incurred as of the [Effective Date](#) (latest signature date below) and **no** obligations have been incurred **prior** to the [Effective Date](#).  
 \_\_ 2. may be incurred as of \_\_\_\_, 20 \_\_\_\_, a date **LATER** than the [Effective Date](#) below and **no** obligations have been incurred **prior** to the [Effective Date](#).  
 \_\_ 3. were incurred as of \_\_\_\_, 20 \_\_\_\_, a date **PRIOR** to the [Effective Date](#) below, and the parties agree that payments for any obligations incurred prior to the [Effective Date](#) are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.

**CONTRACT END DATE:** Contract performance shall terminate as of \_\_\_\_, 20 \_\_\_\_, with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.

**CERTIFICATIONS:** Notwithstanding verbal or other representations by the parties, the "**Effective Date**" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached [Contractor Certifications](#) (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable [Commonwealth Terms and Conditions](#), this Standard Contract Form including the [Instructions and Contractor Certifications](#), the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in [801 CMR 21.07](#), incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

<p><b>AUTHORIZING SIGNATURE FOR THE CONTRACTOR:</b></p> <p>X: _____ Date: _____              (Signature and Date Must Be Handwritten At Time of Signature)</p> <p>Print Name: _____</p> <p>Print Title: _____</p>	<p><b>AUTHORIZING SIGNATURE FOR THE COMMONWEALTH:</b></p> <p>X: _____ Date: _____              (Signature and Date Must Be Handwritten At Time of Signature)</p> <p>Print Name: _____</p> <p>Print Title: _____</p>
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# State of Utah COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



## INSTRUCTIONS AND CONTRACTOR CERTIFICATIONS

The following instructions and terms are incorporated by reference and apply to this Standard Contract Form. Text that appears underlined indicates a "hyperlink" to an Internet or bookmarked site and are unofficial versions of these documents and Departments and Contractors should consult with their legal counsel to ensure compliance with all legal requirements. Using the Web Toolbar will make navigation between the form and the hyperlinks easier. Please note that not all applicable laws have been cited.

**CONTRACTOR LEGAL NAME (AND D/B/A):** Enter the **Full Legal Name** of the Contractor's business as it appears on the Contractor's W-9 or W-4 Form (Contract Employees only) **and** the applicable Commonwealth Terms and Conditions. If Contractor also has a "doing business as" (d/b/a) name, BOTH the legal name and the "d/b/a" name must appear in this section.

**Contractor Legal Address:** Enter the Legal Address of the Contractor as it appears on the Contractor's W-9 or W-4 Form (Contract Employees only) **and** the applicable Commonwealth Terms and Conditions, which must match the legal address on the 1099I table in MMARS (or the Legal Address in HR/CMS for Contract Employee).

**Contractor Contract Manager:** Enter the authorized Contract Manager who will be responsible for managing the Contract. The Contract Manager should be an Authorized Signatory or, at a minimum, a person designated by the Contractor to represent the Contractor, receive legal notices and negotiate ongoing Contract issues. The Contract Manager is considered "Key Personnel" and may not be changed without the prior written approval of the Department. If the Contract is posted on COMMBUYS, the name of the Contract Manager must be included in the Contract on COMMBUYS.

**Contractor E-Mail Address/Phone/Fax:** Enter the electronic mail (e-mail) address, phone and fax number of the Contractor Contract Manager. This information must be kept current by the Contractor to ensure that the Department can contact the Contractor and provide any required legal notices. Notice received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any written legal notice requirements.

**Contractor Vendor Code:** The Department must enter the MMARS Vendor Code assigned by the Commonwealth. If a Vendor Code has not yet been assigned, leave this space blank and the Department will complete this section when a Vendor Code has been assigned. The Department is responsible under the Vendor File and W-9s Policy for verifying with authorized signatories of the Contractor, as part of contract execution, that the legal name, address and Federal Tax Identification Number (TIN) in the Contract documents match the state accounting system.

**Vendor Code Address ID:** (e.g., "AD001") The Department must enter the MMARS Vendor Code Address ID identifying the payment remittance address for Contract payments, which MUST be set up for EFT payments PRIOR to the first payment under the Contract in accordance with the Bill Paying and Vendor File and W-9 policies.

**COMMONWEALTH DEPARTMENT NAME:** Enter the full Department name with the authority to obligate funds encumbered for the Contract.

**Commonwealth MMARS Alpha Department Code:** Enter the three (3) letter MMARS Code assigned to this Commonwealth Department in the state accounting system.

**Department Business Mailing Address:** Enter the address where all formal correspondence to the Department must be sent. Unless otherwise specified in the Contract, legal notice sent or received by the Department's Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address for the Contract Manager will meet any requirements for legal notice.

**Department Billing Address:** Enter the Billing Address or email address if invoices must be sent to a different location. Billing or confirmation of delivery of performance issues should be resolved through the listed Contract Managers.

**Department Contract Manager:** Identify the authorized Contract Manager who will be responsible for managing the Contract, who should be an authorized signatory or an employee designated by the Department to represent the Department to receive legal notices and negotiate ongoing Contract issues.

**Department E-Mail Address/Phone/Fax:** Enter the electronic mail (e-mail) address, phone and fax number of the Department Contract Manager. Unless otherwise specified in the Contract, legal notice sent or received by the Contract Manager (with confirmation of actual receipt) through the listed address, fax number(s) or electronic mail address will meet any requirements for written notice under the Contract.

**MMARS Document ID(s):** Enter the MMARS 20 character encumbrance transaction number associated with this Contract which must remain the same for the life of the Contract. If multiple numbers exist for this Contract, identify all Doc Ids.

**RFR/Procurement or Other ID Number or Name:** Enter the Request for Response (RFR) or other Procurement Reference number, Contract ID Number or other reference/tracking number for this Contract or Amendment and will be entered into the Board Award Field in the MMARS encumbrance transaction for this Contract.

## NEW CONTRACTS (left side of Form):

Complete this section **ONLY** if this Contract is brand new. (Complete the **CONTRACT AMENDMENT** section for any material changes to an existing or an expired Contract, and for exercising options to renew or annual contracts under a multi-year procurement or grant program.)

**PROCUREMENT OR EXCEPTION TYPE:** Check the appropriate type of procurement or exception for this Contract. Only one option can be selected. See State Finance Law and General Requirements, Acquisition Policy and Fixed Assets, the Commodities and Services Policy and the Procurement Information Center (Department Contract Guidance) for details.

**Statewide Contract (OSD or an OSD-designated Department):** Check this option for a Statewide Contract under OSD, or by an OSD-designated Department.

**Collective Purchase approved by OSD:** Check this option for Contracts approved by OSD for collective purchases through federal, state, local government or other entities.

**Department Contract Procurement:** Check this option for a Department procurement including state grants and federal sub-grants under 815 CMR 2.00 and State Grants and Federal Subgrants Policy, Departmental Master Agreements (MA). If multi-Department user Contract, identify multi-Department use is allowable in Brief Description.

**Emergency Contract:** Check this option when the Department has determined that an unforeseen crisis or incident has arisen which requires or mandates immediate purchases to avoid substantial harm to the functioning of government or the provision of necessary or mandated services or whenever the health, welfare or safety of clients or other persons or serious damage to property is threatened.

**Contract Employee:** Check this option when the Department requires the performance of an Individual Contractor, and when the planned Contract performance with an Individual has been classified using the Employment Status Form (prior to the Contractor's selection) as work of a Contract Employee and not that of an Independent Contractor.

**Legislative/Legal or Other:** Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Supporting documentation must be attached to explain and justify the exemption.

## CONTRACT AMENDMENT (Right Side of Form)

Complete this section for any Contract being renewed, amended or to continue a lapsed Contract. All Contracts with available options to renew must be amended referencing the original procurement and Contract doc ids, since all continuing contracts must be maintained in the same Contract file (even if the underlying appropriation changes each fiscal year.) "See Amendments, Suspensions, and Termination Policy."

**Enter Current Contract End Date:** Enter the termination date of the Current Contract being amended, even if this date has already passed. (Note: Current Start Date is not requested since this date does not change and is already recorded in MMARS.)

**Enter Amendment Amount:** Enter the amount of the Amendment increase or decrease to a Maximum Obligation Contract. Enter "no change" for Rate Contracts or if no change.

**AMENDMENT TYPE:** Identify the type of Amendment being done. Documentation supporting the updates to performance and budget must be attached. **Amendment to Scope or Budget:** Check this option when renewing a Contract or executing any Amendment ("material change" in Contract terms) even if the Contract has lapsed. The parties may negotiate a change in any element of Contract performance or cost identified in the RFR or the Contractor's response which results in lower costs, or a more cost-effective or better value performance than was presented in the original selected response, provided the negotiation results in a better value within the scope of the RFR than what was proposed by the Contractor in the original selected response. Any "material" change in the Contract terms must be memorialized in a formal Amendment even if a corresponding MMARS transaction is not needed to support the change. Additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in 801 CMR 21.07, incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.

**Interim Contracts:** Check this option for an Interim Contract to prevent a lapse of Contract performance whenever an existing Contract is being re-procured but the new procurement has not been completed, to bridge the gap during implementation between an expiring and a new procurement, or to contract with an interim Contractor when a current Contractor is unable to complete full performance under a Contract.

**Contract Employee:** Check this option when the Department requires a renewal or other amendment to the performance of a Contract Employee.

**Legislative/Legal or Other:** Check this option when legislation, an existing legal obligation, prohibition or other circumstance exempts or prohibits a Contract from being competitively procured, or identify any other procurement exception not already listed. Legislative "earmarks" exempt the Contract solely from procurement requirements, and all other Contract and state finance laws and policies apply. Attach supporting documentation to explain and justify the exemption and whether Contractor selection has been publicly



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posted.

## COMMONWEALTH TERMS AND CONDITIONS

Identify which [Commonwealth Terms and Conditions](#) the Contractor has executed and is incorporated by reference into this Contract. This Form is signed only once and recorded on the Vendor Customer File (VCUST). See [Vendor File and W-9s](#) Policy.

## COMPENSATION

Identify if the Contract is a **Rate Contract** (with no stated Maximum Obligation) or a **Maximum Obligation Contract** (with a stated Maximum Obligation) and identify the Maximum Obligation. If the Contract is being amended, enter the new Maximum Obligation based upon the increase or decreasing Amendment. The Total Maximum Obligation must reflect the total funding for the dates of service under the contract, including the Amendment amount if the Contract is being amended. The Maximum Obligation must match the MMARS encumbrance. Funding and allotments must be verified as [available and encumbered](#) prior to incurring obligations. If a Contract includes both a Maximum Obligation component and Rate Contract component, check off both, specific Maximum Obligation amounts or amended amounts and Attachments must clearly outline the Contract breakdown to match the encumbrance.

## PAYMENTS AND PROMPT PAY DISCOUNTS

Payments are processed within a 45 day payment cycle through EFT in accordance with the Commonwealth [Bill Paying Policy](#) for investment and cash flow purposes. Departments may NOT negotiate accelerated payments and Payees are NOT entitled to accelerated payments UNLESS a prompt payment discount (PPD) is provided to support the Commonwealth's loss of investment earnings for this earlier payment, or unless a payments is legally mandated to be made in less than 45 days (e.g., construction contracts, Ready Payments under [G.L. c. 29, s. 23A](#)). See [Prompt Pay Discounts Policy](#). PPD are identified as a percentage discount which will be automatically deducted when an accelerated payment is made. Reduced contracts rates may not be negotiated to replace a PPD. If PPD fields are left blank please identify that the Contractor agrees to the standard 45 day cycle; a statutory/legal exemption such as Ready Payments ([G.L. c. 29, § 23A](#)); or only an initial accelerated payment for reimbursements or start up costs for a grant, with subsequent payments scheduled to support standard EFT 45 day payment cycle. Financial hardship is not a sufficient justification to accelerate cash flow for all payments under a Contract. Initial grant or contract payments may be accelerated for the first invoice or initial grant installment, but subsequent periodic installments or invoice payments should be scheduled to support the Payee cash flow needs and the standard 45 day EFT payment cycle in accordance with the Bill Paying Policy. Any accelerated payment that does not provide for a PPD must have a legal justification in Contract file for audit purposes explaining why accelerated payments were allowable without a PPD.

## BRIEF DESCRIPTION OF CONTRACT PERFORMANCE

Enter a brief description of the Contract performance, project name and/or other identifying information for the Contract to specifically identify the Contract performance, match the Contract with attachments, determine the appropriate expenditure code (as listed in the [Expenditure Classification Handbook](#)) or to identify or clarify important information related to the Contract such as the Fiscal Year(s) of performance (ex. "FY2012" or "FY2012-14"). Identify settlements or other exceptions and attach more detailed justification and supporting documents. Enter "Multi-Department Use" if other Departments can access procurement. For Amendments, identify the purpose and what items are being amended. Merely stating "see attached" or referencing attachments without a narrative description of performance is insufficient.

## ANTICIPATED START DATE

The Department and Contractor must certify WHEN obligations under this Contract/Amendment may be incurred. Option 1 is the default option when performance may begin as of the [Effective Date](#) (latest signature date and any required approvals). If the parties want a new Contract or renewal to begin as of the upcoming fiscal year then list the fiscal year(s) (ex. "FY2012" or "FY2012-14") in the Brief Description section. Performance starts and encumbrances reflect the default [Effective Date](#) (if no FY is listed) or the later FY start date (if a FY is listed). Use Option 2 only when the Contract will be signed well in advance of the start date and identify a specific future start date. Do not use Option 2 for a fiscal year start unless it is certain that the Contract will be signed prior to fiscal year. Option 3 is used in lieu of the [Settlement and Release Form](#) when the Contract/Amendment is signed late, and obligations have already been incurred by the Contractor prior to the [Effective Date](#) for which the Department has either requested, accepted or deemed legally eligible for reimbursement, and the Contract includes supporting documents justifying the performance or proof of eligibility, and approximate costs. Only obligations incurred outside the scope of the [Effective Date](#) under any Option listed, even if the incorrect Option is selected, shall be automatically deemed a settlement included under the terms of the Contract and upon payment to the Contractor will release the Commonwealth from further obligations for the identified performance. All settlement payments require justification and must be under same encumbrance and object codes as the Contract payments. Performance dates are subject to [G.L. c.4, § 9](#).

## CONTRACT END DATE

The Department must enter the date that Contract performance will terminate. **If the Contract is being amended and the Contract End Date is not changing, this date must be re-entered again here.** A Contract must be signed for at least the initial duration but not longer than the period of procurement listed in the RFR, or other solicitation document (if applicable). No new performance is allowable beyond the end date without an amendment, but the Department may allow a Contractor to complete minimal close out performance obligations if substantial performance has been made prior to the termination date of the Contract and prior to the end of the fiscal year in which payments are appropriated, provided that any close out performance is subject to appropriation and funding limits under state finance law, and CTR may adjust encumbrances and payments in the state accounting system to enable final close out payments. Performance dates are subject to [G.L. c.4, § 9](#).

## CERTIFICATIONS AND EXECUTION

See [Department Head Signature Authorization Policy](#) and the [Contractor Authorized Signatory Listing](#) for policies on Contractor and Department signatures.

**Authorizing Signature for Contractor/Date:** The Authorized Contractor Signatory must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "[Anticipated Contract Start Date](#)". Acceptance of payment by the Contractor shall waive any right of the Contractor to claim the Contract/Amendment is not valid and the Contractor may not void the Contract. **Rubber stamps, typed or other images are not acceptable.** Proof of Contractor signature authorization on a [Contractor Authorized Signatory Listing](#) may be required by the Department if not already on file.

**Contractor Name /Title:** The Contractor Authorized Signatory's name and title must appear legibly as it appears on the [Contractor Authorized Signatory Listing](#).

**Authorizing Signature For Commonwealth/Date:** The [Authorized Department Signatory](#) must (in their own handwriting and in ink) sign AND enter the date the Contract is signed. See section above under "[Anticipated Start Date](#)". **Rubber stamps, typed or other images are not accepted.** The Authorized Signatory must be an employee within the Department legally responsible for the Contract. See [Department Head Signature Authorization](#). The Department must have the legislative funding appropriated for all the costs of this Contract or funding allocated under an [approved Interdepartmental Service Agreement \(ISA\)](#). A Department may not contract for performance to be delivered to or by another state department without specific legislative authorization (unless this Contract is a Statewide Contract). For Contracts requiring Secretariat signoff, evidence of Secretariat signoff must be included in the Contract file.

**Department Name /Title:** Enter the Authorized Signatory's name and title legibly.

## CONTRACTOR CERTIFICATIONS AND LEGAL REFERENCES

Notwithstanding verbal or other representations by the parties, the "Effective Date" of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified, subject to any required approvals. The Contractor makes all certifications required under this Contract under the pains and penalties of perjury, and agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein:

**Commonwealth and Contractor Ownership Rights.** The Contractor certifies and agrees that the Commonwealth is entitled to ownership and possession of all "deliverables" purchased or developed with Contract funds. A Department may not relinquish Commonwealth rights to deliverables nor may Contractors sell products developed with Commonwealth resources without just compensation. The Contract should detail all Commonwealth deliverables and ownership rights and any Contractor proprietary rights.

**Qualifications.** The Contractor certifies it is qualified and shall at all times remain qualified to perform this Contract; that performance shall be timely and meet or exceed industry standards for the performance required, including obtaining requisite licenses, registrations, permits, resources for performance, and sufficient professional, liability; and other appropriate insurance to cover the performance. If the Contractor is a business, the Contractor certifies that it is listed under the [Secretary of State's website](#) as licensed to do business in Massachusetts, as required by law.

**Business Ethics and Fraud, Waste and Abuse Prevention.** The Contractor certifies that performance under this Contract, in addition to meeting the terms of the Contract, will be made using ethical business standards and good stewardship of taxpayer and other public funding and resources to prevent fraud, waste and abuse.

**Collusion.** The Contractor certifies that this Contract has been offered in good faith and without collusion, fraud or unfair trade practices with any other person, that any actions to avoid or frustrate fair and open competition are prohibited by law, and shall be grounds for rejection or disqualification of a Response or termination of this Contract.

**Public Records and Access** The Contractor shall provide full access to records related to performance and compliance to the Department and officials listed under [Executive Order 195](#) and [G.L. c. 11, s.12](#) seven (7) years beginning on the first day after the final payment



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under this Contract or such longer period necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving this Contract. Access to view Contractor records related to any breach or allegation of fraud, waste and/or abuse may not be denied and Contractor can not claim confidentiality or trade secret protections solely for viewing but not retaining documents. Routine Contract performance compliance reports or documents related to any alleged breach or allegation of non-compliance, fraud, waste, abuse or collusion may be provided electronically and shall be provided at Contractor's own expense. Reasonable costs for copies of non-routine Contract related records shall not exceed the rates for public records under [950 C.M.R. 32.00](#).

**Debarment.** The Contractor certifies that neither it nor any of its subcontractors are currently debarred or suspended by the federal or state government under any law or regulation including, [Executive Order 147](#); [G.L. c. 29, s. 29F](#); [G.L. c. 30, § 39R](#); [G.L. c. 149, § 27C](#); [G.L. c. 149, § 44C](#); [G.L. c. 149, § 148B](#) and [G.L. c. 152, s. 25C](#).

**Applicable Laws.** The Contractor shall comply with all applicable state laws and regulations including but not limited to the applicable [Massachusetts General Laws](#); the Official [Code of Massachusetts Regulations](#); [Code of Massachusetts Regulations](#) (unofficial); [801 CMR 21.00](#) (Procurement of Commodity and Service Procurements, Including Human and Social Services); [815 CMR 2.00](#) (Grants and Subsidies); [808 CMR 1.00](#) (Compliance, Reporting and Auditing for Human And Social Services); [AICPA Standards](#); confidentiality of Department records under [G.L. c. 66A](#); and the [Massachusetts Constitution Article XVIII](#) if applicable.

**Invoices.** The Contractor must submit invoices in accordance with the terms of the Contract and the Commonwealth [Bill Paying Policy](#). Contractors must be able to reconcile and properly attribute concurrent payments from multiple Departments. Final invoices in any fiscal year must be submitted no later than August 15<sup>th</sup> for performance made and received (goods delivered, services completed) prior to June 30<sup>th</sup>, in order to make payment for that performance prior to the close of the fiscal year to prevent reversion of appropriated funds. Failure to submit timely invoices by August 15<sup>th</sup> or other date listed in the Contract shall authorize the Department to issue an estimated payment based upon the Department's determination of performance delivered and accepted. The Contractor's acceptance of this estimated payment releases the Commonwealth from further claims for these invoices. If budgetary funds revert due to the Contractor's failure to submit timely final invoices, or for disputing an estimated payment, the Department may deduct a penalty up to 10% from any final payment in the next fiscal year for failure to submit timely invoices.

**Payments Subject To Appropriation.** Pursuant to [G.L. c. 29 § 26, § 27](#) and [§ 29](#), Departments are required to expend funds only for the purposes set forth by the Legislature and within the funding limits established through appropriation, allotment and subsidiary, including mandated allotment reductions triggered by [G.L. c. 29, § 9C](#). A Department cannot authorize or accept performance in excess of an existing appropriation and allotment, or sufficient non-appropriated available funds. Any oral or written representations, commitments, or assurances made by the Department or any other Commonwealth representative are not binding. The Commonwealth has no legal obligation to compensate a Contractor for performance that is not requested and is intentionally delivered by a Contractor outside the scope of a Contract. Contractors should verify funding prior to beginning performance.

**Intercept.** Contractors may be registered as Customers in the Vendor file if the Contractor owes a Commonwealth debt. Unresolved and undisputed debts, and overpayments of Contract payments that are not reimbursed timely shall be subject to intercept pursuant to [G.L. c. 7A, s. 3](#) and [815 CMR 9.00](#). Contract overpayments will be subject to immediate intercept or payment offset. The Contractor may not penalize any state Department or assess late fees, cancel a Contract or other services if amounts are intercepted or offset due to recoupment of an overpayment, outstanding taxes, child support, other overdue debts or Contract overpayments.

**Tax Law Compliance.** The Contractor certifies under the pains and penalties of perjury tax compliance with [Federal tax laws](#); [state tax laws](#) including but not limited to [G.L. c. 62C](#); [G.L. c. 62C, s. 49A](#); compliance with all state tax laws, reporting of employees and contractors, withholding and remitting of tax withholdings and child support and is in good standing with respect to all state taxes and returns due; reporting of employees and contractors under [G.L. c. 62E](#), withholding and remitting [child support](#) including [G.L. c. 119A, s. 12](#); [TIR 05-11](#); [New Independent Contractor Provisions](#) and applicable [TIRs](#).

**Bankruptcy, Judgments, Potential Structural Changes, Pending Legal Matters and Conflicts.** The Contractor certifies it has not been in bankruptcy and/or receivership within the last three calendar years, and the Contractor certifies that it will immediately notify the Department in writing **at least 45 days prior** to filing for bankruptcy and/or receivership, any potential structural change in its organization, or if there is **any risk** to the solvency of the Contractor that may impact the Contractor's ability to timely fulfill the terms of this Contract or Amendment. The Contractor certifies that at any time during the period of the Contract the Contractor is required to affirmatively disclose in writing to the Department Contract Manager the details of any judgment, criminal conviction, investigation or litigation pending against the Contractor or any of its officers, directors, employees, agents, or subcontractors, including any potential conflicts of interest of which the Contractor has knowledge, or learns of during the Contract term. Law firms or Attorneys providing legal

services are required to identify any potential conflict with representation of any Department client in accordance with Massachusetts Board of Bar Overseers (BBO) rules.

**Federal Anti-Lobbying and Other Federal Requirements.** If receiving federal funds, the Contractor certifies compliance with federal anti-lobbying requirements including [31 USC 1352](#); [other federal requirements](#); [Executive Order 11246](#); [Air Pollution Act](#); [Federal Water Pollution Control Act](#) and [Federal Employment Laws](#).

**Protection of Personal Data and Information.** The Contractor certifies that all steps will be taken to ensure the security and confidentiality of all Commonwealth data for which the Contractor becomes a holder, either as part of performance or inadvertently during performance, with special attention to restricting access, use and disbursement of personal data and information under [G.L. c. 93H](#) and [c. 66A](#) and [Executive Order 504](#). The Contractor is required to comply with [G.L. c. 93I](#) for the proper disposal of all paper and electronic media, backups or systems containing personal data and information, provided further that the Contractor is required to ensure that any personal data or information transmitted electronically or through a portable device be properly encrypted using (at a minimum) [Information Technology Division \(ITD\) Protection of Sensitive Information](#), provided further that any Contractor having access to credit card or banking information of Commonwealth customers certifies that the Contractor is PCI compliant in accordance with the [Payment Card Industry Council Standards](#) and shall provide confirmation compliance during the Contract, provide further that the Contractor shall immediately notify the Department in the event of any security breach including the unauthorized access, disbursement, use or disposal of personal data or information, and in the event of a security breach, the Contractor shall cooperate fully with the Commonwealth and provide access to any information necessary for the Commonwealth to respond to the security breach and shall be fully responsible for any damages associated with the Contractor's breach including but not limited to [G.L. c. 214, s. 3B](#).

**Corporate and Business Filings and Reports.** The Contractor certifies compliance with any certification, filing, reporting and service of process requirements of the [Secretary of the Commonwealth](#), the [Office of the Attorney General](#) or other Departments as related to its conduct of business in the Commonwealth; and with its incorporating state (or foreign entity).

**Employer Requirements.** Contractors that are employers certify compliance with applicable state and [federal employment laws](#) or regulations, including but not limited to [G.L. c. 5, s. 1](#) (Prevailing Wages for Printing and Distribution of Public Documents); [G.L. c. 7, s. 22](#) (Prevailing Wages for Contracts for Meat Products and Clothing and Apparel); [minimum wages and prevailing wage programs and payments](#); [unemployment insurance](#) and contributions; [workers' compensation and insurance](#), [child labor laws](#), [AGO fair labor practices](#); [G.L. c. 149](#) (Labor and Industries); [G.L. c. 150A](#) (Labor Relations); [G.L. c. 151](#) and [455 CMR 2.00](#) (Minimum Fair Wages); [G.L. c. 151A](#) (Employment and Training); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); [G.L. c. 152](#) (Workers' Compensation); [G.L. c. 153](#) (Liability for Injuries); [29 USC c. 8](#) (Federal Fair Labor Standards); [29 USC c. 28](#) and the [Federal Family and Medical Leave Act](#).

**Federal And State Laws And Regulations Prohibiting Discrimination** including but not limited to the [Federal Equal Employment Opportunity \(EEO\) Laws](#) the [Americans with Disabilities Act](#); [42 U.S.C. Sec. 12,101, et seq.](#), the [Rehabilitation Act](#); [29 USC c. 16 s. 794](#); [29 USC c. 16, s. 701](#); [29 USC c. 14, 623](#); the [42 USC c. 45](#); (Federal Fair Housing Act); [G.L. c. 151B](#) (Unlawful Discrimination); [G.L. c. 151E](#) (Business Discrimination); the Public Accommodations Law [G.L. c. 272, s. 92A](#); [G.L. c. 272, s. 98](#) and [98A](#), [Massachusetts Constitution Article CXIV](#) and [G.L. c. 93, s. 103](#); [47 USC c. 5, sc. II, Part II, s. 255](#) (Telecommunication Act); Chapter 149, [Section 105D](#), [G.L. c. 151C](#), [G.L. c. 272, Section 92A](#), [Section 98](#) and [Section 98A](#), and [G.L. c. 111, Section 199A](#), and [Massachusetts Disability-Based Non-Discrimination Standards For Executive Branch Entities](#), and related Standards and Guidance, authorized under Massachusetts Executive Order or any disability-based protection arising from state or federal law or precedent. See also [MCAD](#) and [MCAD links and Resources](#).

**Small Business Purchasing Program (SBPP).** A Contractor may be eligible to participate in the SBPP, created pursuant to [Executive Order 523](#), if qualified through the SBPP COMMBUYS subscription process at: [www.commbuys.com](#) and with acceptance of the terms of the SBPP participation agreement.

**Limitation of Liability for Information Technology Contracts (and other Contracts as Authorized).** The [Information Technology Mandatory Specifications](#) and the [IT Acquisition Accessibility Contract Language](#) are incorporated by reference into Information Technology Contracts. The following language will apply to Information Technology contracts in the U01, U02, U03, U04, U05, U06, U07, U08, U09, U10, U75, U98 object codes in the [Expenditure Classification Handbook](#) or other Contracts as approved by CTR or OSD. Pursuant to Section 11. Indemnification of the Commonwealth Terms and Conditions, the term "other damages" shall include, but shall not be limited to, the reasonable costs the Commonwealth incurs to repair, return, replace or seek cover (purchase of comparable substitute commodities and services) under a Contract. "Other damages" shall not include damages to the Commonwealth as a result of third party claims, provided, however, that the foregoing in no way limits the Commonwealth's right of recovery for personal injury or property damages or patent and copyright infringement under Section 11 nor the Commonwealth's ability to join the contractor as a third party defendant. Further, the term



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"other damages" shall not include, and in no event shall the contractor be liable for, damages for the Commonwealth's use of contractor provided products or services, loss of Commonwealth records, or data (or other intangible property), loss of use of equipment, lost revenue, lost savings or lost profits of the Commonwealth. In no event shall "other damages" exceed the greater of \$100,000, or two times the value of the product or service (as defined in the Contract scope of work) that is the subject of the claim. Section 11 sets forth the contractor's entire liability under a Contract. Nothing in this section shall limit the Commonwealth's ability to negotiate higher limitations of liability in a particular Contract, provided that any such limitation must specifically reference Section 11 of the Commonwealth Terms and Conditions. In the event the limitation of liability conflicts with accounting standards which mandate that there can be no cap of damages, the limitation shall be considered waived for that audit engagement. These terms may be applied to other Contracts only with prior written confirmation from the Operational Services Division or the Office of the Comptroller. The terms in this Clarification may not be modified.

**Northern Ireland Certification.** Pursuant to [G.L. c. 7 s. 22C](#) for state agencies, state authorities, the House of Representatives or the state Senate, by signing this Contract the Contractor certifies that it does not employ ten or more employees in an office or other facility in Northern Ireland and if the Contractor employs ten or more employees in an office or other facility located in Northern Ireland the Contractor certifies that it does not discriminate in employment, compensation, or the terms, conditions and privileges of employment on account of religious or political belief; and it promotes religious tolerance within the work place, and the eradication of any manifestations of religious and other illegal discrimination; and the Contractor is not engaged in the manufacture, distribution or sale of firearms, munitions, including rubber or plastic bullets, tear gas, armored vehicles or military aircraft for use or deployment in any activity in Northern Ireland.

**Pandemic, Disaster or Emergency Performance.** In the event of a serious emergency, pandemic or disaster outside the control of the Department, the Department may negotiate emergency performance from the Contractor to address the immediate needs of the Commonwealth even if not contemplated under the original Contract or procurement. Payments are subject to appropriation and other payment terms.

**Consultant Contractor Certifications** (For Consultant Contracts "HH" and "NN" and "U05" object codes subject to [G.L. Chapter 29, s. 29A](#)). Contractors must make required disclosures as part of the RFR Response or using the [Consultant Contractor Mandatory Submission Form](#).

**Attorneys.** Attorneys or firms providing legal services or representing Commonwealth Departments may be subject to [G.L. c. 30, s. 65](#), and if providing litigation services must be approved by the Office of the Attorney General to appear on behalf of a Department, and shall have a continuing obligation to notify the Commonwealth of any conflicts of interest arising under the Contract.

**Subcontractor Performance.** The Contractor certifies full responsibility for Contract performance, including subcontractors, and that comparable Contract terms will be included in subcontracts, and that the Department will not be required to directly or indirectly manage subcontractors or have any payment obligations to subcontractors.

## EXECUTIVE ORDERS

For covered Executive state Departments, the Contractor certifies compliance with applicable [Executive Orders](#) (see also [Massachusetts Executive Orders](#)), including but not limited to the specific orders listed below. A breach during period of a Contract may be considered a material breach and subject Contractor to appropriate monetary or Contract sanctions.

**Executive Order 481.** [Prohibiting the Use of Undocumented Workers on State Contracts.](#) For all state agencies in the Executive Branch, including all executive offices, boards, commissions, agencies, Departments, divisions, councils, bureaus, and offices, now existing and hereafter established, by signing this Contract the Contractor certifies under the pains and penalties of perjury that they shall not knowingly use undocumented workers in connection with the performance of this Contract; that, pursuant to federal requirements, shall verify the immigration status of workers assigned to a Contract without engaging in unlawful discrimination; and shall not knowingly or recklessly alter, falsify, or accept altered or falsified documents from any such worker

**Executive Order 130.** [Anti-Boycott.](#) The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company, as hereafter defined, participates in or cooperates with an international boycott (See [IRC § 999\(b\)\(3\)-\(4\)](#), and [IRS Audit Guidelines Boycotts](#)) or engages in conduct declared to be unlawful by [G.L. c. 151E, s. 2](#). A breach in the warranty, representation, and agreement contained in this paragraph, without limiting such other rights as it may have, the Commonwealth shall be entitled to rescind this Contract. As used herein, an affiliated company shall be any business entity of which at least 51% of the ownership interests are directly or indirectly owned by the Contractor or by a person or persons or business entity or entities directly or indirectly owning at least 51% of the ownership interests of the Contractor, or which directly or indirectly owns at least 51% of the ownership interests of the Contractor.

**Executive Order 346.** [Hiring of State Employees By State Contractors](#) Contractor certifies compliance with both the conflict of interest law [G.L. c. 268A specifically s. 5 \(f\)](#) and this order; and includes limitations regarding the hiring of state employees by private companies contracting with the Commonwealth. A privatization contract shall be deemed

to include a specific prohibition against the hiring at any time during the term of Contract, and for any position in the Contractor's company, any state management employee who is, was, or will be involved in the preparation of the RFP, the negotiations leading to the awarding of the Contract, the decision to award the Contract, and/or the supervision or oversight of performance under the Contract.

**Executive Order 444.** [Disclosure of Family Relationships With Other State Employees.](#) Each person applying for employment (including Contract work) within the Executive Branch under the Governor must disclose in writing the names of all immediate family related to immediate family by marriage who serve as employees or elected officials of the Commonwealth. All disclosures made by applicants hired by the Executive Branch under the Governor shall be made available for public inspection to the extent permissible by law by the official with whom such disclosure has been filed.

**Executive Order 504.** [Regarding the Security and Confidentiality of Personal Information.](#) For all Contracts involving the Contractor's access to personal information, as defined in [G.L. c. 93H](#), and personal data, as defined in [G.L. c. 66A](#), owned or controlled by Executive Department agencies, or access to agency systems containing such information or data (herein collectively "personal information"), Contractor certifies under the pains and penalties of perjury that the Contractor (1) has read Commonwealth of Massachusetts Executive Order 504 and agrees to protect any and all personal information; and (2) has reviewed all of the Commonwealth [Information Technology Division's Security Policies](#). Notwithstanding any contractual provision to the contrary, in connection with the Contractor's performance under this Contract, for all state agencies in the Executive Department, including all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established, the Contractor shall: (1) obtain a copy, review, and comply with the contracting agency's Information Security Program (ISP) and any pertinent security guidelines, standards, and policies; (2) comply with all of the Commonwealth of Massachusetts Information Technology Division's "[Security Policies](#)"; (3) communicate and enforce the contracting agency's ISP and such Security Policies against all employees (whether such employees are direct or contracted) and subcontractors; (4) implement and maintain any other reasonable appropriate security procedures and practices necessary to protect personal information to which the Contractor is given access by the contracting agency from the unauthorized access, destruction, use, modification, disclosure or loss; (5) be responsible for the full or partial breach of any of these terms by its employees (whether such employees are direct or contracted) or subcontractors during or after the term of this Contract, and any breach of these terms may be regarded as a material breach of this Contract; (6) in the event of any unauthorized access, destruction, use, modification, disclosure or loss of the personal information (collectively referred to as the "unauthorized use"): (a) immediately notify the contracting agency if the Contractor becomes aware of the unauthorized use; (b) provide full cooperation and access to information necessary for the contracting agency to determine the scope of the unauthorized use; and (c) provide full cooperation and access to information necessary for the contracting agency and the Contractor to fulfill any notification requirements. Breach of these terms may be regarded as a material breach of this Contract, such that the Commonwealth may exercise any and all contractual rights and remedies, including without limitation indemnification under Section 11 of the [Commonwealth's Terms and Conditions](#), withholding of payments, Contract suspension, or termination. In addition, the Contractor may be subject to applicable statutory or regulatory penalties, including and without limitation, those imposed pursuant to G.L. c. 93H and under [G.L. c. 214, § 3B](#) for violations under M.G.L. c. 66A.

**Executive Orders 523, 524 and 526.** Executive Order 526 (Order Regarding Non-Discrimination, Diversity, Equal Opportunity and Affirmative Action which supersedes [Executive Order 478](#)). [Executive Order 524](#) (Establishing the Massachusetts Supplier Diversity Program which supersedes Executive Order 390). [Executive Order 523](#) (Establishing the Massachusetts Small Business Purchasing Program.) All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. The Contractor and any subcontractors may not engage in discriminatory employment practices; and the Contractor certifies compliance with applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and the Contractor commits to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. These provisions shall be enforced through the contracting agency, OSD, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

**Supplier Diversity Program (SDP) Plan Commitment**  
**SDP Plan Form #1**  
**(To be submitted with Bid Response)**

**Contract/RFR Document Number: \_\_\_\_\_**

**Instructions:** Completing all parts of this form is mandatory. Please read instructions in the SDP section of the solicitation. **Complete one form and submit with Bid.**

**Part I Bidder/Contractor Information (Required)**

<b>Business Name:</b>	<b>Contact Name:</b>	<b>Phone # (     )     -     </b>	<b>Email address:</b>
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**Part II Financial Commitment (Required)**

Provide a specific percentage committed (as a percentage of Bidder/Contractor sales derived from this contract for the life of the contract) to be spent with all certified SDP Partners that the Bidder will propose if awarded a Contract. Please note that prime bidders who are SDO-certified must also submit an SDP Plan Form.

<b>SDP Percentage Committed in Bid Response for Life of Contract:</b>	_____ %
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**Supplier Diversity Program (SDP) Resources:**

- Resources available to assist Prime Bidders in finding potential **Minority Business Enterprises (MBE)** and **Women Business Enterprises (WBE)** partners can be found on the [Supplier Diversity Program Webpage](http://www.mass.gov/sdp) ([www.mass.gov/sdp](http://www.mass.gov/sdp)).
- Resources available to assist Prime Bidders in finding potential **Service-Disabled Veteran-Owned Business Enterprise (SDVOBE)** partners can be found on the [Supplier Diversity Office Webpage](http://www.mass.gov/sdo) ([www.mass.gov/sdo](http://www.mass.gov/sdo)).
- The Supplier Diversity Program offers training on the SDP Plan requirements. The dates of upcoming trainings can be found on the [OSD Training Courses Webpage](http://www.mass.gov/sdp). In addition, the SDP Webinar can be located on the [Supplier Diversity Program Webpage](http://www.mass.gov/sdp) ([www.mass.gov/sdp](http://www.mass.gov/sdp)).

# Supplier Diversity Program (SDP) Plan - Declaration of SDP Partner(s)

## SDP Plan Form #2

(Must be submitted by Contractor within a period of up to 30 days (or as stated in RFR) of Contract Execution)

Contract/RFR Document Number: \_\_\_\_\_

**Instructions:** Completing all parts of this form is mandatory. Please read instructions in the SDP section of the solicitation. **Complete one form and submit within a period of up to 30 days (or as stated in RFR) of Contract Execution. See SDP and SDVOBE Resource information below to assist in partnering with certified businesses.**

### Part I Contractor Information (Required)

<b>Business Name:</b>	<b>Contact Name:</b>	<b>Phone # ( ) -</b>	<b>Email address:</b>
<p>Please note that prime bidders who are SDO-certified must also submit an SDP Plan Form and may not list themselves as an SDP Partner. Check <u>any</u> of the following <u>that are applicable to the Bidder</u>:</p> <p><input type="checkbox"/> Minority-owned Business Enterprise (MBE); Certification Expiration Date (If applicable): ____/____/____</p> <p><input type="checkbox"/> Women-owned Business Enterprise (WBE); Certification Expiration Date (If applicable): ____/____/____</p> <p><input type="checkbox"/> Non-Profit Organization (NPO); Certification Expiration Date (If applicable): ____/____/____</p> <p><input type="checkbox"/> Service-Disabled Veteran-owned Business Enterprise (SDVOBE); Certification Expiration Date (If applicable): ____/____/____</p>			
<b>Identify Business Opportunities for SDP Partners (Optional):</b>			
<b>Final SDP Percentage Committed for Life of Contract:</b>		_____ %	

### Part II Contractor's SDP Partners (Required) (Fill in Applicable Lines; Insert Additional Rows as Needed)

Planned SDP Partner's Company Name	Planned SDP Partner's Contact Person's Email Address*	Check Planned SDP Partner's Certification(s)**
_____	____@____.____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MNPO/WNPO/MWNPO <input type="checkbox"/> SDVOBE
_____	____@____.____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MNPO/WNPO/MWNPO <input type="checkbox"/> SDVOBE
_____	____@____.____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MNPO/WNPO/MWNPO <input type="checkbox"/> SDVOBE
_____	____@____.____	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MNPO/WNPO/MWNPO <input type="checkbox"/> SDVOBE
<b>Alternative to Contractor Providing List of SDP Partners (above):</b> If specifically authorized in the Request for Response (RFR) to utilize this option, by checking the box at right, Contractor acknowledges that they do not yet have any SDP Partners but will meet the percentage commitment in Part I (above) and all other contract requirements and will work with the SDO to identify and establish business relationships with SDO Partners:		<input type="checkbox"/>

### Part III Under the pains and penalties of perjury I certify that the information provided on this form is accurate. (Required)

<b>Name:</b>	<b>Title:</b>	<b>Signature:</b>	<b>Date:</b> ____/____/____
		(May be left blank if submitted electronically)	

\*The Supplier Diversity Office and contracting Department reserve the right to contact SDP Partners at any time to request that they attest to the amounts reported to have been paid to them by the Contractor.

\*\* SDP Partner Certification Acronyms: MBE = Minority-owned Business Enterprise; WBE = Women-owned Business Enterprise; SDVOBE = Service-Disabled Veteran-owned Business Enterprise.

\*\*\* Certification Status can be checked on the [Supplier Diversity Program Webpage \(www.mass.gov/sdp\)](http://www.mass.gov/sdp).

#### Supplier Diversity Program (SDP) Resources:

- Resources available to assist Prime Bidders in finding potential **Minority Business Enterprises (MBE)** and **Women Business Enterprises (WBE)** partners can be found on the [Supplier Diversity Program Webpage \(www.mass.gov/sdp\)](http://www.mass.gov/sdp).
- Resources available to assist Prime Bidders in finding potential **Service-Disabled Veteran-Owned Business Enterprise (SDVOBE)** partners can be found on the [Supplier Diversity Office Webpage \(www.mass.gov/sdo\)](http://www.mass.gov/sdo).
- The Supplier Diversity Program offers training on the SDP Plan requirements. The dates of upcoming trainings can be found on the [OSD Training Courses Webpage](http://www.mass.gov/sdp). In addition, the SDP Webinar can be located on the [Supplier Diversity Program Webpage \(www.mass.gov/sdp\)](http://www.mass.gov/sdp).

Revised: March 12, 2015





OPERATIONAL SERVICES DIVISION  
OFFICE OF OPERATIONS, TRAINING & AUDIT

State of Utah

Bid CH16012

THE COMMONWEALTH OF MASSACHUSETTS  
Executive Office for Administration and Finance  
OPERATIONAL SERVICES DIVISION  
One Ashburton Place, Suite 1017  
Boston, MA 02108-1552

### STATEWIDE CONTRACT ADMINISTRATION FEE QUARTERLY REPORT

**Reporting Period and Payment Deadline:** Indicate which calendar year and quarter this report covers (check only one quarter):

Calendar Year: 20--

- ☐ - First Quarter: January 1st – March 31st (Report and Payment Due by May 15th)  
☐ - Second Quarter: April 1st – June 30th (Report and Payment Due by August 15th)  
☐ - Third Quarter: July 1st – September 30th (Report and Payment Due by November 15th)  
☐ - Fourth Quarter: October 1 – December 31st (Report and Payment Due by February 15th)

STATEWIDE CONTRACT DOC NO.	MASSACHUSETTS 10-DIGIT VENDOR CODE	
	VC	
LEGAL COMPANY NAME	DOING BUSINESS AS (DBA) (if applicable)	

PERSON COMPLETING THIS FORM:			
FIRST NAME	M.I.	LAST NAME	
EMAIL ADDRESS	TELEPHONE	FAX	
ADDRESS LINE 1		ADDRESS LINE 2	
CITY		STATE	ZIP

LINE	STATEWIDE CONTRACT ADMINISTRATION FEE WORKSHEET		
1.	Total payments received to date from Eligible Entities <sup>1</sup> in this fee Quarter:	\$	.00
2.	Multiplied by 1% Contract Administration Fee:	x 0.01	
3.	Total Quarterly Fee Due (Line 1 multiplied by Line 2):	\$	.00
4.	Plus: Previous Quarter's Deferred payment due (if applicable) (payments may only be deferred if amount due was under \$50.00):	\$	.00
5.	Total Payments Due and Paid to OSD (Line 3 plus Line 4)		.00
6.	No payment is submitted with this report because: <input type="checkbox"/> No payments were received this quarter OR <input type="checkbox"/> Payment due would be less than \$50.00 and is deferred until the next quarter		

**Under pains and penalties of perjury, I hereby declare that this is a true and accurate report of payments and fees due pursuant to the terms of the above-referenced Statewide Contract.**

**Electronic Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_



OPERATIONAL SERVICES DIVISION  
OFFICE OF OPERATIONS, TRAINING & AUDIT

THE COMMONWEALTH OF MASSACHUSETTS  
Executive Office for Administration and Finance  
OPERATIONAL SERVICES DIVISION  
One Ashburton Place, Suite 1017  
Boston, MA 02108-1552

### Instructions:

1. Use one form for each Statewide Contract subject to this fee.
2. Report ONLY total payments received during the reporting period specified on the front page of the form.
3. Include the previous quarter's deferred payment if applicable on Line 4.
4. **A completed report is required, even if:**
  - a. **No payments were received this quarter or**
  - b. **Payment due would be less than \$50 and deferred until the next quarter.**
5. All payments can be made through the secure payment center which you can access through the Administration Fee email Notice.
6. This Statewide Contractor Administration Fee Report AND applicable Contract Administration Fees must be received no later than 45 days after the end of the Reporting Period.
7. Failure to provide the report and applicable fees may result in the Contractor being found in default and subject to the penalties provided for in the Statewide Contract Administration Fee policy that is included in this Statewide Contract, which is incorporated by reference into this form.

**For information concerning the use of this form and/or Contract Administration Fees, please contact the Operational Services Division at (617) 720-3300 and ask to speak with the Contract Administration Fee Auditor.**

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<sup>i</sup> Eligible Entities include, but are not limited to: a) Cities, towns, districts, counties and other political subdivisions; b) Executive, Legislative and Judicial Branches, including all departments and elected offices therein; c) Independent public authorities, commissions, and quasi-public agencies; d) Local public libraries, public school districts, and charter schools; e) Public hospitals owned by the Commonwealth; f) Public institutions of higher education; g) Public purchasing cooperatives; h) Non-profit, UFR-certified organizations that are doing business with the Commonwealth; i) Other states and territories with no prior approval by the State Purchasing Agent required; and j) Other entities when designated in writing by the State Purchasing Agent.







# Commonwealth of Massachusetts

## specific terms and conditions

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*The following terms and conditions are to be incorporated into any Participating Addendum with the Commonwealth under the NASPO ValuePoint Cooperative Contract for Cloud Solutions 2016 – 2026.*

Vendors seeking to execute a Participating Addendum with the Commonwealth of Massachusetts will be required to execute the Commonwealth Terms and Conditions, (Attachment A), and the Commonwealth Standard Contract Form, (Attachment B). The order of precedence for documents governing the Participating Addendum shall be as stated in paragraph 15 of the Commonwealth Terms and Conditions. In addition, for any contract executed by the Commonwealth of Massachusetts under the Participating Addendum, the following documents will be added to the order of precedence, in this order: the Commonwealth solicitation, if any (e.g., an RFQ); any negotiated terms and conditions between the Commonwealth and the vendor; and the vendor's response to the Commonwealth solicitation.

### 1 PARTICIPATION

The following are the Commonwealth entities ("Eligible Entities") that are designated by the State Purchasing Agent as eligible to use the Participating Addendum known as Statewide Contract ITS60:

- a) Cities, towns, districts, counties and other political subdivisions;
- b) Executive, Legislative and Judicial Branches, including all Departments and elected offices therein;
- c) Independent public authorities, commissions and quasi-public agencies;
- d) Local public libraries, public school districts and charter schools;
- e) Public hospitals owned by the Commonwealth;
- f) Public institutions of higher education;
- g) Public purchasing cooperatives;
- h) Non-profit, UFR-certified organizations that are doing business with the Commonwealth;
- i) Other entities when designated in writing by the State Purchasing Agent.

### 2 COMMBUYS MARKET CENTER

COMMBUYS will be the official source of information for Commonwealth Statewide Contracts resulting from Participating Addenda executed with the Commonwealth and is publicly accessible at no charge at [www.commbuys.com](http://www.commbuys.com). All vendors executing a Participating Addendum with the Commonwealth agree that: (a) they will maintain an active seller account in COMMBUYS; (b) they will, when directed to do so by the Operational Services Division (OSD), activate and maintain a COMMBUYS-enabled catalog using Commonwealth Commodity Codes; (c) they will comply with all requests by OSD to utilize COMMBUYS for the purposes of conducting all aspects of purchasing and invoicing with the Commonwealth, as added functionality for the COMMBUYS system is activated; (d) in the event the Commonwealth adopts an alternate market center system, Vendors will be required to utilize such system, as directed by OSD. Commonwealth Commodity Codes are based on the United Nations Standard Products and Services Code (UNSPSC).

### 3 SUPPLIER DIVERSITY PROGRAM (SDP)

Massachusetts [Executive Order 524](#) and Executive Order 565 establish a policy to promote the award of state contracts in a manner that develops and strengthens Minority and Women Business Enterprises (M/WBEs) that resulted in the Supplier Diversity Program in Public Contracting. Similarly, Executive Orders 546 and 565 established the Service-Disabled Veteran-Owned Business Enterprise (SDVOBE) Program, the Veteran-Owned Business Enterprise Program, and the Lesbian Gay Bisexual and Transgender-owned (LGBT) Business Enterprise Program to encourage the

participation of businesses owned and controlled by these business categories in all areas of state procurement and contracting, thereby including them in the SDP. All Vendors, regardless of their certification status, must identify a commitment in the form of a specific percentage of sales made under the resulting contract that will be spent with a Certified Partner(s), using SDP Plan Form #1 – SDP Plan Commitment (Attachment C). This percentage commitment will extend for the life of any resulting contract.

After contract execution, if any, Vendors must submit a completed SDP Plan Form #2 – Declaration of SDP Partners (Attachment D) identifying a Certified Partner(s) no later than 30 days after contract execution. Vendors may defer identification of their SDP Partner(s) by checking the box in Part II, thereby acknowledging their SDP Plan commitment. Failure to submit a completed SDP Plan Form #2 by the deadline may result in penalties including contract suspension or termination.

#### **4 PERFORMANCE AND PAYMENT TIME FRAMES WHICH CONTINUE BEYOND THE DURATION OF THE CONTRACT.**

All agreements for services entered into during the duration of this contract and whose performance and payment time frames extend beyond the duration of this contract shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No new agreements for services may be executed after the contract has expired. Any contract termination or suspension pursuant to this section shall not automatically terminate any agreements for services already in place unless the department also terminates said agreements for service, which were executed pursuant to the main contract.

#### **5 STATEWIDE CONTRACT ADMINISTRATION FEE AND REPORT**

This Statewide Contract is subject to a 1% Contract Administration Fee, which is created pursuant to MGL c. 7, § 3B, 801 CMR 4.02 and incorporated by reference into Statewide Contracts with the Operational Services Division (OSD). The price stated in any Vendor's Statewide Contract shall be inclusive of this fee and Vendors shall not reflect this fee as a separate line item on customer invoices.

This fee will be based on 1% of the total dollar amounts, adjusted for credits or refunds, paid by Eligible Entities to the Vendor based on your statewide contract. All "Statewide Contracts" awarded and all purchase orders and purchases made pursuant to this Agreement are subject to this fee regardless of whether the contract was awarded for statewide or regional coverage.

Note that if the 1% Administration Fee is deductible as a business expense for federal income tax purposes, it is also deductible as an expense for Massachusetts tax purposes.

##### **5.1 Quarterly Fee Payment:**

For each Payment Period, Statewide Contractor shall pay to OSD a fee equal to one percent (1%) of the total payments (adjusted for credits or refunds) received from all Eligible Entities that have purchased from the Statewide Contractor pursuant to this Agreement. All payments will be based on full calendar quarters (Payment Periods) and must be received by OSD on or before 45 days after the last day of the Payment Period (as specified below) or a Contractor will be considered in breach of contract:

Quarter	Reporting/Payment Period	Quarterly Report/Payment Due Date
First Quarter	January 1st – March 31st	May 15th
Second Quarter	April 1st – June 30th	August 15th
Third Quarter	July 1st – September 30th	November 15th
Fourth Quarter	October 1 – December 31st	February 15th

Quarterly payments will include any periods less than a full calendar quarter if a contract does not start at the first day of a quarter or end on the last day of the quarter.

Payments are to be made through a web-based secure payment center, which can be accessed through a link provided to Statewide Contractors by OSD. All Administration Fee payments are to be made directly through the secure payment center. The secure payment center allows payments to be made via Automatic Clearing House (ACH) or by using one of the following credit cards: American Express, Discover, MasterCard and/or Visa.

Please note that there is no charge to vendors to use ACH as OSD covers the nominal fee charged by the secure payment center for using the ACH payment method. OSD will NOT cover the convenience fee for selecting to pay by credit card. This is a fee the contractor is responsible for paying and is non-refundable; the fee is over and above the 1% Administration Fee and it is calculated at 2.49% of the 1% Administration Fee to be paid. Prior to the due date for the Statewide Contractor's Administration Fee payment, the Statewide Contractor will receive an e-mail communication from OSD that includes all required information the Statewide Contractor must use to submit payments via the secure payment center. Electronically submitting your payment, which is comprised of the 1% administration fee of the total payments received by the Contractor from all Eligible Entities for the Quarter, will serve as the Statewide Contractor Administration Fee Report. If the total Administration Fees due for the Payment and Reporting Period are less than \$50, a Statewide Contractor may carry over that balance to the next Payment and Reporting Period until the cumulative amount owed is \$50 or greater (see Quarterly Reporting below for instructions).

## **6 QUARTERLY REPORTING:**

Vendor shall submit one Statewide Contractor Administration Fee Report (Attachment E) for each Statewide Contract for each Payment Period. If an amount greater than \$50 is due for the Payment Period, then the electronic submission of the payment shall serve as submission of the Statewide Contractor Administration Fee Report, as referenced in the Quarterly Fee Payment section above. However, if the total Statewide Contractor Administration Fee due is between \$0 and \$50, then the Vendor must submit one Statewide Contractor Administration Fee Report for each Statewide Contract for each Payment Period. If you are submitting this report, it must be completely filled out, signed by the Vendor via electronic signature under the pains and penalties of perjury and emailed to [osdfeeadministrator@massmail.state.ma.us](mailto:osdfeeadministrator@massmail.state.ma.us).

Vendor shall submit one Vendor Sales and SDP Report (see Attachment F for sample) for each Statewide Contract for each Reporting Period. It is the Commonwealth's intention to accept the reporting format specified in the NASPO ValuePoint Master Agreement with each Vendor, subject to whether, in the sole opinion of the Commonwealth, the negotiated report format provides substantially the same or greater detail required in Attachment F. In all cases, Vendors will be required to submit the SDP reporting tab of Attachment F.

## **7 AUDIT**

During the term of this Agreement and for a period of six years thereafter, the Operational Services Division, its auditors, the Office of the Inspector General or other authorized representatives shall be afforded access at reasonable times to Vendor's accounting records, including sales information on any system, reports or files, in order to audit all records relating to goods sold or services performed pursuant to this Agreement. If such an audit indicates that Vendor has materially underpaid OSD, then the Vendor shall remit the underpayment and be responsible for payment of any costs associated with the audit.

## **8 ADDITIONAL CLOUD TERMS**

Bidders who are IaaS and PaaS resellers or providers will be expected to comply with the terms of MassIT RFR 16-21, "Brokered IaaS/PaaS Cloud Services," available online at <https://www.commbuys.com/bsa/external/bidDetail.sdo?docId=BD-16-1060-ITD00-ITD00->

[00000005782](#). These terms will be added to the Bidder's Participating Addendum with Massachusetts. In particular, see the following mandatory requirements and terms:

- Mandatory contract requirements, RFR Sections 3.2 and 3.4
- Project-specific terms and conditions, RFR Exhibit 10
- Mandatory legal privacy and security requirements, RFR Exhibits 12-14

Bidders who are SaaS resellers or providers will be expected to comply with the Commonwealth of Massachusetts standard cloud terms, available online

at <https://www.commbuys.com/bsa/external/bidDetail.sdo?docId=BD-15-1080-OSD01-OSD10-00000003276> (see document entitled "SaaS doc"). These terms will be added to the Bidder's Participating Addendum with Massachusetts.

**Missouri Statewide Contract Quarterly Administrative Fee:**

The contractor shall pay a one percent (1%) administrative fee to the State of Missouri which shall apply to all payments received by the contractor for all products/ products and services/services provided under the contract. Payment of the one percent administrative fee shall be non-negotiable.

The contractor shall pay the administrative fee at the end of each calendar quarter (i.e. March 31, June 30, September 30, December 31). The total administrative fee for a given quarter must equal one percent (1%) of the total payments (minus returns and credits) received by the contractor during the calendar quarter as reported on the contractor's Missouri Statewide Contract Quarterly Administrative Fee Report specified below. The administrative fee must be received by the Division of Purchasing (Purchasing) no later than the 15<sup>th</sup> calendar day of the month immediately following the end of the calendar quarter, unless the 15<sup>th</sup> is not a business day in which case the next business day thereafter shall be considered the administrative fee deadline.

Payments shall be made using one of the following acceptable payment methods:

- **Check:** Personal check, company check, cashier's check, or money order made payable to the "Missouri Revolving Information Technology Trust Fund" and sent to the following mailing address: Division of Purchasing, P.O. Box 809, Jefferson City, MO 65102 – 0809 OR Division of Purchasing, 301 West High Street, Room 630, Jefferson City, MO 65101-1517. The contractor's payment by check shall authorize the State of Missouri to process the check electronically. The contractor understands and agrees that any returned check from the contractor may be presented again electronically and may be subject to additional actions and/or handling fees.
- **Electronic Payment:** Instructions on how to submit payments electronically by automated clearing house (ACH) will be provided upon request by contacting the Division of Purchasing at (573) 751-2387.

All payments of the administrative fee shall include the contract number on any check or transmittal document. However, only one contract number must be entered on a check or transmittal document. If submitting an administrative fee payment for more than one contract, then a separate check or electronic payment and associated transmittal document must be submitted by the contractor for each contract.

**Missouri Statewide Contract Quarterly Administrative Fee Report:**

The contractor shall submit a Missouri Statewide Contract Quarterly Administrative Fee Report to the Division of Purchasing which shall identify the total payments (minus returns and credits) received by the contractor from state agencies, political subdivisions, universities, and governmental entities in other states that were made pursuant to the contract.

The contractor shall prepare and submit the Missouri Statewide Contract Quarterly Administrative Fee Report at the end of each calendar quarter (i.e. March 31, June 30, September 30, December 31) for total payments (minus returns and credits) received by the contractor during the calendar quarter. The Missouri Statewide Contract Quarterly Administrative Fee Report must be received by the Division of Purchasing (Purchasing) no later than the 15<sup>th</sup> calendar day of the month following the reporting quarter entered on the report, unless the 15<sup>th</sup> is not a business day in which case the next business day thereafter shall be considered the reporting deadline. Even if there has been no usage of the contract during the reporting quarter, the contractor must still submit a report and indicate no payments were received by marking the appropriate box on the report form.

The Missouri Statewide Contract Quarterly Administrative Fee Report form may be downloaded from the following Purchasing website: <http://oa.mo.gov/purchasing/vendor-information>. The Missouri Statewide Contract Quarterly Administrative Fee Report is also included herein as Attachment \_\_\_\_\_. The Missouri Statewide Contract Quarterly Administrative Fee Report must be submitted using one of the following methods:

- **Mail:** Division of Purchasing,  
P.O. Box 809, Jefferson City MO 65102-0809

OR

Division of Purchasing,  
301 West High Street, Room 630, Jefferson City, MO 65101-1517

- **Fax:** (573) 526-9815
- **Email:** [ereports@oa.mo.gov](mailto:ereports@oa.mo.gov)

The contractor shall agree that the Division of Purchasing reserves the right to modify the requested format and content of the Missouri Statewide Contract Quarterly Administrative Fee Report by providing thirty (30) calendar days written notice to the contractor. The contractor shall also agree the Division of Purchasing may unilaterally amend the contract, with thirty (30) calendar days notice to the contractor to change the method of payment of the administrative fee, the timing for submission of the Missouri Statewide Contract Quarterly Administrative Fee Report, and/or timing for payment of the administrative fee. The contractor shall understand and agree that if such an amendment is issued by the Division of Purchasing, the contractor shall comply with all contractual terms, as amended.



## Montana (Minimum) Standard Terms and Conditions

**ACCESS AND RETENTION OF RECORDS:** Contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of eight years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

**ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA.)

**COMPLIANCE WITH LAWS:** Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. The Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

**HOLD HARMLESS/INDEMNIFICATION:** Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

**REDUCTION OF FUNDING:** The State must terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance in a subsequent fiscal period. (See section 18-4-313(4), MCA.)

**VENUE:** This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

## State of New Jersey Compliance Terms and Conditions

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

### 1. **LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS -**

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

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

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

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

### 1.3 **ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS -**

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

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

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

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



## State of New Jersey Compliance Terms and Conditions

court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

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

## State of New Jersey Compliance Terms and Conditions

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

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

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

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

## State of New Jersey Compliance Terms and Conditions

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



**INTENT TO PARTICIPATE**  
**NASPO ValuePoint Cooperative Contract(s) for**  
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**Led by the State of Utah**

**By the State of North Dakota (hereinafter Participating State)**

**Please sign and return by 6:00 PM CST, Friday, December 11, 2015**

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**Terms and Conditions for the State of North Dakota**

**1. INJUNCTIVE RELIEF**

CONTRACTOR shall immediately report to STATE any and all unauthorized disclosures or uses of STATE's Confidential Information or Proprietary Information of which CONTRACTOR or its staff is aware or has knowledge. CONTRACTOR acknowledges that any unauthorized publication or disclosure of STATE's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to STATE. If CONTRACTOR should publish or disclose such Confidential Information or Proprietary Information without authorization, STATE shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. CONTRACTOR shall indemnify, defend, and hold harmless STATE from all damages, costs, liabilities, and expenses (including without limitation reasonable attorneys' fees) caused by or arising from CONTRACTOR's unauthorized notification or disclosure of STATE's Confidential Information or Proprietary Information. As a condition to these indemnity obligations, STATE will provide CONTRACTOR with prompt notice of any claim of which STATE is aware and for which indemnification shall be sought under this Contract and shall cooperate in all reasonable respects with CONTRACTOR in connection with any such claim.

**2. INDEMNITY**

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to defend, indemnify, and hold the State harmless for all costs, expenses and attorneys' fees incurred if the State prevails in an action against CONTRACTOR in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Contract.

**3. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION**

- a. CONTRACTOR, at its own expense, shall defend and indemnify STATE against claims that products furnished under this Contract infringe a United States patent or copyright or misappropriate trade secrets protected under United States law.



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- b. As to any product which is subject to a claim of infringement or misappropriation, CONTRACTOR may (a) obtain the right of continued use of the product for STATE or (b) replace or modify the product to avoid the claim. If neither alternative is available on commercially reasonable terms then, at the request of CONTRACTOR, any applicable Software license and its charges will end, STATE will stop using the product, and will return the product to CONTRACTOR. Upon return of the product, CONTRACTOR will give STATE a credit for the price paid to CONTRACTOR, less a reasonable offset for use and obsolescence.

**4. REPRESENTATIONS AND WARRANTIES**

CONTRACTOR represents and warrants to STATE that neither CONTRACTOR, in connection with performing the services in performance of this Contract, nor the completed product delivered by CONTRACTOR, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. CONTRACTOR further represents and warrants to STATE that it will not use any trade secrets or confidential or proprietary information owned by any third party in performing the services related to this Contract or in delivery of the completed product unless CONTRACTOR has the authority to license, use or provide those trade secrets or confidential or proprietary information to STATE. CONTRACTOR further represents and warrants to STATE that neither CONTRACTOR nor any other company or individual performing services pursuant to this Contract is under any obligation to assign or give any work done under this Contract to any third party.

**5. INSURANCE**

CONTRACTOR shall secure and keep in force during the term of this Contract and CONTRACTOR shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor, to secure and keep in force during the term of this CONTRACT, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- a. Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence
- b. Workers compensation coverage meeting all statutory requirements. The policy must provide coverage for all states of operation that apply to the performance of this Contract
- c. Employer's liability or "stop gap" insurance of not less than \$1,000,000 as an endorsement on the workers compensation or commercial general liability insurance

The insurance coverages listed above must meet the following additional requirements:

- d. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR.
- e. This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.



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- f. The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- g. The insurance required in this agreement, through a policy or endorsement, shall include:
  - 1) Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State
  - 2) A provision that CONTRACTOR's insurance coverage shall be primary (i.e., pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of CONTRACTOR's insurance and shall not contribute with it
  - 3) Cross liability/severability of interest for all policies and endorsements
  - 4) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary
  - 5) The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy
- h. CONTRACTOR shall furnish a certificate of insurance to the undersigned STATE representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- i. Failure to provide insurance as required in this agreement is a material breach of contract entitling STATE to terminate this agreement immediately.
- j. CONTRACTOR shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

## **6. CYBER LIABILITY AND SECURITY INSURANCE**

In the event CONTRACTOR will host data, or provide for the hosting of data through a third-party entity, CONTRACTOR shall secure and maintain Cyber Liability and Security Insurance or equivalent insurance product(s), with minimum liability limits of not less than \$5,000,000 and first party limits of not less than \$1,000,000, that will provide, without cost to the CONTRACTOR or STATE, an immediate response in the event of a data breach, including meeting all notification obligations of CONTRACTOR and STATE and in the event the data breach involves personal information as defined by N.D.C.C. § 51-30-1(4), available free credit monitoring for any affected individual for a minimum period of one year. CONTRACTOR shall defend, indemnify, save and hold harmless, the STATE, its officers, agents and employees from liability of any nature or kind, including costs and expenses, for or on account of any and all suits, claims, or damages of any character whatsoever, resulting from injuries or damages sustained by any person or persons or property by virtue of performance of this contract, arising or resulting in whole or in part from the fault, negligence, wrongful act or omission of the Contractor, or any subcontractor, or their employees or agents.

## **7. SOFTWARE LICENSE**

All ownership rights to CONTRACTOR's software provided to STATE under this Contract (intellectual property owned by CONTRACTOR prior to performance of this Contract) shall remain with





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CONTRACTOR. If CONTRACTOR incorporates any of CONTRACTOR's Software in any work product provided to STATE, CONTRACTOR agrees to provide written notice to STATE of its incorporation in the work product and to convey to STATE a non-exclusive, perpetual, cost-free license, and patent and copyright indemnity, for STATE to use that software for its intended purpose.

## **8. LICENSE GRANT AND SCOPE OF USE**

### **a. Licensing**

- 1) CONTRACTOR grants to STATE a nonexclusive license to use the software and associated documentation, plus any additional software which shall be added by mutual agreement of the parties during the term of this Contract.
- 2) The license usage model is based on *clearly describe license model, i.e. concurrent users, total employees, etc.*
- 3) The license grant shall be extended to any contractors, subcontractors, outsourcing vendors, consultants and others who have a need to use the software for the benefit of STATE.

### **b. Software Functionality and Replacement**

This software licensed by CONTRACTOR to STATE provides the following functionality:

*Describe functionality of software product licensed*

Regarding the aforementioned software functionality licensed by CONTRACTOR to STATE, CONTRACTOR agrees that:

- 1) If CONTRACTOR reduces or replaces the functionality contained in the licensed product, and provides this functionality as a separate or renamed product, then STATE shall be entitled to license such software product at no additional license or maintenance fee.
- 2) If CONTRACTOR releases an option, future product or other release that has substantially the same functionality as the software product licensed to STATE, and it ceases to provide maintenance for the older software product, then STATE shall have the option to exchange licenses for such replacement product or function at no additional charge.

### **c. Purchase of Additional Licenses**

STATE may purchase additional software licenses during the term of this Contract at the same price offered by CONTRACTOR under the terms of this Contract.

### **d. Delivery of Authorized Software Only**

CONTRACTOR shall not ship any software to STATE that STATE is not authorized to use.

## **9. TECHNOLOGY STANDARDS**

CONTRACTOR shall comply with applicable STATE enterprise architecture technology standards. These standards can be found on STATE's website at <http://www.nd.gov/itd/standards>.



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**10. HOSTING SERVICES**

**a. Service Level**

CONTRACTOR's failure to make the hosting services available at least 99% of the time in any given month during the term and any renewal term, excluding scheduled maintenance, shall be deemed a service level default ("Service Level Default") and STATE may obtain the non-exclusive remedies set forth below. For purposes of this Contract, "Available" means that STATE users are able to access all features and functions of the licensed product and services including, but not limited to the licensed software and licensed content.

<b>Service Level (Monthly)</b>	<b>Service Level Credit (Prorated Fees – Monthly)</b>
Above 99%	0
98.99 – 97%	10%
96.99 – 95%	25%
94.99 – 93%	50%
Below 93%	100%

In the event STATE is eligible for a 100% Service Level Credit under this section during any given month of the term, or is eligible for a Service Level Credit greater than 10% in any two (2) months, during any rolling twelve (12) month period, STATE may terminate this Contract without penalty upon written notice to CONTRACTOR.

Credits shall be applied against the next invoice. In the event a Service Level Default occurs after a party has given notice of termination, or STATE has made final payment to CONTRACTOR for the software support services and no further invoices shall issue as a result, CONTRACTOR shall refund to STATE the amount of the appropriate Service Level Credit due for the period of default.

Once each calendar month during the term of this Contract, CONTRACTOR shall provide STATE with a written report comparing the actual performance of licensed product and services with the Service Level Requirement. Such report shall also contain such other information with respect to the performance of the licensed product and services as mutually agreed upon by the parties from time to time, and in conformity with reporting CONTRACTOR provides to its other customers utilizing the licensed product and services.

**b. Scheduled Maintenance and Notifications**

**1) Standard Maintenance Windows**

***Define maintenance window schedule***

**2) Notification of Scheduled Maintenance Downtime**

CONTRACTOR shall notify STATE of any schedule maintenance downtime which will cause the total scheduled maintenance downtime for the month to exceed # hours, or will occur outside of the Standard Maintenance Windows outlined above. Except in cases of emergency, notification will be provided at least # hours prior to such downtime. In cases of emergency, CONTRACTOR shall use its best efforts to notify STATE of a planned downtime as soon as practicable.





**INTENT TO PARTICIPATE**  
**NASPO ValuePoint Cooperative Contract(s) for**  
**CLOUD SOLUTIONS 2016-2026**  
**Led by the State of Utah**

**By the State of North Dakota (hereinafter Participating State)**

**Please sign and return by 6:00 PM CST, Friday, December 11, 2015**

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**c. Hosting Service Exit Plan**

***Note: The hosting service exit plan is to ensure the STATE will receive its data back upon Contract termination.***

CONTRACTOR and STATE shall develop an Exit Plan ("Exit Plan") detailing each party's respective tasks in connection with the orderly transfer of STATE's data back to STATE upon termination of this Contract. CONTRACTOR agrees that there shall be no additional fees to execute the Exit Plan. STATE agrees to take delivery of transferred STATE data no later than sixty (60) calendar days following termination of this Contract.

The Exit Plan must include:

- 1) The format and delivery method mutually agreed upon by CONTRACTOR and STATE to transfer STATE data securely
- 2) The deletion criteria of STATE data from CONTRACTOR's location as determined by STATE.

**d. Hosting Service Transition Assistance**

CONTRACTOR and STATE shall develop a Transition Plan ("Transition Plan") detailing each party's respective tasks in connection with the orderly transition and migration of the licensed software, STATE data, and hosting services.

Upon termination or non-renewal of this Contract or in the event STATE makes a determination to host the licensed software at STATE's hosting location or a third party location as defined in **SOW or Exhibit X**, the Transition Plan shall be implemented. In the event the Transition Plan is implemented, licensing and support costs shall not be higher than the current amounts assessed to STATE by CONTRACTOR under this Contract. CONTRACTOR shall provide reasonable assistance as requested by STATE to successfully complete transition.

**11. CONFIDENTIALITY**

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

**12. COMPLIANCE WITH PUBLIC RECORDS LAWS**

CONTRACTOR understands that, in accordance with this Contract's Confidentiality clause (section 35), STATE must disclose to the public upon request any records it receives from CONTRACTOR.

CONTRACTOR further understands that any records obtained or generated by CONTRACTOR under this Contract, except for records that are confidential under this Contract, may, under certain circumstances, be



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open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact STATE promptly upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to the request.

**13. INDEPENDENT ENTITY**

CONTRACTOR is an independent entity under this Contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this Contract, except to the extent specified in this Contract.

**14. APPLICABLE LAW AND VENUE**

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

**15. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

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

**16. ATTORNEY FEES AND COSTS**

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

**17. NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

CONTRACTOR agrees to comply with all applicable laws, rules, regulations and policies, including those relating to nondiscrimination, accessibility and civil rights. CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums. CONTRACTOR shall have and keep current at all times during the term of this Contract all licenses and permits required by law.



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**Please sign and return by 6:00 PM CST, Friday, December 11, 2015**  
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**18. STATE AUDIT**

All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Contract and be able to provide them at any reasonable time. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.



- \_\_\_\_ 4. State whether any officer, director, manager, stockholder, member, partner, or other owner or principal of the Bidder is serving or has served within the past two calendar years as either an appointed or elected official of any state governmental authority or quasi-public corporation, including without limitation, any entity created as a legislative body or public or state agency by the general assembly or constitution of this state.
- \_\_\_\_ 5. List each officer, director, manager, stockholder, member, partner, or other owner or principal of the Bidder, and each intermediate parent company and the ultimate parent company of the Bidder. For each individual, provide his or her name, business address, principal occupation, position with the Bidder, and the percentage of ownership, if any, he or she holds in the Bidder, and each intermediate parent company and the ultimate parent company of the Bidder.

*Disclosure details (continue on additional sheet if necessary):*

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### SECTION 3 —CERTIFICATIONS

**Bidders must respond to every statement. Bid proposals submitted without a complete response may be deemed nonresponsive.**

*Indicate "Y" (Yes) or "N" (No), and if "No," provide details below.*

#### THE BIDDER CERTIFIES THAT:

- \_\_\_\_ 1. The Bidder will immediately disclose, in writing, to the State Purchasing Agent any potential conflict of interest which may occur during the term of any contract awarded pursuant to this solicitation.
- \_\_\_\_ 2. The Bidder possesses all licenses and anyone who will perform any work will possess all licenses required by applicable federal, state, and local law necessary to perform the requirements of any contract awarded pursuant to this solicitation and will maintain all required licenses during the term of any contract awarded pursuant to this solicitation. In the event that any required license shall lapse or be restricted or suspended, the Bidder shall immediately notify the State Purchasing Agent in writing.
- \_\_\_\_ 3. The Bidder will maintain all required insurance during the term of any contract pursuant to this solicitation. In the event that any required insurance shall lapse or be canceled, the Bidder will immediately notify the State Purchasing Agent in writing.
- \_\_\_\_ 4. The Bidder understands that falsification of any information in this bid proposal or failure to notify the State Purchasing Agent of any changes in any disclosures or certifications in this Bidder Certification may be grounds for suspension, debarment, and/or prosecution for fraud.
- \_\_\_\_ 5. The Bidder has not paid and will not pay any bonus, commission, fee, gratuity, or other remuneration to any employee or official of the State of Rhode Island or any subdivision of the State of Rhode Island or other governmental authority for the purpose of obtaining an award of a contract pursuant to this solicitation. The Bidder further certifies that no bonus, commission, fee, gratuity, or other remuneration has been or will be received from any third party or paid to any third party contingent on the award of a contract pursuant to this solicitation.
- \_\_\_\_ 6. This bid proposal is not a collusive bid proposal. Neither the Bidder, nor any of its owners, stockholders, members, partners, principals, directors, managers, officers, employees, or agents has in any way colluded, conspired, or agreed, directly or indirectly, with any other bidder or person to submit a collusive bid proposal in response to the solicitation or to refrain from submitting a bid proposal in response to the solicitation, or has in any manner, directly or indirectly, sought by agreement or collusion or other communication with any other bidder or person to fix the price or prices in the bid proposal or the bid proposal of any other bidder, or to fix any overhead, profit, or cost component of the bid price in the bid proposal or the bid proposal of any other bidder, or to secure through any collusion, conspiracy, or unlawful agreement any advantage against the State of Rhode Island or any person with an interest in the contract awarded pursuant to this solicitation. The bid price in the bid proposal is fair and proper and is not tainted by any collusion, conspiracy, or unlawful agreement on the part of the Bidder, its owners, stockholders, members, partners, principals, directors, managers, officers, employees, or agents.
- \_\_\_\_ 7. The Bidder: (i) is not identified on the General Treasurer's list created pursuant to R.I. Gen. Laws § 37-2.5-3 as a person or entity engaging in investment activities in Iran described in § 37-2.5-2(b); and (ii) is not engaging in any such investment activities in Iran.
- \_\_\_\_ 8. The Bidder will comply with all of the laws that are incorporated into and/or applicable to any contract with the State of Rhode Island.

[illegible]

## BIDDER

Printed name and title of person signing on behalf of Bidder

**STATE OF RHODE ISLAND  
PROCUREMENT REGULATIONS**

**APPENDIX A – GENERAL CONDITIONS OF PURCHASE**



**Amended regulations adopted June 20, 2011**

Division of Purchases  
Rhode Island Department of Administration  
One Capitol Hill, Second Floor  
Providence, Rhode Island 02908

Tel: (401) 574-8100

The following amended State of Rhode Island Procurement Regulations were adopted by me, as Director of the State of Rhode Island Department of Administration, on the \_\_\_\_\_ day of June 2011.

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Richard A. Licht, Director  
State of Rhode Island  
Department of Administration  
One Capitol Hill  
Providence, Rhode Island 02908

Date of Public Notice: May 5, 2011  
Date of Public Hearing: June 8, 2011  
End of Comment Period: June 8, 2011



## GENERAL CONDITIONS OF PURCHASE

All State Purchase Orders, Contracts, Solicitations, Delivery Orders and Service Requests shall incorporate and be subject to the provisions of Title 37 Chapter 2 of the General Laws of the State of Rhode Island, the Regulations adopted pursuant thereto, all other applicable provisions of the Rhode Island General Laws, specific requirements described in the Request or Contract, and the following General Conditions of Purchase:

**1. GENERAL** - All purchase orders, contracts, solicitations, delivery orders, and service requests are for specified goods and services, in accordance with express terms and conditions of purchase, as defined herein. For the purposes of this document, the terms "bidder" and "contractor" refer to any individual, firm, corporation, or other entity presenting a proposal indicating a desire to enter into contracts with the State, or with whom a contract is executed by the State's Purchasing Agent, and the term "contractor" shall have the same meaning as "vendor".

**2. ENTIRE AGREEMENT** - The State's Purchase Order, or other State contract endorsed by the State Office of Purchases, shall constitute the entire and exclusive agreement between the State and any contractor receiving an award. In the event any conflict between the bidder's standard terms of sale, these conditions or more specific provisions contained in the solicitation shall govern. All communication between the State and any contractor pertaining to any award or contract shall be accomplished in writing.

- **a.** Each proposal will be received with the understanding that the acceptance, in writing, by contract or Purchase Order by the Purchasing Agent of the offer to do work or to furnish any or all the materials, equipment, supplies or services described therein shall constitute a contract between the bidder and the State. This shall bind the bidder on his part to furnish and deliver at the prices and in accordance with the conditions of said accepted proposal and detailed specifications and the State on its part to order from such contractor (except in case of emergency) and to pay for at the agreed prices, all materials, equipment, supplies or services specified and delivered. A contract shall be deemed executory only to the extent of funds available for payment of the amounts shown on Purchase Orders issued by the State to the contractors.

- b.** No alterations or variations of the terms of the contract shall be valid or binding upon the State unless submitted in writing and accepted by the Purchasing Agent. All orders and changes thereof must emanate from the Office of Purchases: no oral agreement or arrangement made by a contractor with an agency or employee will be considered to be binding on the Purchasing Agent, and may be disregarded.

- c.** Contracts will remain in force for the contract period specified or until all articles or services ordered before date of termination shall have been

satisfactorily delivered or rendered and accepted and thereafter until all terms and conditions have been met, unless

1. terminated prior to expiration date by satisfactory delivery against orders of entire quantities, or
  2. extended upon written authorization of the Purchasing Agent and accepted by the contractor, to permit ordering of the unordered balances or additional quantities at the contract price and in accordance with the contract terms, or
  3. canceled by the State in accordance with other provisions stated herein.
- d. It is mutually understood and agreed that the contractor shall not assign, transfer, convey, sublet or otherwise dispose of this contract or his right, title or interest therein, or his power to execute such contract, to any other person, company or corporation, without the previous consent, in writing, of the Purchasing Agent.
  - e. If, subsequent to the submission of an offer or issuance of a purchase order or execution of a contract, the bidder or contractor shall merge with or be acquired by another entity, the contract may be terminated, except as a corporate resolution prepared by the contractor and the new entity ratifying acceptance of the original bid or contract terms, condition, and pricing is submitted to the Office of Purchases, and expressly accepted.
  - f. The contractor or bidder further warrants by submission of an offer or acceptance of a purchase order or other contract that he has no knowledge at the time of such action of any outstanding and delinquent or otherwise unsettled debt owed by him to the State, and agrees that later discovery by the Purchasing Agent that this warranty was given in spite of such knowledge, except where the matter is pending in hearing or from any appeal therefrom, shall form reasonable grounds for termination of the contract.

**3. SUBCONTRACTS** - No subcontracts or collateral agreements shall be permitted, except with the State's express consent. Upon request, contractors must submit to the Office of Purchases a list of all subcontractors to be employed in the performance of any Purchase Order or other contract arising from this Request.

**4. RELATIONSHIP OF PARTIES** - The contractor or bidder warrants, by submission of an offer or acceptance of a purchase order or other contract, that he is not an employee, agent, or servant of the State, and that he is fully qualified and capable in all material regards to provide the specified goods and services. Nothing herein shall be construed as creating any contractual relationship or obligation between the State and any sub-bidder, subcontractor, supplier, or employee of the contractor or offeror.

**5. COSTS OF PREPARATION** - All costs associated with the preparation, development, or submission of bids or other offers will be borne by the offeror. The State will not reimburse any offeror for such costs.

**6. SPECIFIED QUANTITY REQUIREMENT** - Except where expressly specified to the contrary, all solicitations and contracts are predicated on a specified quantity of goods or services, or for a specified level of funding.

- **a.** The State reserves the right to modify the quantity, scope of service, or funding of any contract, with no penalty or charge, by written notice to the contractor, except where alternate terms have been expressly made a part of contract.

- b.** The State shall not accept quantities in excess of the specified quantity except where the item is normally sold by weight (where sold by weight, the State will not accept quantities greater than ten per cent [10%] of the specified quantity), or where the Request or Contract provides for awards for other than exact quantities.

- c.** Purchase Orders or other contracts may be increased in quantity or extended in term without subsequent solicit with the mutual consent of the contractor and the State, where determined by the Purchasing Agent to be in the State's best interest.

**7. TERM AND RENEWAL** - Where offers have been requested or contracts awarded for terms exceeding periods of twelve (12) months, it is mutually understood and agreed that the State's commitment is limited to a base term not to exceed twelve (12) months, subject to renewal annually at the State's sole option for successive terms as otherwise described, except where expressly specified to the contrary. Purchase orders appearing to commit to obligations of funding or terms of performance may be executed for administrative convenience, but are otherwise subject to this provision, and in such cases the State's renewal shall be deemed to be automatic, conditional on the continued availability of appropriated funds for the purpose, except as written notice of the State's intent not to renew is served.

**8. DELIVERY** - Delivery must be made as ordered and in accordance with the proposal. If delivery qualifications do not appear on the bidder's proposal, it will be interpreted to mean that goods are in stock and that shipment will be made within seven (7) calendar days. The decision of the Purchasing Agent, as to reasonable compliance with the delivery terms, shall be final. Burden of proof of delay in receipt of order shall rest with the contractor. No delivery charges shall be added to invoices except when authorized on the Purchase Order.

**9. FOREIGN CORPORATIONS** - In accordance with Title 7 Chapter 1.1 of the General Laws of Rhode Island, no foreign corporation shall have the right to transact business in this state until it shall have procured a certificate of authority so to do from the Secretary of State.

**10. PRICING** - All pricing offered or extended to the State is considered to be firm and fixed unless expressly provided for to the contrary. All prices shall be quoted F.O.B. Destination with freight costs included in the unit cost to be paid by the State, except, where the Request or Contract permits, offers reflecting F.O.B. Shipping Point will be considered, and freight costs may then be prepaid and added to the invoice.

**11. COLLUSION** - Bidder or contractor warrants that he has not, directly or indirectly, entered into any agree participated in any collusion or otherwise taken any action in restraint of full competitive bidding. In special circumstances, an executed affidavit will be required as a part of the bid.

**12. PROHIBITION AGAINST CONTINGENT FEES AND GRATUITIES** - Bidder or contractor warrants that he has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Bidder or contractor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the contract or award in question. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts and suspension or debarment of the bidder(s) or contractor(s) involved.

**13. AWARDS** - Awards will be made with reasonable promptness and by written notice to the successful bidder (only); bids are considered to be irrevocable for a period of sixty (60) days following the bid opening unless expressly provided for to the contrary in the Request, and may not be withdrawn during this period without the express permission of the Purchasing Agent.

- **a.** Awards shall be made to the bidder(s) whose offer(s) constitutes the lowest responsive price offer (or lowest responsive price offer on an evaluated basis) for the item(s) in question or for the Request as a whole, at the option of the State. The State reserves the right to determine those offers which are responsive to the Request, or which otherwise serve its best interests.

- b.** The State reserves the right, before making award, to initiate investigations as to whether or not the materials, equipment, supplies, qualifications or facilities offered by the bidder meet the requirements set forth in the proposal and specification, and are ample and sufficient to insure the proper performance of the contract in the event of award. If upon such examination it is found that the conditions of the proposal are not complied with or that articles or equipment proposed to be furnished do not meet the requirements called for, or that the qualifications or facilities are not satisfactory, the State may reject such a bid. It is distinctly understood, however, that nothing in the foregoing shall mean or imply that it is obligatory upon the State to make any examinations before awarding a contract; and it is further understood that if such examination is made, it in no

way relieves the contractor from fulfilling all requirements and conditions of the contract.

c. Qualified or conditional offers which impose limitations of the bidder's liability or modify the requirements of the bid, offers for alternate specifications, or which are made subject to different terms and conditions than those specified by the State may, at the option of the State, be

1. Rejected as being non-responsive, or
2. set aside in favor of the State's terms and conditions (with the consent of the bidder), or
3. accepted, where the State Purchasing Agent determines that such acceptance best serves the interests of the State.

• Acceptance or rejection of alternate or counter-offers by the State shall not constitute a precedent which shall be considered to be binding on successive solicitations or procurements.

d. Bids submitted in pencil, or which do not bear an original signature, in ink, by an owner or authorized agent thereof, will not be accepted.

e. Bids must be extended in the unit of measure specified in the Request. In the event of any discrepancy between unit prices and their extensions, the unit price will govern.

f. The Purchasing Agent reserves the right to determine the responsibility of any bidder for a particular procurement.

g. The Purchasing Agent reserves the right to reject any and all bids in whole or in part, to waive technical defects, irregularities, and omissions, and to give consideration to past performance of the offerors where, in his judgment the best interests of the State will be served by so doing.

h. The Purchasing Agent reserves the right to make awards by items, group of items or on the total low bid for all the items specified as indicated in the detailed specification, unless the bidder specifically indicates otherwise in his bid.

i. Preference may be given to bids on products raised or manufactured in the State, other things being equal.

j. The impact of discounted payment terms shall not be considered in evaluating responses to any Request.

k. The Purchasing Agent reserves the right to act in the State's best interests regarding awards caused by clerical errors by the Office of Purchases.

**14. SUSPENSION AND DEBARMENT** - The Purchasing Agent may suspend or debar any vendor or potential bidder, for good cause shown:

- a. A debarment or suspension against a part of a corporate entity constitutes debarment or suspension of all of its divisions and all other organizational elements, except where the action has been specifically limited in scope and application, and may include all known corporate affiliates of a contractor, when such offense or act occurred in connection with the affiliate's performance of duties for or on behalf of the contractor, or with the knowledge, approval, or acquiescence of the contractor or one or more of its principals or directors (or where the contractor otherwise participated in, knew of, or had reason to know of the acts).

- b. The fraudulent, criminal or other serious improper conduct of any officer, director, shareholder, partner, employee, or any other individual associated with a contractor may be imputed to the contractor when the conduct occurred in connection with the individual's performance of duties for or on behalf of the contractor, or with the contractor's knowledge, approval or acquiescence. The contractor's acceptance of benefits derived from the conduct shall be evidence of such knowledge, approval, or acquiescence.

- c. A vendor or contractor who knowingly engages as a subcontractor for a contract awarded by the State to a vendor or contractor then under a ruling of suspension or debarment by the State shall be subject to disallowance of cost, annulment or termination of award, issuance of a stop work order, or debarment or suspension, as may be judged to be appropriate by the State Purchasing Agent.

**15. PUBLIC RECORDS** - Contractors and bidders are advised that all documents, correspondence, and other submissions to the Office of Purchases may be accessible as public records, pursuant to Title 38, Chapter 2 of the General Laws, absent specific notice that portions of such submittals may contain confidential or proprietary information, such that public access to those items should be withheld, and except as otherwise provided for pursuant to RIGL 37-2-18 (a)-(h) "Competitive Sealed Bidding".

**16. PRODUCT EVALUATION** - In all specifications, the words "or equal" are understood after each article when manufacturer's name or catalog are referenced. If bidding on items other than those specified, the bidder must, in every instance, give the trade designation of the article, manufacturer's name and detailed specifications of the item the bidder proposes to furnish; otherwise, the bid will be construed as submitted on the identical commodity described in the detailed specifications. The Purchasing Agent reserves the right to determine whether or not the item submitted is the approved equal the detailed specifications.

- a. Any objections to specifications must be filed by a bidder, in writing, with the Purchasing Agent at least 96 hours before the time of bid opening to enable the Office of Purchases to properly investigate the objections.

- b. All standards are minimum standards except as otherwise provided for in the Request or Contract.

- c. Samples must be submitted to the Office of Purchases in accordance with the terms of the proposals and detailed specifications. Samples must be furnished free of charge and must be accompanied by descriptive memorandum invoices indicating whether or not the bidder desires their return and specifying the address to which they are to be returned (at the bidder's risk and expense), provided they have not been used or made useless by tests; and absent instructions, the samples shall be considered to be abandoned. Award samples may be held for comparison with deliveries.

- d. All samples submitted are subject to test by any laboratory the State Purchasing Agent may designate.

**17. PRODUCT ACCEPTANCE** - All merchandise offered or otherwise provided shall be new, of prime manufacture, and of first quality unless otherwise specified by the State. The State reserves the right to reject all nonconforming goods, and to cause their return for credit or replacement, at the State's option. Contract deliverables specified for procurements of services shall be construed to be work products, and subject to the provisions of this section.

- a. Failure by the State to discover latent defect(s) or concealed damage or non-conformance shall not foreclose the State's right to subsequently reject the goods in question.

- b. Formal or informal acceptance by the State of non-conforming goods shall not constitute a precedent for successive receipts or procurements.

- c. Where the contractor fails to promptly cure the defect or replace the goods, the State reserves the right to cancel the Purchase Order, contract with a different contractor, and to invoice the original contractor for any differential in price over the original contract price.

- d. When materials, equipment or supplies are rejected, the same must be removed by the contractor from the premises of the State Agency within forty-eight (48) hours of notification. Rejected items left longer than two days will be regarded as abandoned and the State shall have the right to dispose of them as its own property.

**18. PRODUCT WARRANTIES** - All product or service warranties normally offered by the contractor or bidder shall accrue to the State's benefit, in addition to any special

requirements which may be imposed by the State. Every unit delivered must be guaranteed against faulty material and workmanship for a period of one year unless otherwise specified, and the State may, in the event of failure, order its replacement, repair, or return for full credit, at its sole option.

**19. PAYMENT** - Unless otherwise provided for by the Request or Contract, payment shall not be made until delivery has been made, or services performed, in full, and accepted. Payment shall not be due prior to thirty (30) working days following the latest of completion, acceptance, or the rendering of a properly submitted invoice.

- a. Payment terms other than the foregoing may be rejected as being non-responsive..

- b. No partial shipments will be accepted, unless provided for by the Request or Contract.

- c. Where a question of quality is involved, payment in whole or part against which to charge back any adjustment required, shall be withheld at the direction of the Purchasing Agent. In the event a cash discount is stipulated, the withholding of payments, as herein described, will not deprive the State from taking such discount.

- d. Payments for used portion of inferior delivery will be made by the State on an adjusted price basis.

- e. Payments on contracts under architectural or engineering supervision must be accompanied by a Certificate of Payment and Statement of Account signed by the architect or engineer and submitted to the Agency involved for approval.

**20. THIRD PARTY PAYMENTS** - The State recognizes no assigned or collateral rights to any purchase agreement except as may be expressly provided for in the bid or contract documents, and will not accede to any request for third party or joint payment(s), except as provided for in specific orders by a court of competent jurisdiction, or by express written permission of the Purchasing Agent. Where an offer is contingent upon such payment(s), the offeror is obligated to serve affirmative notice in his bid submission.

**21. SET-OFF AGAINST PAYMENTS** - Payments due the contractor shall be subject to reduction by the State Controller equal to the amount of unpaid and delinquent state taxes (or other just debt owed to the State), except where notice of delinquency has not been served or while the matter is pending in hearing or from any appeal therefrom.

**22. CLAIMS** - Any claim against a contractor may be deducted by the State from any money due him in the same or other transactions. If no deduction is made in such fashion, the contractor shall pay the State the amount of such claim on demand. Submission of a voucher and payment, thereof, by the State shall not preclude the Purchasing Agent from



demanding a price adjustment in any case when the commodity delivered is later found to deviate from the specifications and proposal.

- a. The Purchasing Agent may assess dollar damages against a vendor or contractor determined to be non-performing or otherwise in default of their contractual obligations equal to the cost of remedy incurred by the State, and make payment of such damages a condition for consideration for any subsequent award. Failure by the vendor or contractor to pay such damages shall constitute just cause for disqualification and rejection, suspension, or debarment.

**23. STATE CONTROLLER'S CERTIFICATION OF FUNDING** - Certification as to the availability of funds to support the procurement for the current fiscal year ending June 30th only. Where delivery or service requirements extend beyond the end of the current fiscal year, such extensions are subject to both the availability of appropriated funds and a determination of continued need.

**24. UNUSED BALANCES** - Unless otherwise specified, all unused Blanket Order quantities and/or unexpended funds shall be automatically canceled on the expiration of the specified term. Similarly, for orders encompassing more than one State fiscal year, unexpended balances of funding allotted for an individual fiscal year may be liquidated at the close of that fiscal year, at the State's sole option.

**25. MINORITY BUSINESS ENTERPRISES** - Pursuant to the provisions of Title 37 Chapter 14.1 of the General Laws, the State reserves the right to apply additional consideration to offers, and to direct awards to bidders other than the responsive bid representing the lowest price where:

- a. the offer is fully responsive to the terms and conditions of the Request, and
- b. the price offer is determined to be within a competitive range (not to exceed 5% higher than the lowest responsive price offer) for the product or service, and
- c. the firm making the offer has been certified by the R.I. Department of Economic Development to be a small business concern meeting the criteria established to be considered a Minority Business Enterprise. Ten per cent [10%] of the dollar value of the work-performed against contracts for construction exceeding \$5,000 shall be performed by Minority Business Enterprises where it has been determined that subcontract opportunities exist, and where certified Minority Business Enterprises are available. A contractor may count towards its MBE, DBE, or WBE goals 60% of its expenditures for materials and supplies required under a contract and obtained from an MBE, DBE, or WBE regular dealer, and 100% of such expenditures when obtained from an MBE, DBE, or WBE manufacturer. Awards of this type shall be subject to approval, by the Director of Administration, of a Subcontracting Plan submitted by the bidder receiving the award.

**26. PREVAILING WAGE REQUIREMENT** - In accordance with Title 37 Chapter 13 of the General Laws of Rhode Island, payment of the general prevailing rate of per diem wages and the general prevailing rate for regular, overtime and other working conditions existing in the locality for each craft, mechanic, teamster, or type of workman needed to execute this work is a requirement for both contractors and subcontractors for all public works.

**27. EQUAL OPPORTUNITY COMPLIANCE, HANDICAPPED ACCESS AND AFFIRMATIVE ACTION** - Contractors of the State are required to demonstrate the same commitment to equal opportunity as prevails under federal contracts controlled by Federal Executive Orders 11246, 11625, 11375 and 11830, and Title 28 Chapter 5.1 of the General Laws of Rhode Island. Affirmative action plans shall be submitted by the contractor for review by the State Equal Opportunity Office. A contractor's failure to abide by the rules, regulations, contract terms and compliance reporting provisions as established shall be grounds for forfeiture and penalties as shall be established, including but not limited to suspension.

**28. DRUG-FREE WORKPLACE REQUIREMENT** - In accordance with Executive Order No. 91-14, Contractors who do business with the State and their employees shall abide by the State's drug-free workplace policy and the contractor shall so attest by signing a certificate of compliance.

**29. GOODS PRODUCED IN THE REPUBLIC OF SOUTH AFRICA** - In accordance with Chapters 35-10-12 and 37-2-57 of the General Laws, goods which are known to be wholly produced in the Republic of South Africa may not be accepted for any procurement the State of Rhode Island; the offeror attests by his submission of a bid or offer, or acceptance of a purchase order or other contract, that these prohibitions do not apply to material or goods which form the basis for his offer or contract.

**30. TAXES** - The State of Rhode Island is exempt from payment of excise, transportation and sales tax imposed by the Federal or State Government. These taxes should not be included in the proposal price. Exemption Certificates will be furnished upon request.

**31. INSURANCE** - All construction contractors, independent tradesmen, or firms providing any type of maintenance, repair, or other type of service to be performed on state premises, buildings, or grounds are required to purchase and maintain coverage with a company or companies licensed to do business in the state as follows:

- **a. Comprehensive General Liability Insurance** -
  - 1) Bodily Injury \$1,000,000 each occurrence
    - \$1,000,000 annual aggregate
  - 2) Property Damage \$500,000 each occurrence
- \$500,000 annual aggregate
  - Independent Contractors
  - Contractual - including construction hold harmless and other types of contracts or agreements in effect for insured operations

- Completed Operations
- Personal Injury (with employee exclusion deleted)
- b. Automobile Liability Insurance -
- Combined Single Limit \$1,000,000 each occurrence
  - Bodily Injury
  - Property Damage, and in addition non-owned and/or hired vehicles and equipment
- c. Workers' Compensation Insurance -
- Coverage B \$100,000

The Purchasing Agent reserves the right to consider and accept alternate forms and plans of insurance or to require additional or more extensive coverage for any individual requirement. Successful bidders shall provide certificates of coverage, reflecting the State of Rhode Island as an additional insured, to the Office of Purchases, forty-eight (48) hours prior to the commencement of work, as a condition of award. Failure to comply with this provision shall result in rejection of the offeror's bid.

**32. BID SURETY** - When requested, a bidder must furnish a Bid Bond or Certified Check for 5% of his bid, or for the stated amount shown in the solicitation. Bid Bonds must be executed by a reliable Surety Company authorized to do business in the State of Rhode Island. Failure to provide Bid Surety with bid may be cause for rejection of bid. The Bid Surety of any three bidders in contention will be held until an award has been made according to the specifications of each proposal. All others will be returned by mail within 48 hours following the bid opening. Upon award of a contract, the remaining sureties will be returned by mail unless instructed to do otherwise.

**33. PERFORMANCE AND LABOR AND PAYMENT BONDS** - A performance bond and labor and payment bond of up to 100% of an award may be required by the Purchasing Agent. Bonds must meet the following requirements:

- a. Corporation: The Bond must be signed by an official of the corporation above his official title and the corporate seal must be affixed over his signature.
- b. Firm or Partnership: The Bond must be signed by all of the partners and must indicate that they are "Doing Business As (name of firm)."
- c. Individual: The Bond must be signed by the individual owning the business and indicate "Owner."
- d. The Surety Company executing the Bond must be licensed to do business in the State of Rhode Island or Bond must be countersigned by a company so licensed.
- e. The Bond must be signed by an official of the Surety Company and the corporate seal must be affixed over his signature.
- f. Signatures of two witnesses for both the principal and the Surety must appear on the Bond.
- g. A Power of Attorney for the official signing of the Bond for the Surety Company must be submitted with the Bond.

**34. DEFAULT AND CANCELLATION** - A contract may be canceled or annulled at the contractor's expense upon non-performance of contract, or breach, by the contractor,

of any of his obligations. Failure of contractor to cure such non-performance or breach within ten working days after the receipt of notice, shall be sufficient cause for the cancellation of the contract in question, the cancellation of all outstanding contracts or sub-contracts held by the contractor, and the suspension or debarment of the contractor from future procurements.

- a. Failure of a contractor to deliver or perform within the time specified, or within reasonable time as interpreted by the Purchasing Agent or failure to make replacement of rejected articles, when so requested, immediately or as directed by the Purchasing Agent, will cause the Purchasing Agent to purchase in the open market to replace those rejected or not delivered. The Purchasing Agent reserves the right to authorize immediate purchase in the open market against rejections on any contract when necessary. On all such purchases, the contractor, or his surety, agrees to promptly reimburse the State for excess costs occasioned by such default. Should the cost be less, the contractor shall have no claim to the difference.

- b. A contractor who fails to commence within the time specified or complete an award made for repairs, alterations, construction, or any other service will be considered in default of contract. The Purchasing Agent may contract for completion of the work with another contractor and seek recourse from the defaulting contractor or his surety.

- c. If contractor consistently fails to deliver quantities or otherwise perform as specified, the Purchasing Agent reserves the right to cancel the contract and purchase the balance in the open market at the contractor's expense.

**35. INDEMNITY** - The contractor guarantees:

- a. To save the State, its agents and employees, harmless from any liability imposed upon the State arising from the negligence, either active or passive, of the contractor, as well as for the use of any copyrighted or non-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of the contract of which the contractor is not the patentee, assignee or licensee.

- b. To pay for all permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the city or town in which the installation is to be made and of the State of Rhode Island.

- c. That the equipment offered is standard new equipment, latest model of regular stock product with all parts regularly used with the type of equipment offered; also, that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.

**36. CONTRACTOR'S OBLIGATIONS** - In addition to the specific requirements of the contract, construction and building repair contractors bear the following standard responsibilities:

- a. To furnish adequate protection from damage for all work and to repair damages of any kind, for which he or his workmen are responsible, to the building or equipment, to his own work, or to the work of other contractors;

- b. To clear and remove all debris and rubbish resulting from his work from time to time, as directed or required, a completion of the work leave the premises in a neat unobstructed condition, broom clean, and in satisfactory order and repair;
- c. To store equipment, supplies, and material at the site only upon approval by the State, and at his own risk;
- d. To perform all work so as to cause the least inconvenience to the State, and with proper consideration for the rights of other contractors and workmen;
- e. To acquaint themselves with conditions to be found at the site, and to assume responsibility for the appropriate dispatching of equipment and supervision of his employees during the conduct of the work; and
- f. To ensure that his employees are instructed with respect to special regulations, policies, and procedures in effect for any State facility or site, and that they comply with such rules.

**37. FORCE MAJEURE** - All orders shall be filled by the contractor with reasonable promptness, but the contractor shall not be held responsible for any losses resulting if the fulfillment of the terms of the contract shall be delayed or prevented by wars, acts of public enemies, strikes, fires, floods, acts of God, or for any other acts not within the control of the contractor and which by the exercise of reasonable diligence, the contractor is unable to prevent.

**RECEIVED**

(14) OCT 11 2011

RI SECRETARY OF STATE  
ADMINISTRATIVE RECORDS

**MANDATORY TERMS AND CONDITIONS:**

1. Required Approvals. The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email or facsimile transmission with recipient confirmation. All communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or email address as stated below or any other address provided in writing by a Party.

The State:

State Contact Name & Title  
State Agency Name  
Address  
Email Address  
Telephone # Number  
FAX # Number

The Contractor:

Contractor Contact Name & Title  
Contractor Name  
Address  
Email Address  
Telephone # Number  
FAX # Number

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

3. Modification and Amendment. This Contract may be modified only by a written amendment signed by all Parties and approved by all applicable State officials. The State's exercise of a valid Renewal Option or Term Extension does not constitute an amendment so long as there are no other changes to the Contract's terms and conditions.
4. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.

5. Termination for Convenience. The State may terminate this Contract for convenience without cause and for any reason. The State shall give the Contractor at least thirty (30) days written notice before the termination date. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any goods neither requested nor accepted by the State or for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the State's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the State for any damages or claims arising under this Contract.
6. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity for breach of this Contract.
7. Assignment and Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.
8. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

9. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
10. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
  - a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment **Reference**, semi-annually during the Term. If the Contractor is a party to more than one

contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
  - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
  - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
  - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
11. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
12. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
13. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
14. Strict Performance. Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
15. Independent Contractor. The Parties shall not act as employees, partners, joint venturers, or associates of one another. The Parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either Party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one Party are not employees or agents of the other Party.
16. Patient Protection and Affordable Care Act. The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself



and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from Contractor's failure to fulfill its PPACA responsibilities for itself or its employees.

17. **Limitation of State's Liability.** The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.
18. **Limitation of Contractor's Liability.** In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount detailed in Section #. and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
19. **Hold Harmless.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

20. **HIPAA Compliance.** The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
  - a. Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
  - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.

- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT “protected health information” as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.
  - d. The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.
21. Tennessee Consolidated Retirement System. Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, *et seq.*, the law governing the Tennessee Consolidated Retirement System (“TCRS”), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, *et seq.*, accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of “employee/employer” and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
22. Tennessee Department of Revenue Registration. The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 – 608. Compliance with applicable registration requirements is a material requirement of this Contract.
23. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:
- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
  - b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
  - c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
  - d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

24. Force Majeure. "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the Party except to the extent that the non-performing Party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing Party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either Party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a Party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing Party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the Party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.
25. State and Federal Compliance. The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
26. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 - 407.
27. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to its subject matter, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties, whether written or oral.
28. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
29. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
30. Incorporation of Additional Documents. Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a. any amendment to this Contract, with the latter in time controlling over any earlier amendments;
  - b. this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below), which includes [identify attachments and exhibits];

- c. any clarifications of or addenda to the Contractor's proposal seeking this Contract;
  - d. the State solicitation, as may be amended, requesting responses in competition for this Contract;
  - e. any technical specifications provided to proposers during the procurement process to award this Contract; and
  - f. the Contractor's response seeking this Contract.
31. Intellectual Property. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.
32. Prohibited Advertising or Marketing. The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

State of Washington:

Additional terms and conditions specific to Washington State's Participating Addendum are as follows:

Management Fee. Management Fee is a cost recovery fee associated with Washington's administration of the Participating Addendum with Contractors. Contractor shall pay Washington's Management Fee of 0.74 percent of the gross sales and report sales, including zero sales, each quarter.

Security Design Review. Prior to final execution of a Purchasing Entities contract with a Contractor, the Contractor's application(s) will be subject to a Security Design Review performed by Washington Technology Solutions to ensure compliance with Office of the Chief Information Officer (OCIO) Security Policies.

Sensitive Records or Data. Contractors acknowledge that Participating Entities may have varying levels of sensitive or confidential records and/or data. As set forth below, records and/or data classified as Category 1 or 2 Data may be shared by the direction of the Participating Entity and Category 3 and 4 Data shall not be released by Contractor:

- Category 1 Data is public information and can be released to the public, does not need protection from unauthorized disclosure and needs Contractor to provide integrity and availability protection controls.
- Category 2 Data is sensitive information and may not be specifically protected from disclosure by law and is for official use only. Contractor shall not release to the public unless specifically requested and after receiving prior approval by Purchasing Entity before such release.
- Category 3 Data is confidential information and is specifically protected from disclosure by law. Contractor shall not release Category 3 Data.
- Category 4 Data is confidential information which requires special handling and is specifically protected from disclosure by law. Contractor shall not release Category 4 Data.

Service Organization Control (SOC) 2 Audit Reports. Contractor data center(s) handling Washington State Category 3 and 4 data shall perform independent SOC 2 audits at least annually at its expense.

Washington's Electronic Business Solution (WEBS). Contractors must register its firm in WEBS to receive notification of amendments and announcements relating to the Participating Addendum. Contractors should register in one or more Commodity Codes which reflects Contractor's solution offering.

Washington's Terms & Conditions for Contract. Notwithstanding any provision to the contrary, Contractor acknowledges and agrees that Participating Entity's contract shall comply with Washington law and that such agreement shall be subject to Washington venue and choice of

law and state requirements relating to availability of funds or withdrawal of authority. Contractor further acknowledges and agrees that Participating Entity's contract shall include a six year statute of limitations (unless extended for pending litigation) and recordkeeping requirement.

## GENERAL TERMS AND CONDITIONS:

**1. CONTRACTUAL AGREEMENT:** Issuance of a Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

**2. DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

**2.1. "Agency" or "Agencies"** means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

**2.2. "Bid" or "Proposal"** means the vendors submitted response to this solicitation.

**2.3. "Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

**2.4. "Director"** means the Director of the West Virginia Department of Administration, Purchasing Division.

**2.5. "Purchasing Division"** means the West Virginia Department of Administration, Purchasing Division.

**2.6. "Award Document"** means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

**2.7. "Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

**2.8. "State"** means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

**2.9. "Vendor" or "Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

**3. CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☐ **Term Contract**

**Initial Contract Term:** This Contract becomes effective on \_\_\_\_\_ and extends for a period of \_\_\_\_\_ year(s).

**Renewal Term:** This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Renewal of this Contract is limited to \_\_\_\_\_ successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed \_\_\_\_\_ months in total. Automatic renewal of this Contract is prohibited. Notwithstanding the foregoing, Purchasing Division approval is not required on agency delegated or exempt purchases. Attorney General approval may be required for vendor terms and conditions.

**Delivery Order Limitations:** In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within \_\_\_\_\_ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within \_\_\_\_\_ days.

Upon completion, the vendor agrees that maintenance, monitoring, or warranty services will be provided for one year thereafter with an additional \_\_\_\_\_ successive one year renewal periods or multiple renewal periods of less than one year provided that the multiple renewal periods do not exceed \_\_\_\_\_ months in total. Automatic renewal of this Contract is prohibited.

☐ **One Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Other:** See attached.

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**4. NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document will be considered notice to proceed.

**5. QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☐ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

**6. PRICING:** The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification.

**7. EMERGENCY PURCHASES:** The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

**8. REQUIRED DOCUMENTS:** All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.

☐ **BID BOND:** All Vendors shall furnish a bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

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☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of \_\_\_\_\_. The performance bond must be received by the Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award. In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☐ **INSURANCE:** The apparent successful Vendor shall furnish proof of the following insurance prior to Contract award and shall list the state as a certificate holder:

☐ **Commercial General Liability Insurance:** In the amount of \_\_\_\_\_ or more.

☐ **Builders Risk Insurance:** In an amount equal to 100% of the amount of the Contract.

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The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed above.

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the Purchasing Division.

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The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the specifications prior to Contract award regardless of whether or not that requirement is listed above.

**9. WORKERS' COMPENSATION INSURANCE:** The apparent successful Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

**10. LITIGATION BOND:** The Director reserves the right to require any Vendor that files a protest of an award to submit a litigation bond in the amount equal to one percent of the lowest bid submitted or \$5,000, whichever is greater. The entire amount of the bond shall be forfeited if the hearing officer determines that the protest was filed for frivolous or improper purpose, including but not limited to, the purpose of harassing, causing unnecessary delay, or needless expense for the Agency. All litigation bonds shall be made payable to the Purchasing Division. In lieu of a bond, the protester may submit a cashier's check or certified check payable to the Purchasing Division. Cashier's or certified checks will be deposited with and held by the State Treasurer's office. If it is determined that the protest has not been filed for frivolous or improper purpose, the bond or deposit shall be returned in its entirety.

**11. LIQUIDATED DAMAGES:** Vendor shall pay liquidated damages in the amount of

for \_\_\_\_\_.

This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy.

**12. ACCEPTANCE:** Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

**13. FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.

**14. PAYMENT:** Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit invoices, in arrears.

**15. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

**16. CANCELLATION:** The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules §§ 148-1-6.1.e.

**17. TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.

**18. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules is void and of no effect.

**19. COMPLIANCE:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

**20. PREVAILING WAGE:** Vendor shall be responsible for ensuring compliance with prevailing wage requirements and determining when prevailing wage requirements are applicable.

**21. ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.

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**22. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.

**23. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.

**24. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.

**25. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments. Notwithstanding the foregoing, Purchasing Division approval may or may not be required on certain agency delegated or exempt purchases.

**26. WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

**27. STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.

**28. BANKRUPTCY:** In the event the Vendor files for bankruptcy protection, the State of West Virginia may deem this Contract null and void, and terminate this Contract without notice.

**29. PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

**30. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

**31. LICENSING:** In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

**32. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

**33. VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

**34. PURCHASING CARD ACCEPTANCE:** The State of West Virginia currently utilizes a Purchasing Card program, administered under contract by a banking institution, to process payment for goods and services. The Vendor must accept the State of West Virginia's Purchasing Card for payment of all orders under this Contract unless the box below is checked.

☐ Vendor is not required to accept the State of West Virginia's Purchasing Card as payment for all goods and services.

**35. VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

**36. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

**37. PURCHASING AFFIDAVIT:** In accordance with West Virginia Code § 5A-3-10a, all Vendors are required to sign, notarize, and submit the Purchasing Affidavit stating that neither the Vendor nor a related party owe a debt to the State in excess of \$1,000. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. A copy of the Purchasing Affidavit is included herewith.

**38. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:** This Contract may be utilized by other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"). Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. If the Vendor does not wish to extend the prices, terms, and conditions of its bid and subsequent contract to the Other Government Entities, the Vendor must clearly indicate such refusal in its bid. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.

**39. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

**40. REPORTS:** Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☐ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at [purchasing.requisitions@wv.gov](mailto:purchasing.requisitions@wv.gov).



**41. BACKGROUND CHECK:** In accordance with W. Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision. The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check.

Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

**42. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS:** Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- d. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

**43. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:** In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

## STATE OF WISCONSIN COMMODITIES CONTRACT

- 1. DEFINITIONS.** Words and terms shall be given their ordinary and usual meanings. Unless negotiated otherwise by the parties, where capitalized, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter of the words and terms.

**“Acceptance”** means a manifestation of assent by the State to the terms, Services, Goods or other items offered by the Contractor under the Contract after Inspection by the State.

**“Agency”** or **“State Agency”** means an office, department, agency, institution of higher education, association, society or other body in the State of Wisconsin government created or authorized to be created by the State Constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority, as defined in Wis. Stat. s. 16.70(2).

**“Business Day”** means any day on which the Contracting Agency is open for business.

**“Confidential Information”** means all tangible and intangible information and materials being disclosed in connection with this Contract, in any form or medium without regard to whether the information is owned by the State or by a third party, which satisfies at least one of the following criteria: (i) Personally Identifiable Information; (ii) Proprietary Information; (iii) non-public information related to the State’s employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or (iv) information expressly designated as confidential in writing by the State. Confidential Information includes all information that is restricted or prohibited from disclosure by state or federal law.

**“Contracted Personnel”** means a Contractor’s employees or other personnel (including officers, agents and Subcontractors) provided by the Contractor to render Services under this Contract.

**“Contracting Agency”** means the Agency entering into this Contract on behalf of the State.

**“Day”** means calendar day unless otherwise specified in this Contract.

**“Default”** means the omission or failure to perform a contractual duty or provide Goods or Services as contractually required.

**“Goods”** means articles of trade or items of merchandise, supplies, raw materials, or finished products, and may also include incidental or related Services as the situation may require.

**“Inspection”** means an examination of Goods provided under this Contract in order to determine their fitness for use

**“Personally Identifiable Information”** means an individual’s last name and the individual’s first name or first initial, in combination with and linked to any of the following elements, if that element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual’s Social Security number; (b) the individual’s driver’s license number or state identification number; (c) the number of the individual’s financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual’s financial account; (d) the individual’s DNA profile; or (e) the individual’s unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.

**“Proprietary Information”** means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

- a. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- b. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

**“Properly-submitted Invoice”** is one that is submitted in accordance with instructions contained on the State’s Purchase Order, includes a reference to the proper Purchase Order number, and is submitted to the proper address for processing.

**“Purchase Order”** means the State’s standard document of a purchase of Goods or Services.

**“Services”** means all work performed, and labor, actions, recommendations, plans, research, customizations, modifications, documentation, and maintenance and support provided by the Contractor necessary to fulfill that which the Contractor is obligated to accomplish under this Contract.

**“State”** means the State of Wisconsin.

**“Subcontract”** means an agreement, written or oral, between the Contractor and any other party to fulfill the requirements and performance obligations of this Contract.

**“Subcontractor”** means an entity that enters into a Subcontract, with the Contractor for the purpose of delivering Goods or rendering Services to the State.

**“Work Center”** means a charitable organization or nonprofit institution which is licensed under s. 104.07 and incorporated in this State or a unit of county government which is operated for the purpose of carrying out a program of rehabilitation for severely handicapped individuals and for providing the individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature, and which is engaged in the production of materials, supplies or equipment or the performance of contractual services in connection with which not less than 75% of the total hours of direct labor are performed by severely handicapped individuals.

2. **APPLICABLE LAW.** This Contract shall be governed by the laws of the State of Wisconsin. Venue for any action brought under this Contract shall lie in Madison, Dane County, Wisconsin.
3. **TERM.** The initial term of this Contract shall be for \_\_\_\_ year(s) from the effective date. This Contract is eligible for \_\_\_\_ mutually agreed upon \_\_\_\_-year renewals, unless terminated as provided herein.
4. **TERMINATION FOR CAUSE.** The State may terminate this Contract after providing the Contractor with \_\_\_\_ (\_\_\_\_) Days written notice of the Contractor's right to cure a failure of the Contractor to perform under the terms of this Contract.
- The Contractor may terminate this Contract after providing the State with \_\_\_\_ (\_\_\_\_) Days written notice of the State's right to cure a failure of the State to perform under the terms of this Contract.
5. **TERMINATION FOR CONVENIENCE.** The State may terminate this Contract at any time, without cause, by providing a written notice to the other party at least \_\_\_\_ (\_\_\_\_) Days in advance of the intended date of termination.

Contractor may terminate this Contract at any time, without cause, by providing a written notice to the other party at least \_\_\_\_ (\_\_\_\_) Days in advance of the intended date of termination.

In the event of a termination for convenience, the Contractor shall be entitled to receive compensation for any completed or partially completed Services rendered or Goods provided under the Contract. Compensation for partially completed Services shall be no more than the percentage of completion of the Services requested, as determined by the State in its sole discretion, multiplied by the corresponding payment for completion of such Services as set forth in the Contract. Alternatively, at the sole discretion of the State, the Contractor may be compensated for the actual Service hours provided. The State shall be entitled to a refund for Goods or Services paid for but not received or implemented, such refund to be paid within 30 Days of written notice to the Contractor requesting the refund.

**6. CONTRACT CANCELLATION:**

- (a) The State reserves the right to cancel this Contract in whole or in part without penalty, and without prior notice, if the Contractor:
- Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity
  - Makes an assignment for the benefit of creditors
  - Fails to maintain and keep in force all required insurance, permits and licenses as provided in this Contract;
  - Fails to maintain the confidentiality of the State's information that is considered to be Confidential Information, or
  - Performs in a manner that threatens the health or safety of a State employee, citizen, or customer.

(b) The State reserves the right to cancel this Contract in whole or in part without penalty, with 30 days' notice, if the Contractor:

- Fails to follow the sales and use tax certification requirements of s. 77.66 of the Wisconsin Statutes;
- Incurs a delinquent Wisconsin tax liability;
- Fails to submit a non-discrimination or affirmative action plan as required herein.
- Fails to follow the non-discrimination or affirmative action requirements of subch. II, Chapter 111 of the Wisconsin Statutes (Wisconsin's Fair Employment Law); or
- Becomes a state or federally debarred contractor.

**7. POST CONTRACT OBLIGATIONS.** Upon the termination of this Contract for any reason, or upon Contract expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration.

**8. CONTRACTOR COMPLIANCE AND RESPONSIBILITY FOR ACTIONS.** The Contractor shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations that are in effect during the term of this Contract that may affect the Contractor's work or obligations hereunder.

The Contractor shall be solely responsible for its actions and those of its agents, employees, or Subcontractors. Neither the Contractor nor any of the foregoing parties has authority to act or speak on behalf of the State.

**9. DELAY AND REMEDY.** If the Contractor fails to remedy any delay or other problem in its performance of its Contract obligations after receiving reasonable notice from the State to do so, the Contractor shall reimburse the State for all reasonable costs incurred as a direct consequence of the Contractor's delay, action, or inaction. In case of failure to deliver Goods or Services in accordance with this Contract, the State, upon written notice to the Contractor, may procure such Goods or Services from other sources as necessary, and the Contractor shall be responsible for the additional cost, including the cost of re-procurement, purchase price and administrative fees. This remedy shall be in addition to any other legal remedies available to the State

**10. WORK CENTER CRITERIA.** The Contractor shall implement processes that allow Agencies to satisfy the State's obligation to purchase goods and services produced by Work Centers certified under the State's Work Center Law, §16.752, Wis. Stat. The Contractor shall include goods provided by Work Centers in its catalog for Agencies and block the sale of comparable items to Agencies.

**11. NON-APPROPRIATION.** The State reserves the right to cancel this Contract in whole or in part without penalty if the Legislature fails to appropriate funds necessary to complete the Contract.

**12. CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:

- Worker's compensation insurance, as required under Chapter 102 of the Wisconsin Statutes, for all of the Contractor's employees and Contracted Personnel engaged in the work performed under this Contract;
- Commercial liability, bodily injury and property damage insurance against any claim(s) that may occur in carrying out the terms of this Contract, with a minimum coverage of one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations; and
- Motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the terms of this Contract, with a minimum coverage of one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.
- Certificate of Insurance, showing up-to-date coverage, shall be on file in the Contracting Agency before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted.

**13. NONDISCRIMINATION AND AFFIRMATIVE ACTION.** The Contractor shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, national origin, developmental disability as defined in § 51.01(5), Wis. Stats., or sexual orientation as defined in § 111.32(13m), Wis. Stats. This provision shall include, but is not limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor shall take affirmative action to ensure equal employment opportunities.

Unless exempted by workforce size (50 or fewer employees) or Contract amount (\$50,000 or less), the Contractor must submit a written affirmative action plan to the State.

The Contractor shall post the notice provided by the State, setting forth the provisions of the State's nondiscrimination laws, in its workplace, website or conspicuous places in order that the Contractor's employees and applicants for employment are able to read it.

Failure to comply with the conditions of this provision may result in the following consequences:

- termination of this Contract as provided in Section 6, Contract Cancellation herein,
- designation of the Contractor as "ineligible" for future consideration as a responsible, qualified bidder or proposer for State contracts, or
- withholding of a payment due under the Contract until the Contractor is in compliance

**14. STATE PAYMENT OFFSETS FOR CONTRACTOR'S DELINQUENCY.** The State shall offset payments made to the Contractor under this Contract in an amount necessary to satisfy a certified or verifiable delinquent payment owed to the State or any state or local unit of government. The State also reserves the right to cancel this Contract as provided in Section 6, Contract Cancellation, if the delinquency is not satisfied by the offset or other means during the term of the Contract.

**15. CONTRACTOR INDEMNIFICATION.** Contractor shall hold the State harmless and shall defend and indemnify the State, its Agencies, officers and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees, for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or Subcontractors.

**16. CONFIDENTIAL INFORMATION.**

**(a) Disclosures**

In connection with the performance of work hereunder, it may be necessary for the State to disclose to the Contractor Confidential Information. The Contractor shall not use such information for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken in fulfillment of the obligations thereunder. The Contractor shall hold all such information in confidence, and shall not disclose such information to any persons other than its directors, officers, employees, and agents who have a business-related need to have access to such information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract.

Contractor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of such information while in its possession or control including transportation, whether physically or electronically. If Contractor becomes aware of a data security breach, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, if any.

Contractor shall ensure that all indications of confidentiality contained on or included in any item of such information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. If requested by the State, Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain such information of the State, as directed.

The Contractor shall maintain all such information for a period of three (3) years from the date of termination of this Contract, and shall thereafter return or destroy said information as directed by the State.

**(b) Equitable Relief; Indemnification in Event of Contractor Breach**

*Indemnification:* In the event of a breach of this Section by Contractor, Contractor shall indemnify, defend and hold harmless the State of Wisconsin and any of its officers, employees, or agents from any claims arising from the acts or omissions of the Contractor, and its Subcontractors, employees and agents, including but not limited to disallowances or penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the State in the enforcement of this Section and, with respect to Personally Identifiable Information, the costs of monitoring the credit of all persons whose Personally Identifiable Information was disclosed.



*Equitable Relief:* The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State, which injury will not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that the State, on its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Contract or under applicable law.

- 17. INTELLECTUAL PROPERTY INFRINGEMENT AND LABOR STANDARDS.** The Contractor guarantees that any items provided to the State hereunder were manufactured or produced in accordance with applicable state and federal labor laws, and that the sale or use of said items shall not infringe any United States patent, copyright, or other intellectual property rights of others. The Contractor shall at its own expense indemnify, defend and hold the State harmless from any claims brought against the State for any alleged patent, copyright or other intellectual property right infringement due to the sale or use of such items, provided that the Contractor is promptly notified of such suit, and is given all related documents. The Contractor shall pay all costs, damages, and profits recoverable in any such infringement lawsuit.
- 18. SHIPPING.** Except as otherwise specified herein, Goods shall be shipped, F.O.B. Destination, and the State shall accept legal title of Goods at the point of delivery. Freight charges shall not be paid by the State, but rather shall be prepaid by the Contractor. Unless otherwise specified, the Contractor shall determine the mode of freight and shall accept responsibility for payment of freight charges and processing of freight claims.
- 19. RISK OF LOSS.** The Contractor shall bear all risks of loss, injury or destruction of the Goods ordered herein that occur prior to delivery. Such loss, injury or destruction shall not release the Contractor from any obligation hereunder.
- 20. IDENTIFICATION.** All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affecting an order hereunder shall contain the applicable State Purchase Order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to an order, indicating the contents therein. Standard commercial packaging, packing and shipping containers shall be used. If requested by the State, all shipping containers shall be legibly marked or labeled on the outside with State Purchase Order number, product description, and quantity, or as otherwise directed by the State.
- 21. LIENS, CLAIMS AND ENCUMBRANCES.** The Contractor warrants and represents that all Goods ordered hereunder are free and clear of all liens, claims or encumbrances of any kind.
- 22. WARRANTY OF ITEMS OFFERED.** Goods delivered and Services rendered shall be strictly in accordance with the order placed and may not deviate in any way from the terms, conditions or specifications of this Contract, without the prior written approval of the State. Equipment, materials, or supplies delivered under this Contract are subject to Inspection and testing upon receipt.

The Contractor warrants that the Goods provided shall conform to the specifications in this Contract, are fit and sufficient for the purpose manufactured, of good material and workmanship, and free from defect. Goods offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the State. Items shall be equal in

quality and performance to the standards indicated herein. Goods delivered that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense. The Contractor shall assign to the State its right to recover under any warranties applicable to the Goods offered. Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance, and/or use desired.

**23. RECEIPT OF GOODS.** The State's receipt of Goods upon delivery is for the sole purpose of identification. Such identification shall not be construed as Acceptance of the Goods if they do not conform to contractual requirements. If there are any apparent defects in the Goods at the time of delivery, the State shall promptly notify the Contractor of its rejection of said Goods. Without limiting any other rights, the State, at its option, may require the Contractor to:

- a. Repair or replace any or all of the defective and rejected Goods at Contractor's expense,
- b. Refund the price of any or all of the defective and rejected Goods, and
- c. Accept the return of any or all of the defective and rejected Goods.

If rejected, the Goods shall remain the property of the Contractor.

**24. INDEPENDENT CONTRACTOR.** The Contractor shall act as an independent contractor in providing any and all Goods and Services under this Contract and, except as otherwise outlined herein, shall maintain complete control over its employees, Contracted Personnel, and Subcontractors, if any.

**25. STATE EMPLOYEES.** The Contractor may not contract with or employ a State employee or an individual retained as a full-time contractor by the State during the term of this Contract.

**26. ANTITRUST ASSIGNMENT.** By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the State all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating specifically to that proportionate amount of the particular Goods or Services purchased or acquired by the State under this Contract.

**27. REFUND OF CREDITS.** Within sixty (60) Days of the State's request, the Contractor shall pay to the State any credits resulting from an order that the State determines cannot be applied to future invoices.

**28. OWNERSHIP RIGHTS.** Unless an ownership interest is granted or reserved in this Contract, a State Purchase Order issued under this Contract shall allow the State unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the State as part of the performance of the Contract.

**29. PROMPT PAYMENT.** The State shall pay the Contractor Properly-submitted Invoices within thirty (30) Days of receipt, provided that the Goods or Services to be provided to the State have been delivered, rendered, or installed, and accepted as specified in the solicitation document or this Contract.

If the State fails to pay a Properly-submitted Invoice within thirty (30) Days of receipt, it shall pay a late payment penalty as provided in §16.528, Wis. Stats. However, if the State declares a good faith dispute in regard to an invoice pursuant to § 16.528 (3)(e), Wis. Stats., it may pay any undisputed portion of said invoice, and will be exempt from the prompt payment requirement for the disputed portion.

**30. STATE TAX EXEMPTION.** The State is exempt from payment of Wisconsin sales or use tax on all purchases.

**31. PROMOTIONAL ADVERTISING AND NEWS RELEASES.** Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Contract shall not be made without prior written approval of the State.

**32. NOTICE AND CHANGE OF CONTACT INFORMATION.** Any notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery or three (3) Business Days after mailing by postal service, certified or registered mail-receipt requested.

In the event the Contractor moves or updates contact information, the Contractor shall inform the State of such changes in writing within ten (10) Business Days. The State shall not be held responsible for payments on Purchase Orders delayed due to the Contractor's failure to provide such notice

**33. RECORDS, RECORDKEEPING AND RECORD RETENTION.** Pursuant to §19.36 (3) of the Wisconsin Statutes, all records of the Contractor that are produced or collected under this Contract are subject to disclosure pursuant to a public records request. The Contractor shall establish and maintain adequate records of all documentation developed or compiled and expenditures incurred under this Contract. All expenditure records shall be kept in accordance with Generally Accepted Accounting Procedures (GAAP). All procedures shall be in accordance with federal, state and local laws or ordinances. The Contractor, following final payment, shall retain all records produced or collected under this Contract for three (3) years.

**34. EXAMINATION OF RECORDS.** The State shall at any time during normal business hours, upon reasonable notice, have access to and the right to examine, audit, excerpt, transcribe, and copy, on Contractor's premises, any of the Contractor's records and computer data storage media involving transactions directly pertinent to this Contract. If the material is on computer data storage media, the Contractor shall provide copies of the data storage media or a computer printout of such if the State so requests. Any charges for copies of books, documents, papers, records, computer data storage media or computer printouts provided by the Contractor shall not exceed the actual cost to the Contractor. This provision shall survive the termination, cancellation, or expiration of this Contract.

**35. BREACH NOT WAIVER.** A failure to exercise any right, or a delay in exercising any right, power or remedy hereunder on the part of either party shall not operate as a waiver thereof. Any express waiver shall be in writing and shall not affect any event or Default other than the event or Default specified in such waiver. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The making of any payment to the Contractor under

this Contract shall not constitute a waiver of Default, evidence of proper Contractor performance, or Acceptance of any defective item or work furnished by the Contractor.

- 36. ASSIGNMENT OF CONTRACT.** The Contractor shall provide prior written notice to the State before assigning this Contract to another party. The State reserves the right to withhold approval of any such assignment. The terms and conditions of this Contract as well as any rights obligations and liabilities associated with such shall survive any and all assignments, mergers, or acquisitions by a third party until cancelled in writing by both parties.
- 37. SEVERABILITY.** If any provision of this Contract is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall remain valid and in full force and effect. The invalid provision shall be replaced by a valid provision that comes closest in intent to the invalid provision.
- 38. CONTRACT DISPUTE RESOLUTION.** In the event of any dispute or disagreement between the parties under this Contract, whether with respect to the interpretation of any provision of this Contract, or with respect to the performance of either party hereto, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety or welfare, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor's highest executive authority and the equivalent executive authority within the Contracting Agency, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.
- 39. NO GUARANTEE OF QUANTITY.** The State may obtain related Goods and Services from other sources during the term of this Contract. The State makes no express or implied warranties whatsoever that any particular quantity or dollar amount of Goods or Services will be procured through this Contract.
- 40. TERMINATION OF PURCHASE ORDER.** The State may terminate a specific Purchase Order issued under this Contract if it determines that the Contractor is unable to deliver the Goods required in a timely manner, in order to meet the business needs of the State.
- 41. FORCE MAJEURE.** Neither party shall be in default by reason of any failure in performance of this Contract in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.
- 42. TIME IS OF THE ESSENCE.** Timely provision of the Goods or Services required under this Contract shall be of the essence of the Contract, including the provision of the Goods or Services within the time agreed or on a date specified.

- 43. NO AGENCY RELATIONSHIP.** The Contractor shall not take any action, or make any omission, that may imply, or cause others reasonably to infer that the Contractor is acting as the State's agent in any matter or in any way not expressly authorized by this Contract.
- 44. DISCLOSURE.** If a state public official (as defined in §19.42 (14) of the Wisconsin Statutes) or an organization in which a state public official holds at least a 10% interest is or becomes a party to this Agreement, it shall be voidable by the State unless appropriate disclosure is made to the State of Wisconsin Government Accountability Board, 212 East Washington Avenue, Madison, Wisconsin 53703 (Telephone 608-266-8005).
- 45. OTHER DOCUMENTS.** The parties to this Contract understand and agree that standard forms or templates may be used for various purposes, including but not limited to, purchase orders, invoices, quotes, 'Website Terms and/or Conditions' or 'click to accept' agreement(s), some of which may contain boilerplate or standard terms and conditions ("Other Documents"). However, any use of Other Documents are not a part of this Contract and are deemed to be for administrative convenience only and the terms therein are of no effect, have no force of law and do not modify the terms of this Contract.

**ATTACHMENT A: STATE OF UTAH STANDARD INFORMATION TECHNOLOGY TERMS AND CONDITIONS  
STATE OF UTAH COOPERATIVE INFORMATION TECHNOLOGY CONTRACT**

This is a State Cooperative Contract for information technology products and services meaning all computerized and auxiliary automated information handling, including: (a) systems design and analysis; (b) acquisition, storage, and conversion of data; (c) computer programming; (d) information storage and retrieval; (e) voice, radio, video, and data communications; (f) requisite systems controls; (g) simulation; and (h) all related interactions between people and machines.

**1. DEFINITIONS:**

- a. "Access to Secure Public Facilities, Data, and Technology" means Contractor will (A) enter upon secure premises controlled, held, leased, or occupied by the State of Utah or an Eligible User; (B) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by the State of Utah or an Eligible User; or (C) have access to or receive any Public Data or Confidential Information during the course of performing this Contract.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors or other agents of Contractor who need to access Public Data to enable the Contractor to perform its responsibilities under this Contract.
- c. "Confidential Information" means information that is deemed as confidential under applicable record laws. The State of Utah and the Eligible Users reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws by Contractor.
- d. "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. This Contract may include any purchase orders that result from the parties entering into this Contract.
- e. "Contract Signature Page(s)" means the cover page that Division and Contractor sign.
- f. "Contractor" means the individual or entity delivering the Goods, Custom Deliverables, or performing the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, partners, and/or any other person or entity for which Contractor may be liable under federal, state, or local laws.
- g. "Custom Deliverable" means the Work Product that Contractor is required to deliver to Eligible Users under this Contract.
- h. "Data Breach" means the unauthorized access by a non-authorized person(s) which results in unauthorized acquisition of Public Data and compromises the security, confidentiality, or integrity of Public Data. It is within an Eligible User's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
- i. "Division" means the State of Utah Division of Purchasing.
- j. "DTS" means the Department of Technology Services.
- k. "Eligible User(s)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts will be allowed to use this Contract.
- l. "Federal Criminal Background Check" means an in depth background check conducted and processed by the FBI that covers all states. Federal Criminal Background Check reports will show if applicant has had any criminal cases filed against them that violated federal criminal law.
- m. "Good" means any deliverable not classified as a Custom Deliverable or Service that Contractor is required to deliver to the Eligible Users under this Contract.
- n. "Non-Public Data" means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State of Utah and the federal government because it contains information that is exempt by state, federal and local statutes, ordinances, or administrative rules from access by the general public as public information.
- o. "Personal Data" means data that includes information relating to a person that identifies the person by a person's first name or first initial and last name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
- p. "Proposal" means Contractor's response documents, including attachments, to the Division's Solicitation.
- q. "Protected Health Information" (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
- r. "Security Incident" means the potentially unauthorized access by non-authorized persons to Public Data that Contractor believes could reasonably result in the use, disclosure or theft of Public Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach. It is within an Eligible User's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.

- s. "Services" means the furnishing of labor, time, or effort by Contractor as set forth in this Contract, including but not limited to installation, configuration, implementation, technical support, warranty maintenance, and other support services.
  - t. "Solicitation" means the documents used by the Division to solicit Contractor's Proposal for the Goods, Custom Deliverables, or Services identified in this Contract.
  - u. "Public Data" means all Confidential Information, Non-Public Data, Personal Data, and Protected Health Information that is created or in any way originating with the State of Utah or an Eligible User whether such data or output is stored on the State of Utah's or an Eligible User's hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State of Utah, an Eligible User, or by Contractor. Public Data includes any federal data, that the State of Utah or an Eligible User controls or maintains, that is protected under federal laws, statutes, and regulations.
  - v. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
  - w. "Subcontractors" means subcontractors or subconsultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, and includes all independent contractors, agents, employees, or anyone else for whom the Contractor may be liable, at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
  - x. "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the ordering Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
  3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all the Goods delivered under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
  4. **NO WAIVER OF SOVEREIGN IMMUNITY:** In no event shall this Contract be considered a waiver by the Division, an Eligible User, or the State of Utah of any form of defense or immunity, whether sovereign immunity, governmental immunity, or any other 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.
  5. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by an Eligible User to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah and federal auditors, and the Division access to all such records.
  6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
    - (1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
    - (2) Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
    - (3) Contractor's failure to comply with this section will be considered a material breach of this Contract.
    - (4) Contractor shall protect, indemnify, and hold harmless the Division, the Eligible Users, and the State of Utah, and anyone that the State of Utah may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
  7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made to the Division.
  8. **CONFLICT OF INTEREST WITH STATE EMPLOYEES:** Contractor agrees to comply and cooperate in good faith with all conflict of interest and ethic laws.

- 9. INDEPENDENT CONTRACTOR:** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the Division, the Eligible Users, or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor, as an independent contractor, shall have no authorization, express or implied, to bind the Division, the Eligible Users, or the State of Utah to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the Division, the Eligible Users, or the State of Utah. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.
- 10. CONTRACTOR ACCESS TO SECURE Public FACILITIES, PUBLIC DATA, AND TECHNOLOGY:** An employee of Contractor or a Subcontractor may be required to complete a Federal Criminal Background Check, if said employee of Contractor or a Subcontractor will have Access to Secure Public Facilities, Public Data, and Technology. Contractor shall provide the Eligible User with sufficient personal information (at Contractor's own expense) so that a Federal Criminal Background Check may be completed by the Eligible User, at the Eligible User's expense. The Eligible User will also provide Contractor with a Disclosure Form and Confidentiality Agreement which must be filled out by Contractor and returned to the Eligible User. Additionally, each employee of Contractor or a Subcontractor, who will have Access to Secure Public Facilities, Public Data, and Technology, will be scheduled by the Eligible User to be fingerprinted, at a minimum of one week prior to having such access. At the time of fingerprinting, said employee of Contractor or a Subcontractor will disclose, in full, any past record of felony or misdemeanor convictions. The Eligible User is authorized to conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided. The Eligible User may use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) every two years and reserves the right to revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor agrees to notify the Eligible User if an arrest or conviction of any employee of Contractor or a Subcontractor that has Access to Secure Public Facilities, Public Data and Technology occurs during this Contract. Contractor, in executing any duty or exercising any right under this Contract, shall not cause or permit any of its employees or employees of a Subcontractor (if any) who have been convicted of a felony or misdemeanor to have Access to Secure Public Facilities, Public Data, and Technology. A felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred.
- 11. DRUG-FREE WORKPLACE:** Contractor agrees to abide by the Eligible User's drug-free workplace policies while on the Eligible User's or the State of Utah's premises.
- 12. CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor agrees to follow and enforce the applicable code of conduct. Contractor will assure that each employee or each employee of Subcontractor(s) under Contractor's supervision receives a copy of such code of conduct.
- 13. INDEMNITY CLAUSE:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the Division, the Eligible User, or the State of Utah. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
- 14. EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.
- 15. SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
- 16. AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract.
- 17. DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract, by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
- 18. TERMINATION:** Unless otherwise stated in this Contract, this Contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given fourteen (14) calendar days after notification to correct and cease the violations, after which this Contract may be terminated for cause at any time. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon sixty (60) calendar days prior written notice being given the other party. The parties may also agree to terminate this Contract prior to the expiration of this Contract by written agreement.

If Services apply to this Contract, then Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the Division, the Eligible Users, or the State of Utah is limited to full payment



for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract.

- 19. SUSPENSION OF WORK:** Should circumstances arise which would cause the Division to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Division.
- 20. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Division or an Eligible User, if it is reasonably determined that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.
- If a written notice is delivered under this section, the Eligible User will reimburse Contractor for the Goods or Services properly ordered until the effective date of said notice. The Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
- 21. SALES TAX EXEMPTION:** The Goods, Custom Deliverables, or Services being purchased by the Eligible Users under this Contract are being paid from the Eligible User's funds and used in the exercise of the Eligible User's essential function as an Eligible User. The Eligible User will provide Contractor with a copy of its sales tax exemption number upon request. It is the Contractor's responsibility to request the sales tax exemption number from the Eligible User.
- 22. TITLE AND OWNERSHIP WARRANTY:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Good or Custom Deliverable delivered to the Eligible Users under this Contract. Contractor fully indemnifies the Eligible Users for any loss, damages or actions arising from a breach of this warranty without limitation.
- 23. HARDWARE WARRANTY:** Contractor agrees to warrant and assume responsibility for all hardware portions of any Good or Custom Deliverable, that it licenses, contracts, or sells under this Contract, for a period of one (1) year. Contractor acknowledges that all warranties granted to the Division and Eligible Users by the Uniform Commercial Code of the State of Utah apply to this Contract. Product liability disclaimers and/or warranty disclaimers from Contractor are not applicable to this Contract. In general, the Contractor warrants that the hardware: (a) will perform as specified in the Proposal; (b) will live up to all specific claims listed in the Proposal; (c) will be suitable for the ordinary purposes for which the hardware is used; (d) will be suitable for any special purposes that the Division has relied on Contractor's skill or judgment to consider when it advised the Division about the hardware in the Proposal; (e) the hardware has been properly designed and manufactured; and (f) is free of significant defects or unusual problems.
- 24. SOFTWARE WARRANTY:** Contractor warrants that for a period of ninety (90) days from the date of Acceptance that the software portions of the Goods and Custom Deliverables, that Contractor licenses, contracts, or sells to the Eligible Users under this Contract, will: (a) perform in accordance with the specific claims provided in the Proposal; (b) be suitable for the ordinary purposes for which such Goods and Custom Deliverables are used; (c) be suitable for any special purposes that the Eligible User has relied on Contractor's skill or judgment to consider when it advised the Eligible User about the Goods or Custom Deliverables in its Proposal; (d) have been properly designed and manufactured; and (e) be free of significant defects or unusual problems. Contractor agrees to provide the Eligible Users with bug fixes, including informing the Eligible Users of any known software bugs or software defects that may affect the Eligible User's use of the software during the Contract.
- 25. WARRANTY REMEDIES:** Upon breach of the hardware or software warranty, Contractor will repair or replace (at no charge to the Eligible Users) the Goods or Custom Deliverables whose nonconformance is discovered and made known to Contractor. If the repaired and/or replaced products prove to be inadequate, or fail to meet the performance of its essential purpose, Contractor will refund the full amount of any payments that have been made for the failing products. 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.
- 26. UPDATES AND UPGRADES:** Contractor grants to the Eligible Users a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the term of this Contract. Such upgrades and updates are subject to the terms of this Contract. The Eligible Users shall download, distribute, and install all updates as released by Contractor during this Contract, and Contractor strongly suggests that the Eligible Users also download, distribute, and install all upgrades as released by Contractor during this Contract.
- 27. BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With an Eligible User's prior written authorization, Contractor may perform remote diagnostics to work on reported problems, subject to Contractor's obligation of this Contract. In the event that an Eligible User declines remote diagnostics, Contractor and the Eligible User may agree to on-site technical support, subject to the terms of this Contract.
- 28. TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is a part of the Goods or Custom Deliverables that Contractor provides under this Contract, Contractor will use commercially reasonable efforts to respond, in a reasonable time, when technical support or maintenance requests regarding the Goods or Custom Deliverables are made to Contractor.
- 29. SECURE PROTECTION AND HANDLING OF PUBLIC DATA:** If Contractor is given Public Data as part of this Contract, the protection of Public Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of Public Data. To the extent that Contractor is given Public Data, Contractor shall safeguard the confidentiality, integrity and availability of the Public Data and comply with the following conditions:

1. **Network Security:** Contractor agrees at all times to maintain network security that - at a minimum - includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Contractor also agrees to maintain network security that conforms to one of the following:

(1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy* (copy available upon request);

(2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or

(3) Any generally recognized comparable standard that Contractor then applies to its own network and approved by DTS in writing.

2. **Public Data Security:** Contractor agrees to protect and maintain the security of Public Data with protection that is at least as good as or better than that maintained by the State of Utah. These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification).

3. **Public Data Transmission:** Contractor agrees that any and all transmission or exchange of system application data with the Eligible Users and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).

4. **Public Data Storage:** Contractor agrees that all Public Data will be stored and maintained in data centers in the United States. Contractor agrees that no Public Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process. Contractor shall permit its employees and Subcontractors to access non-Public Data remotely only as required to provide technical support. Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.

5. **Public Data Encryption:** Contractor agrees to store all data provided to Contractor, including State, as part of its designated backup and recovery process in encrypted form, using no less than 128 bit key.

6. **Password Protection:** Contractor agrees that any portable or laptop computer that has access to the Eligible Users or State of Utah networks, or stores any Public Data is equipped with strong and secure password protection.

7. **Public Data Re-Use:** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. Contractor further agrees that no Public Data of any kind shall be transmitted, exchanged, or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the Eligible Users.

8. **Public Data Destruction:** The Contractor agrees that upon expiration or termination of this Contract it shall erase, destroy, and render unreadable all Public Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the Eligible User, whichever shall come first, unless the Eligible User provides Contractor with a written directive. It is understood by the parties that the Eligible User's written directive may request that certain data be preserved in accordance with applicable law.

9. **Services Shall Be Performed Within United States:** Contractor agrees that all of the Services related to Public Data that it provides to the Eligible Users will be performed by Contractor and Subcontractor(s) within the borders and jurisdiction of the United States.

**30. SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** Contractor shall immediately inform an Eligible User of any Security Incident or Data Breach.

1. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the Eligible User should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.

2. **Security Incident Reporting Requirements:** Contractor shall report a Security Incident to the Eligible User immediately if Contractor reasonably believes there has been a Security Incident.

3. **Breach Reporting Requirements:** If Contractor has actual knowledge of a confirmed Data Breach that affects the security of any Public Data that is subject to applicable data breach notification law, Contractor shall: (a) promptly notify the Eligible User within 24 hours or sooner, unless shorter time is required by applicable law; (b) take commercially reasonable measures to address the Data Breach in a timely manner; and (c) be responsible for its Data Breach responsibilities, as provided in the next Section.

**31. DATA BREACH RESPONSIBILITIES:** This Section only applies when a Data Breach occurs. Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification in accordance with DTS Policy 5000-0002 Enterprise Information Security Policy (copy available upon request). In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the Eligible User by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach; and (d) in accordance with applicable laws indemnify, hold harmless, and defend DTS and the State of Utah against any claims, damages, or other harm

related to such Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the Eligible User. Contractor shall be responsible for all notification and remedial costs and damages.

**32. CHANGE MANAGEMENT:** If Contractor develops software for the State of Utah then the following paragraphs apply:

1. Contractor agrees to comply with DTS Policy 4000-0003, Software Development Life Cycle Policy. The Software Development Life Cycle Policy requires any Contractor developing software for the State of Utah to work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance. Upon request, the Division agrees to provide Contractor with a copy of the latest version of the Software Development Life Cycle Policy.
2. Contractor agrees to comply with DTS Policy 4000-0004, Change Management Policy. Per the Change Management Policy, any Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify Eligible User's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. The Eligible User will notify Contractor if this change control requirement is applicable. Following this notification, any outages or Data Breaches which are a direct result of Contractor's failure to comply with the Eligible User's instructions and policies following notification will result in Contractor's liability for any and all damages resulting from or associated with the outage or Data Breach. Upon request, the Division agrees to provide Contractor with a copy of the latest version of the DTS Change Management Policy 4000-0004.

**33. PUBLIC INFORMATION:** Contractor agrees that this Contract, any related purchase orders, related invoices, related pricing lists, and the Proposal will be public documents, and may be available for distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, any related purchase orders, related invoices, related pricing lists, and Proposal in accordance with GRAMA. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation. The Division, the Eligible Users, or the State of Utah will not inform Contractor of any request for a copy of this Contract, including any related purchase orders, related invoices, related pricing lists, or the Proposal.

**36. DELIVERY:** Unless otherwise specified in this Contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Contractor is responsible for including any freight charges due by the Eligible User to Contractor when providing quotes to the Eligible User unless otherwise specified in this Contract. Invoices listing freight charges that were not identified in the quote prior to shipment, unless otherwise specified in this Contract, will be returned to the Contractor to remove such costs. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Eligible Users except as to latent defects, fraud, and Contractor's warranty obligations.

**37. ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good or Custom Deliverable to Eligible Users or provide any Good and Custom Deliverable for download from the Internet, if approved in writing by the Eligible Users. Contractor should take all reasonable and necessary steps to ensure that the confidentiality of those electronic deliveries is preserved in the electronic delivery process, and are reminded that failure to do so may constitute a breach of obligations owed to the Eligible Users under this Contract. Contractor warrants that all electronic deliveries will be free of known, within reasonable industry standards, malware, bugs, Trojan horses, etc. Any electronic delivery that includes Public Data that Contractor processes or stores must be delivered within the specifications of this Contract.

**38. ACCEPTANCE PERIOD:** A Good, Custom Deliverable, or Service furnished under this Contract shall function in accordance with the specifications identified in this Contract and Solicitation. If the Goods and Custom Deliverables delivered do not conform to the specifications identified in this Contract and Solicitation ("Defects"), the Eligible Users shall within thirty (30) calendar days of the delivery date ("Acceptance Period") to notify Contractor in writing of the Defects. Contractor agrees that upon receiving such notice, it shall use reasonable efforts to correct the Defects within fifteen (15) calendar days ("Cure Period"). The Eligible User's acceptance of a Good, Custom Deliverable, or Services occurs at the end of the Acceptance Period or Cure Period.

If after the Cure Period, a Good, Custom Deliverable, or Service still has Defects, then the Eligible User may, at its option: (a) declare Contractor to be in breach and terminate this Contract; (b) demand replacement conforming Goods, Custom Deliverables, or Services from Contractor at no additional cost to the Eligible User; or (c) continue the Cure Period for an additional time period agreed upon by the Eligible User and Contractor in writing. Contractor shall pay all costs related to the preparation and shipping of the products returned pursuant to this section. No products shall be accepted and no charges shall be paid until acceptance is met. The warranty period will begin upon the end of the Acceptance Period.

**39. ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the appropriate Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by the Eligible Users will be those prices listed in this Contract. The Eligible Users have the right to adjust or return any invoice reflecting incorrect pricing.

**40. PROMPT PAYMENT DISCOUNT:** Contractor may quote a prompt payment discount based upon early payment. Contractor shall list payment discount terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received.

**41. PAYMENT:**

1. Payments will be made within thirty (30) days from a correct invoice is received, whichever is later. After sixty (60) days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.

2. Unless otherwise stated in this Contract, all payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Eligible User's purchasing card (major credit card). The Division will not allow Contractor to charge electronic payment fees of any kind.
3. The acceptance by Contractor of final payment without a written protest filed with the Eligible User within ten (10) working days of receipt of final payment shall release the Eligible User, the Division, and the State of Utah from all claims and all liability to Contractor for fees and costs pursuant to this Contract.
4. Contractor agrees that if during, or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Eligible Users to Contractor, then Contractor shall, upon written request, immediately refund to the Eligible Users any such overpayments.

**42. INDEMNIFICATION – INTELLECTUAL PROPERTY:** Contractor warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by the Eligible Users in unaltered form, will not, to Contractor's knowledge, infringe any third party copyrights, patents, trade secrets, and/or other proprietary rights that exist on the effective date of this Contract and/or that arise or are enforceable under the law of the United States of America.

Contractor will release, indemnify, and hold the Division, the Eligible Users, and the State of Utah harmless from liability or damages of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in Contractor's performance of this Contract. Additionally, if such a claim or liability is based upon an allegation that a Good, Custom Deliverable, or Service furnished by Contractor infringes on any right protected by any patent, copyright, trademark, trade secret, and/or proprietary right of any third party, Contractor agrees to indemnify and hold harmless the Division, the Eligible Users, and the State of Utah for any judgments, settlements, reasonable costs, and reasonable attorneys' fees resulting from such a claim or liability. Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto; however, the Eligible Users shall have the right, at its option, to participate in the defense of any such action without relieving Contractor of any obligation hereunder. The parties agree that if there are any limitations of liability, including a limitation of liability clause in this Contract, such limitations of liability will not apply to this Section.

**43. OWNERSHIP IN INTELLECTUAL PROPERTY:** The parties each recognize that each has no right, title, or interest, proprietary or otherwise, in or to the name or any logo, or intellectual property owned or licensed by the other. Each agree that, without prior written consent of the other or as described in this Contract, it shall not use the name, any logo, or intellectual property owned or licensed by the other.

**44. OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the Eligible Users, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for Eligible Users and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible Users, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible Users any and all copyrights in and to the Custom Deliverables, subject to the following:

1. Contractor has received payment for the Custom Deliverables,
2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of Eligible Users (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible Users.

Contractor agrees to grant to the Eligible Users a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible Users and the State of Utah to use the Custom Deliverables. The Eligible Users reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's internal business operation under this Contract. The Eligible User and the Division may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

**45. OWNERSHIP, PROTECTION AND USE OF RECORDS:** Except for confidential medical records held by direct care providers, the Eligible Users shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of the Eligible User.

Contractor agrees to maintain the confidentiality of records it holds for the Eligible Users as required by applicable federal, state, or local laws.

- 46. PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES:** In the event that the Eligible User provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor agrees to hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Contract.
- 47. PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION:** All documents and data pertaining to work required by this Contract will be the property of the Eligible Users, and must be delivered to the Eligible Users within thirty (30) working days after termination or expiration of this Contract, regardless of the reason for contract termination, and without restriction or limitation to their future use. The costs for returning documents and data to the Eligible Users are included in this Contract.
- 48. CONFIDENTIALITY:** Confidential Information may be disclosed to the Contractor under the terms of this Contract. If Confidential Information is disclosed to Contractor then Contractor agrees to adhere to the following:
- Contractor will: (a) limit disclosure of any Confidential Information to Authorized Persons who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Contract relates, and only for that purpose; (b) advise its Authorized Persons of the proprietary nature of the Confidential Information and of the obligations set forth in this Contract and require such Authorized Persons to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties, except as otherwise agreed to in writing by the Eligible Users. Contractor will promptly notify the Eligible Users of any misuse or misappropriation of Confidential Information that comes to Contractor's attention.
- Contractor shall be responsible for any breach of this duty of confidentiality contract by any of their officers, agents, subcontractors at any tier, and any of their respective representatives, including any required remedies and/or notifications under applicable law (Utah Code Section 13-44-101 thru 301 et al). Contractor shall indemnify, hold harmless, and defend the Division, the Eligible Users, and State of Utah from claims related to a breach of these confidentiality requirements by Contractor or anyone for whom the Contractor is liable. This duty of confidentiality shall be ongoing and survive the term of this Contract.
- 49. ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Division.
- 50. DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract: (a) nonperformance of contractual requirements or (b) a material breach of any term or condition of this Contract. The Division will issue a written notice of default providing a fourteen (14) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the Division may do one or more of the following: (a) exercise any remedy provided by law; (b) terminate this Contract and any related contracts or portions thereof; (c) impose liquidated damages, if liquidated damages are listed in the contract; (d) suspend Contractor from receiving future solicitations; or (e) request a full refund of the Goods, Custom Deliverables, or Services furnished by Contractor that are defective or Services that were inadequately performed under this Contract.
- 51. TERMINATION UPON DEFAULT:** In the event this Contract is terminated as a result of a default by Contractor, the Division may procure or otherwise obtain, upon such terms and conditions as the Division deems appropriate, Goods, Custom Deliverables, or Services similar to those terminated, and Contractor shall be liable to the Division for any and all cover costs and damages arising therefrom, including attorneys' fees, excess costs and fees, and cost of cover together with incidental or consequential damages, incurred by the Division in obtaining similar Goods, Custom Deliverables, or Services.
- 52. FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Division and the Eligible Users may immediately terminate this Contract after determining such delay will reasonably prevent successful performance of this Contract.
- 53. PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
- 54. WORKERS' COMPENSATION:** Contractor shall maintain during the term of this Contract, workers' compensation insurance for all its employees as well as any subcontractor employees related to this Contract. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction. Contractor acknowledges that within thirty (30) days of contract award, Contractor and/or Subcontractors must submit proof of certificate of insurance that meets the above requirements.
- 55. LIABILITY INSURANCE:** Contractor agrees to provide and to maintain during the performance of this Contract, at its sole expense, a policy of general liability insurance. The limits of the policy shall be no less than \$1,000,000.00 for each occurrence and \$3,000,000.00 aggregate. It shall be the responsibility of Contractor to require any of their Subcontractor(s) to secure the same insurance coverage as prescribed herein for the Contractor.

Contractor must provide proof of insurance to the Division and must add the State of Utah as an additional insured with notice of cancellation. Contractor acknowledges that within thirty (30) days of contract award, Contractor and/or Contractor's Subcontractors must submit proof of certificate of insurance that meets the above requirements. Failure to provide proof of insurance, as required, could result in this Contract being terminated for cause.

- 56. CONFLICT OF TERMS:** Contractor terms and conditions that apply must be in writing and attached to this Contract. No other terms and conditions will apply to this Contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, purchase orders, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: (a) this Attachment A; (b) Contract Signature Page(s); (c) State of Utah's Additional Terms and Conditions, if any; and (d) Contractor Terms and Conditions, if any. Attachment A will be given precedence over any provisions including, limitation of liability, indemnification, standard of care, insurance, or warranty, and will not be nullified by or exception created by more specific terms elsewhere in this Contract.
- 57. ENTIRE AGREEMENT:** This Contract shall constitute the entire agreement between the parties, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
- 58. SURVIVORSHIP:** This paragraph defines the specific contractual provisions that will remain in effect after expiration of, the completion of, or termination of this Contract, for whatever reason: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of Public Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records, including Residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, State, or Local Government Internal Business Processes, including Residuals of such confidential business processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration of, completion, or termination of this contract.
- 59. WAIVER:** The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract.
- 60. CONTRACT INFORMATION:** During the duration of this Contract, the Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.
- 61. COMPLIANCE WITH ACCESSIBILITY STANDARDS:** Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractors must also adhere to Utah Administrative rule R895-14-1-3-3, which states that vendors developing new websites or applications are required to meet accessibility guidelines subject to rule R895 and correct any items that do not meet these guidelines at no cost to the agency; and Rule R895-14-1-4-2, which states that vendors proposing IT products and services shall provide Voluntary Product Accessibility Template® (VPAT™) documents. Contractor acknowledges that all Goods and Custom Deliverables that it licenses, contracts, or sells to DTS under this contract are accessible to people with disabilities.
- 62. RIGHT TO AUDIT:** Contractor agrees to, upon written request, permit Division, or a third party designated by the Division, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel; physical premises; records; technical and physical infrastructures; and any other person, place, or object which may assist the Division or its designee in completing such assessment. In addition, upon request, Contractor shall provide the Division with the results of any audit performed by or on behalf of Contractor that would assist the Division or its designee in confirming Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards.
- 63. LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
- 64. ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions and prices of this Contract.
- 65. INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
- 66. QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
- 67. ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
- 68. REPORTS AND FEES:**
  - 1. Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will

be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.

2. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The quarterly report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address: salesreports@utah.gov.
3. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

4. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

**If Services are applicable to this Contract, the following terms and conditions apply to this Contract:**

69. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence.
70. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
71. **ADDITIONAL INSURANCE REQUIREMENTS:**
  1. Professional liability insurance in the amount as described in the Solicitation for this Contract, if applicable.
  2. Any other insurance policies described or referenced in the Solicitation for this Contract.
  3. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, state, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.
  4. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Contractor must provide proof of the above listed policies within thirty (30) days of being awarded this Contract.
72. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.
73. **STATE REVIEWS, LIMITATIONS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor.

(Revision Date: 3 August 2015)

**PARTICIPATING ADDENDUM**

(hereinafter "Addendum")

For

**NASPO VALUEPOINT** Add description of goods & services**MASTER AGREEMENT NO.** Add contract no.

(hereinafter "Master Agreement")

Between

Insert Contractor Name

(hereinafter "Contractor")

and

State of Hawaii

(hereinafter "Participating State")

**State of Hawaii, State Procurement Office (SPO) Price List Contact No.** add PL No.

This Addendum will add the State of Hawaii as a Participating State to purchase from the NASPO ValuePoint Master Agreement Number insert contract number with insert contractor name.

## 1. Scope:

This addendum covers NASPO ValuePoint describe services lead by insert lead State for use by state agencies and other entities located in the Participating State authorized by the state's statutes to utilize state contracts.

## 2. Participation:

All jurisdictions located within the State of Hawaii, which have obtained prior written approval by its Chief Procurement Officer, will be allowed to purchase from the Master Agreement. Private nonprofit health or human services organizations with current purchase of service contracts governed by Hawaii Revised Statutes (HRS) chapter 103F are eligible to participate in the SPO price/vendor list contracts upon mutual agreement between the Contractor and the non-profit. (Each such participating jurisdiction and participating nonprofit is hereinafter referred to as a "Participating Entity"). Issues of interpretation and eligibility for participation are solely within the authority of the Administrator, State Procurement Office.

## 3. Changes: Replace with specific changes or statements that no changes are required

A. Usage Reports. Contractor shall submit a quarterly State of Hawaii gross sales report to the Participating State contact person listed in Paragraph 5 (or as amended), below, in accordance with the following schedule (or as required):

<u>Quarter Ending</u>	<u>Report Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The quarterly report will be subtotaled by each Purchasing Entity. The quarterly report shall also include any adjustments from prior periods.



- B. The validity of this Addendum, any of its terms or provisions, as well as the right and duties of the parties in this Addendum, shall be governed by the laws of the State of Hawaii. A copy of the Attorney General's General Conditions can be found at <http://spo.hawaii.gov/wp-content/uploads/2014/02/103D-General-Conditions.pdf>. Any action at law or in equity to enforce or interpret the provisions of this Addendum shall be brought in a court of competent jurisdiction in Honolulu, Hawaii. A view of Hawaii
- C. Inspection of Facilities. Pursuant to HRS § 103D-316, the Participating State, at reasonable times, may inspect the part of the plant or place of business of the Contractor or any subcontractor that is related to the performance of a Master Agreement and this Addendum.
- D. Campaign Contributions. The Contractor is notified of the applicability of HRS § 11-355, which prohibits campaign contributions from Contractor during the term of the Addendum if the contractor is paid with funds appropriated by the Hawaii State Legislature.
- E. Purchases by State of Hawaii government entities under this Master Agreement is not mandatory. This Addendum is secondary and non-exclusive.
- F. The State of Hawaii's purchasing card (pCard) is required to be used by the States executive departments/agencies (excluding the Department of Education, the Hawaii Health System Corporation, the Office of Hawaiian Affairs, and the University of Hawaii) for all orders totaling less than \$2,500. For purchases of \$2,500 or more, agencies may use the pCard, subject to its credit limit or issue a purchase order.
- Contractor(s) shall forward original invoice(s), directly to the ordering agency. General excise tax shall not be applied to the delivery charge.
- Pursuant to HRS § 103-10, Participating State and any agency of the Participating State or any county, shall have thirty (30) calendar days after receipt of invoice or satisfactory delivery of goods to make payment. Any interest for delinquent payment shall be as allowed by HRS § 103-10.
- G. Pursuant to HRS §103D-310(c), if Contractor is doing business in the Participating State, Contractor is required to comply with all laws governing entities doing business in the Participating State, including the following HRS chapters.
1. Chapter 237, General Excise Tax Law;
  2. Chapter 383, Hawaii Employment Security Law;
  3. Chapter 386, Workers' Compensation;
  4. Chapter 392, Temporary Disability Insurance;
  5. Chapter 393, Prepaid Health Care Act; and
  6. Certificate of Good Standing for entities doing business in the State.
- The Hawaii Compliance Express (HCE) is utilized for verification of compliance. The SPO will conduct periodic checks to confirm Contractor's compliance on HCE throughout the term of the Addendum.
- H. Effective Date and Contract Period. This Addendum is effective upon the date of execution by the Participating State and shall continue for the term set forth in the Master Agreement.

## 4. Lease Agreements:

Leasing is not authorized by this Addendum

## 5. Primary Contact:

The primary contact individual for this Addendum are as follows (or their named successors:

Participating State

Name: Name of purchasing specialist  
Address: State Procurement Office  
1151 Punchbowl Street, Room 416  
Honolulu, HI 96813  
Telephone: phone number  
Fax: (808) 586-0570  
E-Mail: specialist e-mail address

Contractor

Name:  
Address:  
Telephone:  
Fax:  
E-Mail:

## 6. Subcontractors:

Subcontractors are (or are not) allowed under this Addendum.

## 7. Freight Charges (unless otherwise stated in the master contract):

Prices proposed will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of a full order originally shipped without transportation charges (that failed to ship with the original order, thereby becoming back-ordered) will also be shipped without transportation charges.

## 8. Purchase Order and Payment Instructions:

All purchase orders issued by Participating Entities under this Addendum shall include the Participating State contract number: SPO Price List Contract No. 16-07 and the NASPO ValuePoint Master Agreement Number 06913.

- Purchase Orders and Payments shall be made to add contractor name or authorized subcontractors, if any.

## 9. Participating Entity as Individual Customer:

Each Participating Entity shall be treated as an individual customer. Except to the extent modified by this Addendum, each Participating Entity will be responsible to follow the terms and conditions of the Master Agreement; and will have the same rights and

responsibilities for their purchases as the Lead State has in the Master Agreement. Each Participating Entity will be responsible for its own charges, fees, and liabilities. Each Participating Entity will have the same rights to any indemnity or to recover any costs allowed in the Master Agreement for their purchases. The Contractor will apply the charges to each Participating Entity individually.

10. Entire Contract:

This Addendum and the Master Agreement set forth the entire agreement, and all the conditions, understandings, promises, warranties and representations among the parties with respect to this Addendum and the Master Agreement, and supersedes any prior communications, representations or agreements whether, oral or written, with respect to the subject matter hereof.

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Agreement, that are included in any purchase order or otherwise shall be void. The terms and conditions of this Addendum and the Master Agreement shall govern in the case of any such inconsistent, contrary, or

IN VIEW OF THE ABOVE, the parties execute this Addendum by their signatures, on the dates below.

Participating State: STATE OF HAWAII	Contractor:
Signature:	Signature:
Name: SARAH ALLEN	Name:
Title: Administrator, SPO	Title:
Date:	Date:

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Deputy Attorney General

## Attachment G – Cost Schedule

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### Solicitation Number CH16012 NASPO ValuePoint Cloud Solutions RFP

**Cloud Solutions By Category.** Specify **Discount Percent %** Offered for products in each category. Highest discount will apply for products referenced in detail listings for multiple categories. Provide a detailed product offering for each category.

**Software as a Service** **Discount %** \_\_\_\_\_

**Infrastructure as a Service** **Discount %** \_\_\_\_\_

**Platform as a Services** **Discount %** \_\_\_\_\_

**Value Added Services** **Discount %** \_\_\_\_\_

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**Additional Value Added Services:**

**Maintenance Services**

Onsite Hourly Rate \$ \_\_\_\_\_  
Remote Hourly Rate \$ \_\_\_\_\_

**Professional Services**

- **Deployment Services** Onsite Hourly Rate \$ \_\_\_\_\_  
Remote Hourly Rate \$ \_\_\_\_\_
- **Consulting/Advisory Services** Onsite Hourly Rate \$ \_\_\_\_\_  
Remote Hourly Rate \$ \_\_\_\_\_
- **Architectural Design Services** Onsite Hourly Rate \$ \_\_\_\_\_  
Remote Hourly Rate \$ \_\_\_\_\_
- **Statement of Work Services** Onsite Hourly Rate \$ \_\_\_\_\_  
Remote Hourly Rate \$ \_\_\_\_\_

**Partner Services**

Onsite Hourly Rate \$ \_\_\_\_\_  
Remote Hourly Rate \$ \_\_\_\_\_

**Training Deployment Services**

Onsite Hourly Rate \$ \_\_\_\_\_  
Online Hourly Rate \$ \_\_\_\_\_

**Attachment H – Identification of Service Models Matrix**

Offerors must complete the following form to identify the service models your firm offers under this RFP. You may provide a list of the different SaaS, IaaS, and/or PaaS services that you offer, including the Categorization of Risk that you have the ability to store and secure. This document is to provide purchasing entities and eligible users a quick snap shot of the cloud solutions your firm provides.

<b>Service Model:</b>	<b>Low Risk Data</b>	<b>Moderate Risk Data</b>	<b>High Risk Data</b>	<b>Deployment Models Offered:</b>
SaaS				
IaaS				
PaaS				



# State of Utah Vendor Information Form

Legal Company Name (include d/b/a if applicable)		Federal Tax Identification Number		State of Utah Sales Tax ID Number	
Ordering Address		City	State	Zip Code	
Remittance Address (if different from ordering address)		City	State	Zip Code	
Type <input type="checkbox"/> Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Government <input type="checkbox"/> For-Profit Corporation <input type="checkbox"/> Non-Profit Corporation		Company Contact Person			
Telephone Number (include area code)		Fax Number (include area code)			
Company's Internet Web Address		Email Address			
Offeror's Authorized Representative's Signature					
Type or Print Name					
Position or Title of Authorized Representative					
Date:					

**State of Vermont**  
**Instructions, Terms and Conditions and Required Forms**  
**For Multi-State Cooperative Procurements**

1. **Confidentiality of Bid Documents:** The successful response will become part of the contract file and will become a matter of public record as will all other responses received. If the response includes material that is considered by the bidder to be proprietary and confidential under the Vermont Public Records Act, 1 V.S.A. § 315 et seq., the bidder shall clearly designate the material as such, and include a explaining why such material should be considered confidential. The bidder must identify each page or section of the response that it believes is proprietary and confidential with sufficient grounds to justify each exemption from release, including the prospective harm to the competitive position of the bidder if the identified material were to be released. Under no circumstances can the entire response or price information be marked confidential. Responses that do not comply with the above may not be considered.
2. **Certification for apparel, footwear, and textiles (sweatshop prohibition):** If the subject matter of this solicitation concerns the sale of apparel, footwear, or textiles, then each bidder must provide certification from each supplier that meets the requirements of 29 V.S.A. §922(a) as well as a list of the names and addresses of each supplier, as required by 29 V.S.A. §922(b). In addition, any contract resulting from such solicitation must include the following language:

Contractor certifies that if, at any time during the contract period, there are changes to the information in the certification or to the list of suppliers the contractor will promptly inform the Commissioner of Buildings and General Services of such changes.

3. **Vermont Contract Provisions:** Any contract resulting from this solicitation must include the following provisions:
  - a. *Standard State Provisions for Multistate Procurements*, a copy of which is included herein. Note: These provisions may be modified if, in the determination of the State, the terms of the Master Agreement awarded by the Lead State are no less protective than the standard State provisions.
  - b. *Other State Provisions for Information Technology Procurements* ("Attachment D – Other Provisions"), a copy of which is included herein. Note: These provisions are to be modified to meet the needs of the State depending on the particular technology procurement and the terms of the Master Agreement awarded by the Lead State.
  - c. *Notice to Third Party Licensors/Suppliers of Software Products:* Contractor shall provide the following notice to its third party licensors which are licensing or deemed to license their products to the State in connection with the State's use of any product or service supplied by Contractor to the State under this agreement:

To the extent Contractor' third party licensors license Software products to the State of Vermont (the "State"), in connection with the State's use of Contractor's products, such licensor ("Licensor") shall agree as follows:

    - (a) The State shall not be required to defend or indemnify Licensor or otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or license verification costs of Licensor;
    - (b) The State shall not be required to agree to binding arbitration or otherwise waive the State's right to a jury trial;
    - (c) The State's use of Licensor's product shall be governed by and construed in accordance with the laws of the State of Vermont and any action or proceeding brought by either the State or Licensor in connection with the State's use of Licensor's product shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit.

(d) The State shall not waive nor be deemed to waive the immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution.

(e) Licensor confidentiality shall be subject to the Vermont Public Records Act, 1 V.S.A. § 315 et seq.

(f) Limitations or exclusions of liability shall not apply to State claims arising out of (i) Licensor's obligation to indemnify the State for infringement; (ii) personal injury or damage to real or personal property; or (iii) gross negligence, fraud or intentional misconduct. The parties acknowledge and agree that limits of liability shall not apply to third party claims arising from the acts or omissions of a party in the performance of this Agreement.

(g) To the extent Licensor is a "data collector" for purposes of 9 V.S.A. § 2430, Licensor shall comply with all applicable requirements of 9 V.S.A. § 2435.

(h) Licensor shall have no right to access State systems to audit the State's use of Licensor's product; upon request, the State shall provide Licensor with a certified report concerning the State's use of any software licensed for State use. Settlement payment shall be the exclusive remedy for any non-compliance.

(i) Fair Employment Practices and Americans with Disabilities Act: Licensor agrees to comply with the requirement of Title 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Licensor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by Licensor under this Agreement. Licensor further agrees to include this provision in all subcontracts for services performed in the State of Vermont.

(j) Licensor certifies under the pains and penalties of perjury that Licensor is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.

(k) Licensor certifies that neither Licensor nor Licensor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds. Licensor further certifies under pains and penalties of perjury that Licensor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

The State's use of the Contractor's product, including the third party products embedded therein, shall constitute the third party licensor's acceptance of the foregoing terms.

**4. Required Forms:** The following forms, each included herein, are to be completed and submitted as part of the response to this solicitation, as applicable:

- a. Certificate of Compliance
- b. Offshore Outsourcing Questionnaire
- c. Environmental Information Form
- d. Towns and Schools Questionnaire
- e. Econometric Modeling Questionnaire



**STATE OF VERMONT  
STANDARD STATE PROVISIONS  
FOR MULTI-STATE PROCUREMENTS  
REVISED DECEMBER 2015**

**1. Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** The specific contract to which this form is attached (hereinafter “Agreement”) will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Contractor in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Contractor irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement.

Contractor agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

**2. Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State’s sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State’s immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State’s entry into this Agreement.

**3. Independence:** The Contractor will act in an independent capacity and not as officers or employees of the State.

**4. Defense and Indemnity:** The Contractor shall defend the State and its officers and employees against all third Contractor claims or suits arising in whole or in part from any act or omission of the Contractor or of any agent of the Contractor in connection with the performance of this Agreement. The State shall notify the Contractor in the event of any such claim or suit, and the Contractor shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit. The State retains the right to participate at its own expense in the defense of any claim. The State shall have the right to approve all proposed settlements of such claims or suits. In the event the State withholds approval to settle any such claim, then the Contractor shall proceed with the defense of the claim but under those circumstances, the Contractor’s indemnification obligations shall be limited to the amount of the proposed settlement initially rejected by the State.

After a final judgment or settlement the Contractor may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Contractor shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Contractor in connection with the performance of this Agreement.

The Contractor shall indemnify the State and its officers and employees in the event that the State, its officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Contractor or an agent of the Contractor in connection with the performance of this Agreement.

The Contractor agrees that in no event shall the terms of this Agreement nor any document required by the Contractor in connection with its performance under this Agreement obligate the State to defend or indemnify the Contractor or otherwise be liable for the expenses or reimbursement, including attorneys’ fees, collection costs or other costs of the Contractor except to the extent awarded by a court of competent jurisdiction.

**5. Insurance:** Before commencing work on this Agreement the Contractor must provide certificates of insurance to show that the following minimum coverages are in effect. It is the responsibility of the Contractor to maintain current certificates of insurance on file with the State through the term of the

Agreement. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Contractor for the Contractor's operations. These are solely minimums that have been established to protect the interests of the State.

*Workers Compensation:* With respect to all operations performed, the Contractor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont.

*General Liability and Property Damage:* With respect to all operations performed under this Agreement, the Contractor shall carry general liability insurance having all major divisions of coverage including, but not limited to:

Premises - Operations

Products and Completed Operations

Personal Injury Liability

Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

\$1,000,000 Per Occurrence

\$1,000,000 General Aggregate

\$1,000,000 Products/Completed Operations Aggregate

\$ 50,000 Fire/ Legal/Liability

*Automotive Liability:* The Contractor shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than \$1,000,000 combined single limit.

*Additional Insured.* The General Liability and Property Damage and Automobile coverages required for performance of this Agreement shall include the State of Vermont and its agencies, departments, officers and employees as Additional Insureds. Coverage shall be primary and non-contributory with any other insurance and self-insurance.

*Notice of Cancellation or Change.* There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage(s) without thirty (30) days written notice from the Contractor or its insurer(s) to the State. Any failure to comply with the reporting provisions of this clause shall constitute a material breach of this Agreement and shall be grounds for immediate termination of this Agreement.

**6. Reliance by the State on Representations:** All payments by the State under this Agreement will be made in reliance upon the accuracy of all prior representations by the Contractor, including but not limited to bills, invoices, progress reports and other proofs of work.

**7. False Claims Act:** The Contractor acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* If the Contractor violates the Vermont False Claims Act it shall be liable to the State for civil penalties, treble damages and the costs of the investigation and prosecution of such violation, including attorney's fees, except as the same may be reduced by a court of competent jurisdiction in accordance with the False Claims Act. The Contractor's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Contractor's liability for State claims.

**8. Whistleblower Protections.** The Contractor shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of

authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, the Contractor shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to the Contractor or its agents prior to reporting to any governmental entity and/or the public.

## **9. Federal Requirements:**

**A. Internal Controls:** In the case that this Agreement is an award that is funded in whole or in part by Federal funds, in accordance with 2 CFR Part II, §200.303, the Contractor must establish and maintain effective internal control over the Federal award to provide reasonable assurance that the Contractor is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the award. These internal controls should be in compliance with guidance in “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States and the “Internal Control Integrated Framework”, issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

**B. Mandatory Disclosures:** In the case that this Agreement is an award funded in whole or in part by Federal funds, in accordance with 2CFR Part II, §200.113, Contractor must disclose, in a timely manner, in writing to the State, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures may result in the imposition of sanctions which may include disallowance of costs incurred, withholding of payments, termination of the Agreement, suspension/debarment, etc.

**10. Records Available for Audit:** The Contractor shall maintain all records pertaining to performance under this agreement. “Records” means any written or recorded information, regardless of physical form or characteristics, which is produced or acquired by the Party in the performance of this agreement. Records produced or acquired in a machine readable electronic format shall be maintained in that format. The records described shall be made available at reasonable times during the period of the Agreement and for three years thereafter or for any period required by law for inspection by any authorized representatives of the State or Federal Government. If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved.

**11. Fair Employment Practices and Americans with Disabilities Act:** Contractor agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by the Contractor under this Agreement. Contractor further agrees to include this provision in all subcontracts.

**12. Set Off:** The State may set off any sums which the Contractor owes the State against any sums due the Contractor under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures more specifically provided hereinafter.

## **13. Taxes Due to the State:**

**A.** Contractor understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.

- B. Contractor certifies under the pains and penalties of perjury that, as of the date the Agreement is signed, the Contractor is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C. Contractor understands that final payment under this Agreement may be withheld if the Commissioner of Taxes determines that the Contractor is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.
- D. Contractor also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Contractor has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Contractor has no further legal recourse to contest the amounts due.

**14. Taxation of Purchases.** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.

**15. Sub-Agreements:** Contractor shall not assign or subcontract the performance of this Agreement or any portion thereof to any other Contractor without the prior written approval of the State. Contractor also agrees to include in all subcontract agreements a tax certification in accordance with paragraph 16 above. Contractor shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing work under this Agreement pursuant to an agreement with Contractor or any subcontractor.

**16. No Gifts or Gratuities:** Contractor shall not give title or possession of anything of substantial value (including property, currency, travel and/or education programs) to any officer or employee of the State during the term of this Agreement.

**17. Copies:** Contractor shall use reasonable best efforts to ensure that all written reports prepared under this Agreement are printed using both sides of the paper.

**18. Certification Regarding Debarment:** Contractor certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds.

Contractor further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

**19. Conflict of Interest:** Contractor shall fully disclose, in writing, any conflicts of interest or potential conflicts of interest. Contractor agrees that the failure to disclose any such conflicts shall constitute a material breach of this Agreement and shall be grounds for immediate termination of this Agreement.

**20. Confidentiality:** Contractor acknowledges and agrees that this Agreement and any and all information obtained by the State from the Contractor in connection with this Agreement are subject to the State of Vermont Public Records Act, 1 V.S.A. § 315 et seq.

**21. Force Majeure:** Neither the State nor the Contractor shall be liable to the other for any failure or delay of performance of any obligations under this Agreement to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control rendering

performance illegal or impossible (excluding strikes or lock-outs) (“Force Majeure”). Where Force Majeure is asserted, the nonperforming Contractor must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Agreement, substantially fulfilled all non-excused obligations, and timely notified the other Contractor of the likelihood or actual occurrence of an event described in this paragraph.

**22. Marketing:** Contractor shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.

**23. Termination:** In addition to any right of the State to terminate for convenience, the State may terminate this Agreement as follows:

**A. Non-Appropriation:** If this Agreement extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support this Agreement, the State may cancel at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority.

**B. Termination for Cause:** Either Contractor may terminate this Agreement if a Contractor materially breaches its obligations under this Agreement, and such breach is not cured within thirty (30) days after delivery of the non-breaching Contractor’s notice or such longer time as the non-breaching Contractor may specify in the notice.

**C. No Implied Waiver of Remedies.** A Contractor’s delay or failure to exercise any right, power or remedy under this Agreement shall not impair any such right, power or remedy, or be construed as a waiver of any such right, power or remedy. All waivers must be in writing.

**24. Location of State Data.** No State data received, obtained, or generated by the Contractor in connection with performance under this Agreement shall be processed, transmitted, stored, or transferred by any means outside continental United States, except with the express written permission of the State.

(End of Standard Provisions)

**RFP:**  
**DATE:**

## CERTIFICATE OF COMPLIANCE

**This form must be completed in its entirety and submitted as part of the response for the proposal to be considered valid.**

**TAXES:** Pursuant to 32 V.S.A. § 3113, bidder hereby certifies, under the pains and penalties of perjury, that the company/individual is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due to the State of Vermont as of the date this statement is made. A person is in good standing if no taxes are due, if the liability for any tax that may be due is on appeal, or if the person is in compliance with a payment plan approved by the Commissioner of Taxes.

**INSURANCE:** Bidder certifies that the company/individual is in compliance with, or is prepared to comply with, the insurance requirements as detailed in Section 4 of the State of Vermont Additional Terms and Conditions to the NASPO Terms and Conditions and Required Forms Cooperative Procurements. Certificates of insurance must be provided prior to issuance of a contract and/or purchase order. If the certificate(s) of insurance is/are not received by the Office of Purchasing & Contracting within five (5) days of notification of award, the State of Vermont reserves the right to select another vendor. Please reference the RFP and/or RFQ # when submitting the certificate of insurance.

**CERTIFICATION FOR APPAREL, FOOTWEAR, AND TEXTILES (SWEATSHOP PROHIBITION):** Bidder certifies that the company/individual is in compliance with the requirements as detailed in Section 7 of the State of Vermont Additional Terms and Conditions to the NASPO Terms and Conditions and Required Forms Cooperative Procurements. The contractor must provide certification from each supplier that meets the requirements of 29 V.S.A. §922(a) as well as a list of the names and addresses of each supplier, as required by 29 V.S.A. §922(b). Contractor certifies that if, at any time during the contract period, there are changes to the information in the certification or to the list of supplier the contractor will promptly inform the Commissioner of Buildings and General Services of such changes. The state reserves the right to ask for additional information and / or certifications any time during the contract period. Failure of the vendor to comply with any provision of this certification will be considered a default of the vendor's contract obligations.

**CONTRACT TERMS:** The undersigned hereby acknowledges and agrees to the State of Vermont Additional Terms and Conditions to the NASPO Terms and Conditions and Required Forms Cooperative Procurements.

**TERMS OF SALE:** The undersigned agrees to furnish the products or services listed at the prices quoted. The Terms of Sales are Net 30 days from receipt of service or invoice, whichever is later. Percentage discounts may be offered for prompt payments of invoices, however such discounts must be in effect for a period of 30 days or more in order to be considered in making awards.

**FORM OF PAYMENT:** Would you accept the Visa Purchasing Card as a form of payment? ☐ Yes ☐ No

Insurance Certificate(s): Attached \_\_\_\_\_

Will provide upon notification of award \_\_\_\_\_

Delivery Offered: \_\_\_\_\_ days after notice of award

Terms of Sale: \_\_\_\_\_  
(If Discount)

Quotation Valid for: \_\_\_\_\_ days

Date: \_\_\_\_\_

Name of Company: \_\_\_\_\_

Contact Name: \_\_\_\_\_

Address: \_\_\_\_\_

Fax Number: \_\_\_\_\_

\_\_\_\_\_

E-mail: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Signature (Bid Not Valid Unless Signed)

(Type or Print)

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All returned quotes and related documents must be identified with our request for quote number.

### Offshore Outsourcing Questionnaire

Vendors must indicate whether or not any services are or will be performed in a country other than the United States. Indicate N/A if not applicable.

**Services:**

Proposed Service to be Outsourced	Bid Total	Offshore Dollars	Represents what % of total Contract Dollars	Outsourced Work Location (Country)	Subcontractor

If any or all of the services are or will be outsourced offshore, Vendors are required to provide a cost estimate of what the cost would be to provide the same services onshore and/or in Vermont.

Proposed Service to be Outsourced	Bid Total if provided Onshore	Bid Total if provided in Vermont	Cost Impact	Onshore Work Location	Subcontractor

\_\_\_\_\_  
Name of Bidder:

\_\_\_\_\_  
Signature of Bidder:

\_\_\_\_\_  
Date

**ENVIRONMENTAL INFORMATION FORM**  
**June 1, 2008**

**RECYCLED MATERIALS OR PRODUCTS:**

All bidders are to complete the following information in reference to each item being quoted. Additional pages may be used if necessary.

ITEM #	BRAND/MANUFACTURER	% OF RECYCLED CONTENT	% POST CONSUMER CONTENT

**MERCURY CONTENT CERTIFICATION:**

The undersigned hereby certifies that none of the items quoted in this RFQ/RFP and any contract issued as a result contain mercury except as identified below. Bidders shall also specify the amount of mercury contained in any of the products listed below. Additional pages may be used if necessary.

ITEM	PART #	MERCURY CONTENT

\_\_\_\_\_  
Name of Bidder:\_\_\_\_\_  
Signature of Bidder:\_\_\_\_\_  
Date:



**TOWNS AND SCHOOLS QUESTIONNAIRE****PROVISIONS FOR THE PURCHASE OF SUPPLIES, MATERIALS, AND  
EQUIPMENT FOR TOWNS, SCHOOLS, POLITICAL SUBDIVISIONS,  
AND INDEPENDENT COLLEGES<sup>1</sup> OF THE STATE OF VERMONT**

The Office of Purchasing & Contracting keeps a current file of the contracts that are available to the political subdivisions and colleges. We are continually interested in expanding this file and would appreciate a positive response to the following questions:

1. Will you furnish these products and services to the political subdivisions of the State of Vermont at the same prices, terms and conditions as you quoted in this response? Yes \_\_\_\_\_ No \_\_\_\_\_

If no, kindly outline below the prices, terms, and conditions under which you will agree to supply these needs.

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2. Will you furnish these products and services to the independent colleges of the State of Vermont at the same prices, terms and conditions as you quoted in this response? Yes \_\_\_\_\_ No \_\_\_\_\_

If no, kindly outline below the prices, terms, and conditions under which you will agree to supply these needs.

---

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It should be noted that if you agree to extend these contract terms and prices to the political subdivisions or to independent colleges, all such items furnished will be billed directly to and paid for by the political subdivision or college and neither the State of Vermont, nor its Commissioner of Buildings and General Services, personally or officially, assumes any responsibility.

\_\_\_\_\_  
RESPONSE TITLE:

\_\_\_\_\_  
FIRM NAME:

\_\_\_\_\_  
DATE:

\_\_\_\_\_  
BY:

<sup>1</sup>Independent Colleges are "any institution of higher education chartered in VT and accredited or holding a certificate of approval from the State Board of Education."

## Econometric Modeling Questionnaire

**For bid amounts exceeding \$100,000.00 bidders are required to respond to the questions identified below.**

Act 112 of the Acts of 2012, "An act relating to evaluating net costs of government purchasing," requires the Secretary of Administration and the legislative economist to design and implement a pilot project to help measure the net fiscal impact to the state of certain identified purchases. In order to accomplish this goal, we are seeking data on contracts for goods and services to support the econometric evaluation.

Questions have been identified that may assist the state in the data collection process which will ultimately be used for Econometric Modeling. Indicate N/A if not applicable.

1. Vermont-based company?

Yes: \_\_\_\_\_ No \_\_\_\_\_

2. Describe your companies presence in Vermont:

Description: \_\_\_\_\_  
\_\_\_\_\_

3. Indicate number of employees residing in Vermont: \_\_\_\_\_

4. Indicate percentage (%) of employees residing in Vermont: \_\_\_\_\_(%)

5. Indicate Vermont payroll for most recent fiscal year: \$ \_\_\_\_\_

6. Indicate percent (%) of total payroll in Vermont: \_\_\_\_\_(%)

**When responding to questions 7 and 8, please indicate: Yes, No, or Not known at time of bid.**

7. If Out-of-State Vendor (see Question 1), do you expect to use Vermont subcontractors to fulfill any portion of the Contract? Or, will Vermont be the source of any portion of goods sold? \_\_\_\_\_  
\_\_\_\_\_

8. If Vermont Vendor (see Question 1), will out-of-state subcontractors or goods sourced outside of Vermont be used to fulfill any portion of the contract? \_\_\_\_\_

Name of Bidder: \_\_\_\_\_

Signature of Bidder: \_\_\_\_\_

Date: \_\_\_\_\_

## ATTACHMENT D

### OTHER PROVISIONS

#### 1. ORDER OF PRECEDENCE; CONTRACTOR DOCUMENTATION

The parties specifically agree that any language or provisions contained in a Contractor Document is of no force and effect if such language or provisions conflict with the terms of Attachment C or Attachment D to this Contract. Further, in no event shall any Contractor Document: (a) require indemnification by the State of the Contractor; (b) waive the State's right to a jury trial; (c) establish jurisdiction in any venue other than the Superior Court of the State of Vermont, Civil Division, Washington Unit; (d) designate a governing law other than the laws of the State of Vermont; (e) constitute an implied or deemed waiver of the immunities, defenses, rights or actions arising out of State's sovereign status or under the Eleventh Amendment to the United States Constitution; or (f) limit the time within which an action may be brought hereunder.

For purposes of this Attachment D, "Contractor Document" shall mean one or more document, agreement or other instrument required by the Contractor in connection with the performance of the services set forth in Attachment A hereto, regardless of format, including Contractor's [*insert title of attachment*] attached hereto as Attachment [ ] and any other paper or "shrinkwrap," "clickwrap" or other electronic version thereof.

Notwithstanding any other provision or other unilateral license terms which may be issued by Contractor after the effective date of this Contract, and irrespective of whether any such provisions have been proposed prior to or after the issuance of an order for the products and services being purchased by the State, as applicable, the components of which are licensed under the Contractor Documents, or the fact that such other agreement may be affixed to or accompany the products and services being purchased by the State, as applicable, upon delivery ("shrink wrap"), the terms and conditions set forth herein shall supersede and govern licensing and delivery of all products and services hereunder.

#### 2. TERM OF CONTRACTOR'S DOCUMENTS

Contractor acknowledges and agrees that, to the extent a Contractor Document provides for alternate term or termination provisions, including automatic renewals, such sections shall be waived and shall have no force and effect. All Contractor Documents shall run concurrently with the term of this Contract; provided, however, to the extent the State has purchased a perpetual license to use the Contractor's software, hardware or other services, such license shall remain in place unless expressly terminated in accordance with the terms of this Contract.

#### 3. OWNERSHIP AND LICENSE IN DELIVERABLES

**3.1 Contractor Intellectual Property.** Contractor shall retain all right, title and interest in and to all Contractor Intellectual Property that Contractor delivers to the State in accordance with Attachment A of this Contract. "Contractor Intellectual Property" means any intellectual property, tangible or intangible, that is owned by Contractor and contained in or necessary for the use of the items that Contractor is required to

deliver to the State under this Contract, including Work Product (“Deliverables”). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the Deliverables, the Contractor shall grant the State a royalty-free license for such development and use. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted an irrevocable, perpetual, non-exclusive royalty-free license to any such Contractor Intellectual Property that is incorporated into Work Product.

**3.2 State Intellectual Property; State Intellectual Property; User Name.** The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible; and (ii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, “State Intellectual Property”).

Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

**3.3 Work Product.** **[ALTERNATIVE LANGUAGE AVAILABLE FOR SAAS SOLUTIONS]** All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein.

“Work Product” means any tangible or intangible ideas, inventions, improvements, modifications, discoveries, development, customization, configuration, methodologies or processes, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, work of authorship, specifications, operating instructions, procedures manuals or other documentation, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection),

that is specifically made, conceived, discovered or reduced to practice by Contractor, either solely or jointly with others, pursuant to this Contract. Work Product does not include Contractor Intellectual Property or third party intellectual property.

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State's internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State's obligations with respect to Confidential Information, authorize others to do the same on the State's behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

The Contractor shall not sell or copyright a Deliverable without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Intellectual Property or Contractor Intellectual Property developed outside of this Contract with no assistance from State.

#### **4. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING**

**4.1 Confidentiality of Contractor Information.** The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection with this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes

available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

**4.2 Confidentiality of State Information.** In performance of this Contract, and any exhibit or schedule hereunder, the Party acknowledges that certain State Data (as defined below), to which the Contractor may have access may contain individual federal tax information, personal protected health information and other individually identifiable information protected by State or federal law. [In addition to the provisions of this Section, the Party shall execute the HIPAA Business Associate Agreement attached as Attachment \_\_\_\_]. Before receiving or controlling State Data, the Contractor will have an information security policy that protects its systems and processes and media that may contain State Data from internal and external security threats and State Data from unauthorized disclosure, and will have provided a copy of such policy to the State. State Data shall not be stored, accessed from, or transferred to any location outside the United States.

Unless otherwise instructed by the State, Contractor agrees to keep confidential all information received and collected by Contractor in connection with this Contract ("State Data"). The Contractor agrees not to publish, reproduce, or otherwise divulge any State Data in whole or in part, in any manner or form or authorize or permit others to do so. Contractor will take reasonable measures as are necessary to restrict access to State Data in the Contractor's possession to only those employees on its

staff who must have the information on a “need to know” basis. The Contractor shall use State Data only for the purposes of and in accordance with this Contract. The Contractor shall provide at a minimum the same care to avoid disclosure or unauthorized use of State Data as it provides to protect its own similar confidential and proprietary information.

The Contractor shall promptly notify the State of any request or demand by any court, governmental agency or other person asserting a demand or request for State Data to which the Contractor or any third party hosting service of the Contractor may have access, so that the State may seek an appropriate protective order.

**4.3 Security of State Information.** The Contractor represents and warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

**4.4 Back-Up Policies:** The Contractor’s back-up policies have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

**4.5 Security Breaches; Security Breach Reporting.** To the extent the Contractor or its subcontractors, affiliates or agents handles, collects, stores, disseminates or otherwise deals with State Data, the Contractor acknowledges that in the performance of its obligations under this Contract, it will be a “data collector” pursuant to Chapter 62 of

Title 9 of the Vermont Statutes (9 V.S.A. §2430(3)). The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (including, as applicable, PII, PHI or ePHI) in any format or media, whether encrypted or unencrypted (for example, but not limited to: physical trespass on a secure facility; intrusion or hacking or other brute force attack on any State environment; loss or theft of a PC, laptop, desktop, tablet, smartphone, removable data storage device or other portable device; loss or theft of printed materials; or failure of security policies) (collectively, a “Security Breach”), the Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall analyze and document the incident and provide the required notices, as set forth below.

In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or in the case of a Security Breach by a data collector regulated by the Vermont Department of Financial Regulation (“DFR”), DFR, within fourteen (14) business days of the Contractor’s discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor’s subcontractors, affiliates or agents which may be “data collectors” hereunder. Except to the extent delayed upon request of law enforcement in accordance with 9 V.S.A. §2435(b)(4), within thirty days of the Security Breach or when the Contractor provides notice to consumers pursuant to this Contract, whichever is sooner, the Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification. Further, the Contractor agrees to fully cooperate with the State, assume responsibility for such notice if the State determines it to be appropriate under the circumstances of any particular Security Breach, and assume all costs associated with a Security Breach, including but not limited to, notice, outside investigation and services (including mailing, call center,



forensics, counsel and/or crisis management), and/or credit monitoring, in the sole determination of the State.

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

## **5 SUBCONTRACTORS**

Contractor shall be responsible for directing and supervising each of its subcontractors and any other person performing any of the Work under an agreement with Contractor. Contractor has provided to the State a list of all subcontractors and subcontractors' subcontractors, together with the identity of those subcontractors' workers compensation insurance providers. Contractor shall be responsible and liable to the State for all acts or omissions of subcontractors and any other person performing any of the Services under an agreement with Contractor or any subcontractor.

## **6 CONTRACTOR'S REPRESENTATIONS AND WARRANTIES**

**6.1 General Representations and Warranties.** The Contractor represents, warrants and covenants that:

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no pending litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the Deliverables as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the Deliverables or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.
- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

**6.2 Contractor's Performance Warranties.** Contractor represents and warrants to the State that:

- (i) All Deliverables will be free from material errors and shall perform in accordance with the specifications therefor.
- (ii) Each and all of the services shall be performed in a timely, diligent, professional and workpersonlike manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment. At its own expense and without limiting any other rights or remedies of the State hereunder, the Contractor shall re-perform any services that the State has determined to be unsatisfactory in its reasonable discretion; the State shall have no obligation to pay for services it has determined to be unsatisfactory.
- (iii) All Deliverables supplied by the Contractor to the State shall be transferred free and clear of any and all restrictions on the conditions of transfer, modification, licensing, sublicensing and free and clear of any and all lines, claims, mortgages, security interests, liabilities and encumbrances or any kind.
- (iv) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.

**6.3 Limitation on Disclaimer.** The express warranties set forth in this Contract shall be in lieu of all other warranties, express or implied.

**6.4 Effect of Breach of Warranty.** If, at any time during the term of this Contract, software or the results of Contractor's work fail to perform according to any warranty of Contractor under this Contract, the State shall promptly notify Contractor in writing of such alleged nonconformance, and Contractor shall provide at no additional cost of any kind to the State, the maintenance required.

## **7 INDEMNIFICATION**

The Contractor acknowledges and agrees that the laws and the public policy of the State of Vermont prohibit the State from agreeing to indemnify contractors and other parties. The Contractor agrees that, to the extent a Contractor Document expressly provides for or implies indemnification of the Contractor and/or other third parties by the State, such sections shall be waived and shall have no force and effect with respect to the State.

## **8 PROFESSIONAL LIABILITY AND CYBER LIABILITY INSURANCE COVERAGE**

In addition to the insurance required in Attachment C to this Contract, before commencing work on this Contract and throughout the term of this Contract, Contractor agrees to procure and maintain (a) Technology Professional Liability insurance for any and all services performed under this Contract, with minimum third party coverage of \$\_\_\_\_\_ per claim, \$\_\_\_\_\_ aggregate; and (b) first party Breach Notification Coverage of not less than \$\_\_\_\_\_.

Before commencing work on this Contract the Contractor must provide certificates of insurance to show that the foregoing minimum coverages are in effect.

With respect to the first party Breach Notification Coverage, Contractor shall name the State of Vermont and its officers and employees as additional insureds for liability arising out of this Agreement.

## **8 LIMITATION OF LIABILITY.**

IN NO EVENT WILL THE CONTRACTOR'S LIABILITY FOR ANY DAMAGES TO THE STATE EVER EXCEED \_\_\_\_\_. LIMITS OF LIABILITY FOR STATE CLAIMS WHICH MAY BE AGREED BY THE STATE SHALL NOT APPLY TO STATE CLAIMS ARISING OUT OF: (A) CONTRACTOR'S OBLIGATION TO INDEMNIFY THE STATE; (B) CONTRACTOR'S CONFIDENTIALITY OBLIGATIONS TO THE STATE; (C) PERSONAL INJURY OR DAMAGE TO REAL OR PERSONAL PROPERTY; (D) CONTRACTOR'S GROSS NEGLIGENCE, FRAUD OR INTENTIONAL MISCONDUCT; OR (E) VIOLATIONS OF THE STATE OF VERMONT FRAUDULENT CLAIMS ACT. IN NO EVENT SHALL CONTRACTOR'S LIABILITY BE LIMITED FOR THIRD PARTY CLAIMS AGAINST THE CONTRACTOR WHICH MAY ARISE OUT OF CONTRACTOR'S ACTS OR OMISSIONS IN THE PERFORMANCE OF THIS CONTRACT.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL OR SPECIAL DAMAGES, DAMAGES WHICH ARE UNFORESEEABLE TO THE PARTIES AT THE TIME OF CONTRACTING, DAMAGES WHICH ARE NOT PROXIMATELY CAUSED BY A PARTY, SUCH AS LOSS OF ANTICIPATED BUSINESS, OR LOST PROFITS, INCOME, GOODWILL, OR REVENUE IN CONNECTION WITH OR ARISING OUT OF THE SUBJECT MATTER OF THIS CONTRACT.

The provisions of this Section shall apply notwithstanding any other provisions of this Contract or any other agreement, and shall survive the expiration or termination of this Contract.

## **9 SOVEREIGN IMMUNITY**

The Contractor acknowledges that the State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of any such immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Contract.

## 10 DISPUTE RESOLUTION

**10.1 Governing Law; Jurisdiction.** The Contractor agrees that this Contract, including any Contractor Document, shall be governed by and construed in accordance with the laws of the State of Vermont and that any action or proceeding brought by either the State or the Contractor in connection with this Contract shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. The Contractor irrevocably submits to the jurisdiction of such court in respect of any such action or proceeding. The State shall not be liable for attorneys' fees in any proceeding.

**10.2 Contractor Default.** The Contractor shall be in default under this Contract if Contractor commits any material breach of any covenant, warranty, obligation or certification under this Contract, fails to perform the Services in conformance with the specifications and warranties provided in this Contract, or clearly manifests an intent not to perform future obligations under this Contract, and such breach or default is not cured, or such manifestation of an intent not to perform is not corrected by reasonable written assurances of performance within thirty (30) days after delivery of the State's notice period, or such longer period as the State may specify in such notice.

**10.3 State Default.** State shall be in default under this Contract if State commits any material breach or default of any covenant, warranty, or obligation under this Contract and State fails to cure such failure within thirty (30) business days after delivery of Contractor's notice or such longer period as Contractor may specify in such notice.

**10.4 Trial by Jury.** The Contractor acknowledges and agrees that public policy prohibits the State from agreeing to arbitration and/or from waiving any right to a trial by jury. Therefore, Contractor further acknowledges and agrees that, to the extent a Contractor Document expressly provides for arbitration or waiver of the State's right to a jury trial of the Contractor and/or other third parties by the State, such sections shall be waived and shall have no force and effect with respect to the State.

**10.5 Trade Secret, Patent, and Copyright Infringement.** The State shall not be deemed to waive any of its rights or remedies at law or in equity in the event of Contractor's trade secret, patent and/or copyright infringement.

**10.6 Limits on Actions Prohibited.** The Contractor acknowledges and agrees that 12 V.S.A. § 465 renders null and void any contractual provision which limits the time in which an action may be brought under the contract, or waives the statute of limitations.

**10.7 Continuity of Performance.** In the event of a dispute between the Contractor and the State, each party will continue to perform its obligations under this Contract during the resolution of such dispute unless and until this Contract is terminated in accordance with its terms.

## 11 REMEDIES FOR DEFAULT

In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

## 12 TERMINATION

**12.1 Termination Assistance.** [ALTERNATIVE LANGUAGE AVAILABLE FOR SAAS] Upon nearing the end of the final term of this Contract, and without respect to either the cause or time of such termination, the Contractor shall take all reasonable and prudent measures to facilitate the transition to a successor provider, to the extent required by the State. The primary activities in this turnover are focused on transition planning to ensure operational readiness for the State and/or successor provider. This includes both a knowledge transfer period, and the turnover of the solution and supporting services to the State and/or successor provider. The State shall sign-off on each defined transition milestone to ensure that all transition Deliverables (set forth below), and exit criteria are fully executed based on agreed upon Contract terms. Upon the sooner of a date specified in a notice of termination from either party, or within 90 days of Contract expiration, the Contractor shall:

**Deliverable 1** - Develop a System Turnover Plan at no additional cost to the State. The Solution Turnover Plan shall include, at minimum:

- Proposed approach to Turnover.
- Tasks and subtasks for Turnover.
- Schedule for Turnover.
- Entrance and exit criteria.
- Readiness walkthrough process.
- Documentation update procedures during Turnover.
- Description of Contractor coordination activities that will occur during the Turnover Phase that will be implemented to ensure continued functionality of the Solution and services as deemed appropriate by the State.

**Deliverable 2** - Develop a Solution Requirements Statement at no additional cost that would be required by the State and/or successor provider to fully take over the Solution, technical, and business functions outlined in the Contract. The Statement shall also include an estimate of the number, type, and salary of personnel required to perform the other functions of the project work, implemented solution, and all supporting services. The Statement shall be separated by type of activity of the personnel. The Statement shall include all facilities and any other resources required to operate the Solution, including, but not limited to:

- Telecommunications networks.
- Office space.
- Hardware.
- Software.
- Other technology.

The Statement shall be based on the Contractor's experience in the operation of the Solution and shall include actual Contractor resources devoted to operations activities.

**Deliverable 3** - Develop and submit a Transition Plan including, at minimum:

- Proposed approach to transition.
- Proposed approach for conducting a knowledge transfer from the Contractor to the State or successor provider.
- Proposed approach for consolidating applicable sections from the Contractor's Turnover Plan into the transition planning activity.
- Tasks and activities for transition.
- Personnel and level of effort in hours.
- Completion date.
- Transition Milestones.
- Entrance and exit criteria.
- Schedule for transition.
- Production program and documentation update procedures during transition.
- Readiness walkthrough.
- Parallel test procedures.
- Provider training.
- Interface testing.

The Contractor shall execute the Transition Plan and activities at no additional cost.

The Contractor agrees, after receipt of a notice of termination, and except as otherwise directed by the State, the Contractor shall:

1. Stop work under the Contract on the date, and to the extent, specified in the notice;
2. Immediately deliver to the State all State Data and historical project records in a form acceptable to the State, and copies of all subcontracts and all third party contracts executed in connection with the performance of the Services;
3. Place no further orders or subcontracts for Services, except as may be necessary for completion of such portion of the work under the Contract that is not terminated as specified in writing by the State;
4. Assign, to the extent applicable or as the State may require, all subcontracts and all third party contracts executed in connection with the performance of the Services to the State or a successor provider, as the State may require;

5. Perform, as the State may require, such knowledge transfer and other services as are required to allow the Services to continue without interruption or adverse effect and to facilitate orderly migration and transfer of the services to the successor provider;
6. Complete performance of such part of the work as shall not have been terminated; and
7. Take such action as may be necessary, or as the State may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the State has or may acquire an interest and to transfer that property to the State or a successor provider.

Contractor acknowledges that, if it were to breach, or threaten to breach, its obligation to provide the State with the foregoing assistance, the State would be immediately and irreparably harmed and monetary compensation would not be measurable or adequate. In such circumstances, the State shall be entitled to obtain such injunctive, declaratory or other equitable relief as the State deems necessary to prevent such breach or threatened breach, without the requirement of posting any bond and Contractor waives any right it may have to allege or plead or prove that the State is not entitled to injunctive, declaratory or other equitable relief. If the court should find that Contractor has breached (or attempted or threatened to breach) any such obligations, Contractor agrees that without any additional findings of irreparable injury or other conditions to injunctive or any equitable relief, Contractor will not oppose the entry of an order compelling its performance and restraining Contractor from any further breaches (or attempted or threatened breaches).

**12.3 Contractor Bankruptcy.** Contractor acknowledges that if Contractor, as a debtor in possession, or a trustee in bankruptcy in a case under Section 365(n) of Title 11, United States Code (the "Bankruptcy Code"), rejects this Contract, the State may elect to retain its rights under this Contract as provided in Section 365(n) of the Bankruptcy Code. Upon written request of the State to Contractor or the Bankruptcy Trustee, Contractor or such Bankruptcy Trustee shall not interfere with the rights of the State as provided in this Contract, including the right to obtain the State Intellectual Property.

## **13 ACCESS TO STATE DATA; RETURN OF PROPERTY**

**13.1 Access to State Data.** Within ten (10) business days of a request by State, the Contractor will make available to State a complete and secure (i.e. encrypted and appropriately authenticated) download file of State Intellectual Property and State Data in a format acceptable to State including all schema and transformation definitions and/or delimited text files with documented, detailed schema definitions along with attachments in their native format. *Provided, however,* in the event the Contractor ceases conducting business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or

assets or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Act or any statute of any state relating to insolvency or the protection of rights of creditors, the Contractor shall immediately return all State Intellectual Property and State Data to State control; including, but not limited to, making all necessary access to applicable remote systems available to the State for purposes of downloading all State Data.

**13.2 Return of Property.** Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to State all State Intellectual Property and State Data (including without limitation any Deliverables for which State has made payment in whole or in part), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time.

The Contractor's policies regarding the retrieval of data upon the termination of services have been made available to the State upon execution of this Contract under separate cover. The Contractor shall provide the State with not less than thirty (30) days advance written notice of any material amendment or modification of such policies.

## **14 STATE FACILITIES**

During the term of this Contract, the State may make available to Contractor space in any State facility applicable to the Services, subject to the conditions that Contractor: (i) shall only use such space solely and exclusively for and in support of the Services; (ii) shall not use State facilities to provide goods or services to or for the benefit of any third party; (iii) shall comply with the leases, security, use and rules and agreements applicable to the State facilities; (iv) shall not use State facilities for any unlawful purpose; (v) shall comply with all policies and procedures governing access to and use of State facilities that are provided to Contractor in writing; (vi) instruct Contractor personnel not to photograph or record, duplicate, disclose, transmit or communicate any State information, materials, data or other items, tangible or intangible, obtained or available as a result of permitted use of State facilities; and (vii) return such space to the State in the same condition it was in at the commencement of this Contract, ordinary wear and tear excepted. State facilities will be made available to Contractor on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

## **15 AUDIT**

**15.1 Audit Rights.** Contractor will maintain and cause its permitted contractors to maintain a complete audit trail of all transactions and activities, financial and non-financial, in connection with this Contract. Contractor will provide to the State, its internal or external auditors, clients, inspectors, regulators and other designated representatives, at reasonable times (and in the case of State or federal regulators, at any time required by such regulators) access to Contractor personnel and to any and all Contractor facilities or where the required information, data and records are maintained, for the purpose of performing audits and inspections (including unannounced and random audits) of Contractor and/or Contractor personnel and/or any or all of the records, data and information applicable to this Contract. At a minimum, such audits, inspections and access shall be conducted to the extent permitted or required by any laws applicable to the State or Contractor (or such higher or more rigorous standards, if any, as State or Contractor applies to its own



similar businesses, operations or activities), to (i) verify the accuracy of charges and invoices; (ii) verify the integrity of State Data and examine the systems that process, store, maintain, support and transmit that data; (iii) examine and verify Contractor's and/or its permitted contractors' operations and security procedures and controls; (iv) examine and verify Contractor's and/or its permitted contractors' disaster recovery planning and testing, business resumption and continuity planning and testing, contingency arrangements and insurance coverage; and (v) examine Contractor's and/or its permitted contractors' performance of the Services including audits of: (1) practices and procedures; (2) systems, communications and information technology; (3) general controls and physical and data/information security practices and procedures; (4) quality initiatives and quality assurance, (5) contingency and continuity planning, disaster recovery and back-up procedures for processes, resources and data; (6) Contractor's and/or its permitted contractors' efficiency and costs in performing Services; (7) compliance with the terms of this Contract and applicable laws, and (9) any other matters reasonably requested by the State. Contractor shall provide and cause its permitted contractors to provide full cooperation to such auditors, inspectors, regulators and representatives in connection with audit functions and with regard to examinations by regulatory authorities, including the installation and operation of audit software.

**15.2 Software Licensee Compliance Report.** In lieu of any requirement that may be in a Contractor Document that the State provide the Contractor with access to its system for the purpose of determining State compliance with the terms of the Contractor Document, upon request and not more frequently than annually, the State will provide Contractor with a certified report concerning the State's use of any software licensed for State use pursuant this Contract. The parties agree that any non-compliance indicated by the report shall not constitute infringement of the licensor's intellectual property rights, and that settlement payment mutually agreeable to the parties shall be the exclusive remedy for any such non-compliance.

**15.3 Operations Security.** The Contractor shall cause an SSAE 16 SOC 2 Type 2 audit report to be conducted annually. The audit results and the Contractor's plan for addressing or resolution of the audit results shall be shared with the State within sixty (60) days of the Contractor's receipt of the audit results. Further, on an annual basis, within 90 days of the end of the Contractor's fiscal year, the Contractor shall transmit its annual audited financial statements to the State.

## **16 CONFLICTS OF INTEREST**

Contractor agrees that during the term of this Contract, its performance shall be solely in the best interest of the State. Contractor will not perform services for any person or entity which has also contracted with the State of Vermont in connection with the same project, without express written consent of the State. Contractor shall fully disclose, in writing, any such conflicts of interest, including the nature and extent of the work to be performed for any other person or entity so that the State may be fully informed prior to giving any consent. Contractor agrees that the failure to disclose any such conflicts shall be deemed

an event of default under this Contract, and this Contract shall be terminable immediately.

## **17 MISCELLANEOUS**

**17.1 Taxes.** Most State purchases are not subject to federal or state sales or excise taxes and must be invoiced tax free. An exemption certificate will be furnished upon request covering taxable items. The Contractor agrees to pay all Vermont taxes which may be due as a result of this Contract.

**17.2 Force Majeure.** Neither the State nor the Contractor shall be liable to the other for any failure or delay of performance of any obligations hereunder to the extent such failure or delay shall have been wholly or principally caused by acts or events beyond its reasonable control making it illegal or impossible to perform their obligations under this Contract, including without limitation, acts of God, acts of civil or military authority, fires, floods, earthquakes or other natural disasters, war or riots. If a party asserts Force Majeure as an excuse for failure to perform the party's obligation, then the nonperforming party must prove that it made all reasonable efforts to remove, eliminate or minimize such cause of delay or damages, diligently pursued performance of its obligations under this Contract, substantially fulfilled all non-excused obligations, and timely notified the other party of the likelihood or actual occurrence of an event described in this paragraph.

**17.3 Marketing.** Neither party to this Contract shall refer to the other party in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of such party prior to release.

## **18 IRS TERMS IF FEDERAL TAX INFO WILL BE PROCESSED OR STORED (Per IRS Publication 1075)**

In addition to any other security standard or requirements set forth in this Contract, the Contractor agrees as follows:

### **A. PERFORMANCE**

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by its employees with the following requirements:

1. All work will be done under the supervision of the Contractor or the Contractor's employees.
2. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the Contractor will be prohibited.

3. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
4. The Contractor certifies that the data processed during the performance of this Contract will be completely purged from all data storage components of his or her computer facility, and no output will be retained by the Contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the Contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
5. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the State or his or her designee. When this is not possible, the Contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the State or its designee with a statement containing the date of destruction, description of material destroyed, and the method used.
6. All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
7. No work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval of the IRS.
8. The Contractor will maintain a list of employees authorized access. Such list will be provided to the State and, upon request, to the IRS reviewing office.
9. The State will have the right to void the Contract if the Contractor fails to provide the safeguards described above.

**B. CRIMINAL/CIVIL SANCTIONS:**

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
2. Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and

shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431.

3. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to State records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

#### **C. INSPECTION:**

The IRS and the State shall have the right to send its officers and employees into the offices and plants of the Contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the Contractor is found to be noncompliant with Contract safeguards.

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**CONSENSUS ASSESSMENTS INITIATIVE QUESTIONNAIRE (CAIQ) V3.0.1 GUIDING DOCUMENT PRINCIPLES**

**INTENT OF THIS TAB:** To assist reviewers/users of document to understand both the intent and structure of CAIQ

**GUIDING PRINCIPLES:**

- Questionnaire is organized using CSA 16 governing & operating domains divided into “control areas” within CSA’s Controls Matrix structure
- Questions are to assist both cloud providers in general principles of cloud security and clients in vetting cloud providers on the security of their offering and company security profile
- CAIQ is not intended to duplicate or replace existing industry security assessments but to contain questions unique or critical to the cloud computing model in each control area
- Each question should be able to be answered yes or no
- If a question can’t be answered yes or no then it was separated into two or more questions to allow yes or no answers.
- Questions are intended to foster further detailed questions to provider by client specific to client’s cloud security needs. This was done to limit number of questions to make the assessment feasible and since each client may have unique follow-on questions or may not be concerned with all follow-on questions

p. 288

p. 289

p. 290



p. 292



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**TITLE OF PROJECT (to be inserted by the Division of Purchasing)**  
**SOLICITATION # (to be inserted by the Division of Purchasing)**  
**RFP EVALUATION SCORESHEET**

**DRAFT:** This document is intended to be a draft and should not be returned to the Division of Purchasing. Please return this document to the evaluation committee. This document is not subject to GRAMA pursuant to Utah Administrative Code R33-7-702(2).

**Firm Name:** \_\_\_\_\_

**Evaluator:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Score will be assigned as follows:**

1 = Poor, fails to address the requirements in the RFP

2 = Fair, addresses the requirements in the RFP unsatisfactorily

3 = Good, addresses all requirements in the RFP satisfactorily

4 = Very Good, addresses all requirements in the RFP and may exceed some

5 = Superior, addresses all requirements in the RFP and exceeds them

	Minimum Mandatory Requirements	RFP Section	Evaluation (Pass/Fail)
1	Signature Page	5.1	
2	Cover Letter	5.2	
3	Acknowledgement of Amendments	5.3	
4	Executive Summary	5.4	
5	General Requirements	5.5	
6	Recertification	5.8	
7	Business Profile	6.1	
8	Scope of Experience	6.2	
9	Financials	6.3	
10	Contract Manager	7.1	
11	Cost Proposal Submitted	9.1	

	Scoreable Technical Criteria	RFP Section	Evaluator Score (1-5)	Criteria Weight	% of Tech Criteria	Points Possible	Points Earned	Minimum Required
	<b>BUSINESS INFORMATION</b>	6						
1	Business Profile	6.1		5	1.9%	25.0	0.0	
2	Scope of Experience	6.2		5	1.9%	25.0	0.0	
3	General Information	6.4		5	1.9%	25.0	0.0	
4	Billing and Pricing Practices	6.5		5	1.9%	25.0	0.0	
5	Scope and Variety of Cloud Solutions	6.6		5	1.9%	25.0	0.0	
6	Best Practices	6.7		5	1.9%	25.0	0.0	
	<b>ORGANIZATION AND STAFFING</b>	7						
1	Contract Manager	7.1		5	1.9%	25.0	0.0	
	<b>TECHNICAL REQUIREMENTS</b>	8						
1	Technical Requirements	8.1		10	3.8%	50.0	0.0	
2	Subcontractors	8.2		10	3.8%	50.0	0.0	
3	Working with Purchasing Entities	8.3		10	3.8%	50.0	0.0	
4	Customer Service	8.4		10	3.8%	50.0	0.0	
5	Security of Information	8.5		10	3.8%	50.0	0.0	
6	Privacy and Security	8.6		10	3.8%	50.0	0.0	
7	Migration and Redeployment Plan	8.7		10	3.8%	50.0	0.0	
8	Service of Data Recovery	8.8		10	3.8%	50.0	0.0	
9	Data Protection	8.9		10	3.8%	50.0	0.0	
10	Service Level Agreements	8.10		10	3.8%	50.0	0.0	
11	Data Disposal	8.11		10	3.8%	50.0	0.0	
12	Performance Measures and Reporting	8.12		10	3.8%	50.0	0.0	
13	Cloud Security Alliance Questionnaires	8.13		10	3.8%	50.0	0.0	
14	Service Provisioning	8.14		10	3.8%	50.0	0.0	
15	Back up and Disaster Plan	8.15		10	3.8%	50.0	0.0	
16	Solution Administration	8.16		10	3.8%	50.0	0.0	
17	Hosting and Provisioning	8.17		10	3.8%	50.0	0.0	
18	Trial and Testing Periods	8.18		10	3.8%	50.0	0.0	
19	Integration and Customization	8.19		10	3.8%	50.0	0.0	
20	Marketing Plan	8.20		10	3.8%	50.0	0.0	
21	Value-Added Services	8.21		10	3.8%	50.0	0.0	

22	Supporting Infrastructure	8.22		10	3.8%	50.0	0.0	
23	Alignment of Cloud Computing	8.24		10	3.8%	50.0	0.0	
					<b>100.0%</b>	<b>1325.0</b>	<b>0.0</b>	<b>0.0</b>

Required Technical Point Threshold	RFP Section	Min Percent	Min Points Required	Points Earned	Percent Earned	Evaluation
	4.3.2	70%	927.5	0.0	0.0%	

Cost	RFP Section	Low Cost Option	Offered Cost	Percent of Total	Points Possible	Points Earned
	4.3.3			10%	147.2	0.0

\* Purchasing will use the following cost formula: The points assigned to each offerors cost proposal will be based on the lowest proposal price. The offeror with the lowest Proposed Price will receive 100% of the price points. All other offerors will receive a portion of the total cost points based on what percentage higher their Proposed Price is than the Lowest Proposed Price. An offeror whose Proposed Price is more than double (200%) the Lowest Proposed Price will receive no points. The formula to compute the points is: Cost Points x (2- Proposed Price/Lowest Proposed Price).

Total Evaluation Points	Percent of Total	Points Possible	Points Earned
Total Technical Evaluation Points	90%	1,325.0	0.0
Total Cost Evaluation Points	10%	147.2	0.0
<b>Total Evaluation Points</b>	<b>100%</b>	<b>1,472.2</b>	<b>0.0</b>

**ACKNOWLEDGEMENT OF AMENDMENTS TO RFP (SOLICITATION CH16012)**

This attachment represents that the Offeror has read, reviewed, and understands the totality of Solicitation CH16012, including the final RFP document posted on February 10, 2016.

By signing below, the Offeror attest to reviewing the documents listed above.

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Offeror

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Representative Signature

## Question and Answers for Bid #CH16012 - NASPO ValuePoint Cloud Solutions

### Overall Bid Questions

#### Question 1

On page 105 of the RFP it states:

A successful Offeror will have the ability to provide cloud based services through the following deployment methods:

i. Private cloud. The cloud infrastructure is provisioned for exclusive use by a single organization comprising multiple consumers (e.g., business units). It may be owned, managed, and operated by the organization, a third party, or some combination of them, and it may exist on or off premises.

ii. Community cloud. The cloud infrastructure is provisioned for exclusive use by a specific community of consumers from organizations that have shared concerns (e.g., mission, security requirements, policy, and compliance considerations). It may be owned, managed, and operated by one or more of the organizations in the community, a third party, or some combination of them, and it may exist on or off premises.

iii. Public cloud. The cloud infrastructure is provisioned for open use by the general public. It may be owned, managed, and operated by a business, academic, or government organization, or some combination of them. It exists on the premises of the cloud provider.

iv. Hybrid cloud. The cloud infrastructure is a composition of two or more distinct cloud infrastructures (private, community, or public) that remain unique entities, but are bound together by standardized or proprietary technology that enables data and application portability (e.g., cloud bursting for load balancing between clouds)

Does a vendor have to be able to provide all of these deployment methods- ie-private, hybrid etc. in order to respond to this RFP? Can we only respond to one type of deployment method? (Submitted: Dec 21, 2015 12:46:45 PM MST)

#### Answer

- An offeror can provide a response to all of the deployment methods or to one type of deployment method.

(Answered: Jan 12, 2016 3:01:39 PM MST)

#### Question 2

Section 5.6.16 in the main RFP document references Attachment H. However, Attachment H was not provided in the bid documents. Can the State provide Attachment H? (Submitted: Dec 22, 2015 1:10:07 PM MST)

#### Answer

- Solicitation CH16012 has been revised to include Attachment H. (Answered: Dec 22, 2015 4:00:29 PM MST)

#### Question 3

Is it the intent of the State to exclude small businesses from this bid? The minimum D&B rating requirement is extremely exclusionary to small businesses and we would suggest that small businesses will offer the State the best opportunity for innovation in the fast moving cloud market. (Submitted: Dec 31, 2015 11:39:18 AM MST)

#### Answer

- The participating states want some assurance that a vendor is financially stable and able to complete IT projects of this nature. States are putting significant amounts of tax payer dollars into a contractor to provide a solution. If a small business would like to participate on this effort and cannot qualify on their own, they may want to consider partnering with a larger firm in order to qualify. (Answered: Jan 13, 2016 12:28:55 PM MST)

#### Question 4

Attachment B: Cloud Security Alliance Questionnaires, pp. 85-97 - there is a spreadsheet-like matrix in 2-point font size that is illegible when increased in size. Please provide the matrix as a separate document in a 10-point font or higher so that its contents may be read and answers to the questions inserted. (Submitted: Jan 4, 2016 3:30:06 PM MST)

#### Answer

- The Exhibits to Attachment B have been attached as separate documents. (Answered: Jan 5, 2016 1:01:30 PM MST)

#### Question 5

(Attachment A, Section 16: Insurance): Under what circumstances will the state accept "Claims Made" coverage for professional/network security & privacy liability? (Submitted: Jan 5, 2016 12:17:45 PM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and

Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 13, 2016 1:30:25 PM MST)

#### Question 6

(Attachment A, Section 16: Insurance): Can vendors substitute notice from itself for insurer notice if our insurer won't agree to the notice requirements? (Submitted: Jan 5, 2016 12:18:22 PM MST)

#### Answer

- Yes. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur. (Answered: Jan 12, 2016 2:55:24 PM MST)

#### Question 7

(Attachment A, Section 16: Insurance): Can vendors use a combination of policies to meet the limits requirements they have to satisfy the insurance requirements? (Submitted: Jan 5, 2016 12:18:41 PM MST)

#### Answer

- Yes. Vendors can use an umbrella insurance coverage to meet the insurance requirements. (Answered: Jan 12, 2016 2:55:24 PM MST)

#### Question 8

RFP, p. 5, #2.5 and Attachment E - can an offeror choose not to agree to a participating state's terms (and not respond to RFQs from that participating state)? (Submitted: Jan 5, 2016 12:19:32 PM MST)

#### Answer

- If an offeror is awarded a Master Agreement, and contract negotiations for the Master Agreement are successful, then the offeror will be free to negotiate with other eligible states to enter into Participating Addendums. An offeror does not need to agree to participating state's terms, but can negotiate the terms in the applicable Participating Addendum. (Answered: Jan 12, 2016 2:45:09 PM MST)

#### Question 9

RFP, p. 16, #3.16 - Erate participation. Is it possible to participate in the Erate program with NASPO if the Offeror does not have a SPIN but an Offeror's resellers do? (Submitted: Jan 5, 2016 12:19:50 PM MST)

#### Answer

- If that is allowable under E-Rate program. (Answered: Jan 25, 2016 2:23:05 PM MST)

#### Question 10

RFP, p. 25, #6.3 - Financials - is it acceptable to provide a link to the audited financial statements on our investor relations website due to the length of the financial statements document? (Submitted: Jan 5, 2016 12:20:09 PM MST)

#### Answer

- Yes. A link would be acceptable. (Answered: Jan 5, 2016 1:06:52 PM MST)

#### Question 11

Clarification of ambiguity - RFP, p. 9, #3.4 - exceptions are to be submitted with the proposal response. RFP, p. 12, #3.12 - exceptions are to be submitted as questions during Q&A. (Submitted: Jan 5, 2016 12:20:52 PM MST)

#### Answer

- Section 3.4 only refers to the exceptions and/or additions to the Master Agreement Terms and Conditions. An offeror can redline the Master Agreement Terms and Conditions if it so chooses. While Section 3.12 refers to remaining part of the RFP document. "Any exceptions to the content of the RFP, excluding the Master Agreement Terms and Conditions contained in Attachment A, including the Exhibits to Attachment A, must be addressed within the Q&A period. The Offeror further acknowledges that it has read the RFP, along with the Exhibits, Attachments, and any attached or referenced documents, including the General Provisions." (Answered: Jan 5, 2016 1:06:16 PM MST)

#### Question 12

If a cloud service provider's (CSP) business model is to sell its solutions to end users via resellers, will the State/NASPO allow the CSP to add resellers under them on their contract for fulfillment of their product (i.e. same model Utah uses for the NASPO Data Communications Products and Services contract)? (Submitted: Jan 8, 2016 6:46:13 AM MST)

#### Answer

- Correct. The same model that is used in the NASPO Data Communication contracts can be used for this contract. (Answered: Jan 21, 2016 4:24:21 PM MST)

#### Question 13

If a cloud service provider can use resellers for fulfillment, are the resellers subject to section 8.2 of the RFP? (Submitted: Jan 8, 2016 6:46:38 AM MST)

#### Answer

- Yes. Resellers are subject to 8.2. (Answered: Jan 21, 2016 4:24:21 PM MST)

#### Question 14

If providing multiple cloud offers, what specific sections in 8.1.1 must vendors submit for each cloud offer?

(Submitted: Jan 8, 2016 6:47:11 AM MST)

#### Answer

- No. If a vendor offers multiple cloud offers then it only needs to provide one proposal. However, the proposal should provide details on the cloud offers it provides. (Answered: Jan 13, 2016 1:30:08 PM MST)

#### Question 15

Is the state only accepting bids from cloud solution providers, or are the willing to accept bids from resellers and other parties? (Submitted: Jan 8, 2016 6:51:16 AM MST)

#### Answer

- The state is willing to accept bids/proposals from all eligible offerors that are determined to be responsive and responsible. (Answered: Jan 21, 2016 4:24:21 PM MST)

#### Question 16

What service model would Unified Communications as a service (UCaSS) fall under? (Submitted: Jan 8, 2016 2:51:56 PM MST)

#### Answer

- It is the offerors responsibility to identify the service model.

When choosing between equally plausible service model sub-categories, Offerors should consider several factors:

- 1) Visibility to the Purchasing Entities. The service model sub-categories in the RFP exist to help Purchasing Entities match their requirements with service characteristics. Offerors should select the most intuitive and appropriate service model from the point of view of a Purchasing Entity.
- 2) Primary Focus of the Service. Services may offer a mix of capabilities that span service models in the strict technical sense. For example, a service may offer both IaaS capabilities for processing and storage with some PaaS capabilities for application deployment, or SaaS capabilities for specific applications. In a service mix situation the Offerors should select the service model that is their primary focus.
- 3) Purchasing Entity Role. Offerors should consider the operational role of the Purchasing Entity's primary actual consumer or operator of the service. For example services most often consumed by system managers are likely to fit best as IaaS; services most often consumed by application deployers or developers as PaaS, and services most often consumed by business users as SaaS.
- 4) Lowest Level of Configurability. Offerors can consider IaaS, PaaS and SaaS as an ascending hierarchy of complexity, and select the model with the lowest level of available Purchasing Entity interaction. As an example, virtual machines are an IaaS service often bundled with a range of operating systems, which are PaaS services. The Purchasing Entity usually has access to configure the lower level IaaS service, and the overall service should be considered IaaS. In cases where the Purchasing Entity cannot configure the speed, memory, network configuration, or any other aspect of the IaaS component, consider categorizing as a PaaS service. (Answered: Jan 12, 2016 2:55:24 PM MST)

#### Question 17

To ensure that a vendor submitting a response is authorized to resell a particular cloud service providers offering(s), would the State consider requiring that any dealer, reseller, agent, distributor, etc. submitting a response, include a signed letter of authorization from the cloud service provider certifying their status? (Submitted: Jan 11, 2016 6:21:06 PM MST)

#### Answer

- Yes. If a reseller is submitting a proposal then it should provide some confirmation that it is authorized to provide the specific cloud service. A signed letter would be the best method to demonstrate authorization. The State reserves the right to clarify with any reseller that it is in fact authorized to provide a cloud service. (Answered: Jan 21, 2016 4:24:21 PM MST)

#### Question 18

1. Cloud Solicitation-2.8 states that the solicitation may be re-issued on a biannual basis. Do you mean biennial or biannual? Biannual would be 2x per year, and biennial is every 2 years. (Submitted: Jan 12, 2016 6:09:23 AM MST)

#### Answer

- Correct. The word in section 2.8 should be biennial. This will be corrected in the final version of the RFP document. (Answered: Jan 12, 2016 3:00:37 PM MST)

#### Question 19

2. Cloud Solicitation-9. Cost Proposal- states that we must provide a discount from a commercially available price list in paragraph 1, yet in paragraph 2 it states that the discount is to be from a government pricing catalog. Many vendors do not have government price lists. Please confirm that we can use either commercial or

government price lists to determine our discounts. (Submitted: Jan 12, 2016 6:10:05 AM MST)

**Answer**

- If possible offerors should submit a government pricing catalog; however, if an offeror does not have a government pricing catalog then it can use its commercial price lists. (Answered: Jan 12, 2016 3:00:37 PM MST)

**Question 20**

3. Attachment G-Cost Proposal and Score sheet-Please explain how you will use your cost formula shown in the Score sheet when comparing discounts from list. Would you look at who is giving the highest discount? If so, this may not be an accurate comparison as some price lists have much higher prices for similar services and can therefore provide a higher net discount which may not result in a true bottom line cost savings (Submitted: Jan 12, 2016 6:10:25 AM MST)

**Answer**

- Offerors that provide a price schedule with a minimum discount from its Cloud Solutions will receive 152.8 points. If an Offeror fails to provide a discount or a price schedule as required by Section 9.1 its proposal will be disqualified. (Answered: Jan 12, 2016 3:00:37 PM MST)

**Question 21**

Attachment A-5. Assignments/Subcontracts-Would the State Add the Language in italics so that approval/disapproval by the Lead State is timely and reasonable

5. Assignment/Subcontracts: Contractor shall not assign, sell, transfer, or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State , "which consent shall not be unreasonably withheld". (Submitted: Jan 12, 2016 6:13:15 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 22**

Attachment A-7 Termination-Please allow language in italics to insure that Contractors have had 30 days written notice to cure prior to termination of the contract for cause.

Termination of the Master Agreement due to Contractor default may be immediate " if Contractor shall have failed to cure any such default within thirty (30) days of written notice thereof ." (Submitted: Jan 12, 2016 6:15:43 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 23**

Attachment A 8. Confidentiality, Non-Disclosure and Injunctive Relieve b. Non-Disclosure. Please allow addition of language in italics and delete (industry standard of confidentiality) . Since there is no industry standard, Contractors should be bound to their own reasonable degree of care for confidential information

Contractor shall hold Confidential Information in confidence, using at least the "same degree of care it applies to its own confidential information, but in no event less than a reasonable degree of care", and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose (Submitted: Jan 12, 2016 6:20:22 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 24**

Attachment A, 8. Confidentiality, Non-Disclosure and Injunctive Relieve c. Injunctive Relief. Please delete the word (acknowledges) and add "has been advised"

Contractor (acknowledges) "has been advised" that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages (Submitted: Jan 12, 2016 6:24:25 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)



**Question 25**

Attachment A 10. Defaults and Remedies. Please allow the addition of "by either party" in italics below. Both parties should be held accountable for nonperformance or material breach, as either party's lack of performance or breach would impact the other party's performance.

(1) Nonperformance "by either party" of contractual requirements; or

(2) A material breach "by either party" of any term or condition of this Master Agreement; or (Submitted: Jan 12, 2016 6:34:46 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 26**

Attachment A-12. Force Majeure. Please insert the language in parenthesis as entities should continue to pay for goods or services that have been delivered prior to the Force Majeure event.

12. Force Majeure : Neither party shall be in default by reason of any failure in performance of this Contract (except for a failure to pay for goods or services delivered prior to the occurrence of a force majeure event) in accordance with reasonable control and without fault or negligence on their part. (Submitted: Jan 12, 2016 6:43:24 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 27**

Attachment A. 13. Indemnification, Paragraph B. Please add language in parenthesis as vendors cannot indemnify Intellectual property for other 3rd party manufacturers products if that third party manufacturer does not provide that level of indemnification.

The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity" if and to the extent that the respective manufacturers of the Product provide such indemnification to end users thereof." (Submitted: Jan 12, 2016 6:45:56 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 28**

Attachment A. 16-Insurance-Please allow claims based and allow additional language that if such policies were to be cancelled prior to the expiration of the contract, that tail coverage would be purchased and maintained for at least a three (3) year minimum. Contractor also agrees that it shall be solely responsible for any self-insured retention or deductibles maintained on any of the policies referenced in this section.

Section 1) Please allow Contractors to add that they agree that insurance limiters may be satisfied using any combination of underlying and excess/umbrella policies.

Regarding cancellation, please allow standard cancellation language that provides for the insurance broker to notify Purchasing of any changes in accordance with insurance provisions-not the Vendor. (Submitted: Jan 12, 2016 6:52:21 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 29**

Attachment A- 22. Data Access Controls. Please add language in italics as vendors would have to share information without purchasing's express written consent if required to share the information by law.

"Unless required by law", Contractor may not share a Purchasing Entity's Data with its parent corporation, other affiliates, or any other third party without the Purchasing Entity's express written consent. (Submitted: Jan 12, 2016 6:54:00 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 30**

Attachment A. 25. Purchasing Entity Data Please add language in parenthesis as many corporations utilize third party legal counsel and accounting firms for which they would need to disclose information. No information regarding Purchasing Entity's use of the Service may be disclosed, provided, rented or sold to any third party (with the exception of Contractor's legal counsel and accountants) for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. The obligation shall extend beyond the term of this Master Agreement in perpetuity. (Submitted: Jan 12, 2016 7:00:47 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 31**

Attachment A-26. Records and Administration and Audit. a. Please allow vendors to provide "copies" of our books instead of our actual books, as vendors would need to keep their original files. In addition, please change the right to audit from six (6) years to two (2) years as we believe that this is sufficient time and more reasonable. (Submitted: Jan 12, 2016 7:03:12 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 32**

Attachment A-26. Records and Administration and Audit. Would you allow the addition of a paragraph e. at the end of the audit section as it clarifies what a vendor may have examined during an audit, the time, costs, etc. e. Any audit or inspection authorized by this Master Agreement shall be limited to copies of records in the possession or control of Contractor in order to determine Contractor's compliance with the terms and conditions hereunder, and only to the extent such records solely and directly relate to Contractor's performance under this Master Agreement. The cost of any such audit or inspection shall be at the sole expense of the Lead State, Participating Entity, or Purchasing Entity, and shall be conducted at the Contractor location(s) where such records are maintained. All Contractor information shall be considered confidential. Audits may be conducted no more than once per year, upon reasonable written notice to Contractor, during Contractor's normal business hours, with minimal business disruption to Contractor. (Submitted: Jan 12, 2016 7:21:42 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 33**

Attachment A. 28. System Failure and Damage- Please allow vendors to add language in italics below as efforts need to be defined.

28. System Failure or Damage: In the event of system failure or damage caused by Contractor or its Services, the Contractor agrees to use its "commercially reasonable" best efforts to restore or assist in restoring the system to operational capacity (Submitted: Jan 12, 2016 7:23:00 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 34**

Attachment A-31-Warranty Please delete e and f and add the paragraph below as vendors may be utilizing third party software.

" Contractor's sole liability (and Lead State's, Purchasing Entity's and Participating Entity's exclusive remedy) for any warranty claim shall be for Contractor to re-perform the deficient Services, or, if Contractor fails to remedy such deficiency within thirty (30) days of notice of a claim, to void the invoice for the

deficient Services. Contractor shall have no obligation with respect to a warranty claim (i) if notified of such claim more than thirty (30) days after the Services in question were first performed or (ii) if the claim is the result of third-party hardware or software failures, or the actions of Lead State, Purchasing Entity or Participating Entity, or a third party.

(b) THIS SECTION 31 SETS FORTH THE ONLY WARRANTIES MADE BY CONTRACTOR. CONTRACTOR HEREBY DISCLAIMS ALL OTHER OTHER WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT. ALL SOFTWARE AND HARDWARE PROVIDED OR INSTALLED BY CONTRACTOR ARE SUBJECT EXCLUSIVELY TO THE RESPECTIVE MANUFACTURERS WARRANTY. " (Submitted: Jan 12, 2016 7:25:05 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 35**

Attachment A-Terms and Conditions 43-Entire Agreement. Please allow deletion of language in parenthesis below as suppliers utilizing third party software cannot alter the terms and conditions of the software. This Master Agreement, along with any attachment, contains the entire understanding of the parties hereto with respect to the Master Agreement unless a term is modified in a Participating Addendum with a Participating Entity. (Delete-No click-through, or other end user terms and conditions or agreements required by the Contractor (Additional Terms) provided with any Services hereunder shall be binding on Participating Entities or Purchasing Entities, even if use of such Services requires an affirmative acceptance of those Additional Terms before access is permitted.) (Submitted: Jan 12, 2016 7:35:06 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 36**

Attachment A-43. Entire agreement-Please allow the additional paragraph to this section in italics below as this defines the liability of the Contractor.

" ADD- LIMITATION OF LIABILITY. (A) CONTRACTOR SHALL NOT BE LIABLE TO THE LEAD STATE, PURCHASING ENTITY OR PARTICIPATING ENTITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR INTERRUPTION OF SERVICES, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF REVENUE, LOSS OF DATA, OR LOSS OR INCREASED EXPENSE OF USE), WHETHER IN AN ACTION IN CONTRACT, WARRANTY, TORT (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE), OR STRICT LIABILITY, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LIABILITIES. CONTRACTOR SHALL NOT BE RESPONSIBLE FOR PROBLEMS THAT OCCUR AS A RESULT OF THE USE OF ANY THIRD-PARTY SOFTWARE OR HARDWARE. (B) EXCEPT FOR GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, CONTRACTOR'S TOTAL LIABILITY TO THE LEAD STATE, PURCHASING ENTITY AND PARTICIPATING ENTITY ARISING OUT OF SERVICES PERFORMED UNDER THIS MASTER AGREEMENT, REGARDLESS OF THE LEGAL THEORY UPON WHICH SUCH LIABILITY MAY BE BASED, SHALL NOT EXCEED IN THE AGGREGATE THE TOTAL PAYMENTS MADE BY LEAD STATE, PURCHASING ENTITY OR PARTICIPATING ENTITY TO CONTRACTOR FOR THE SERVICES IN QUESTION IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST OCCURRENCE OF THE EVENT GIVING RISE TO SUCH LIABILITY." (Submitted: Jan 12, 2016 7:36:51 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 1:57:23 PM MST)

**Question 37**

Exhibit 1 (Saas) 7. Termination and Suspension of Service- Please clarify that "purchasing entity" should be capitalized in the section. (Submitted: Jan 12, 2016 8:51:57 AM MST)

**Answer**

- Correct the purchasing entity should be capitalized in this section. (Answered: Jan 12, 2016 2:26:19 PM MST)

**Question 38**

Exhibit 1 (SaaS) 18. Right to Remove Individuals-Please add language in quotation marks and delete language in parenthesis. Reasonable judgement and reasoning should be used in a request to remove an

individual from a project, and any removal should be subject to applicable law.

18. Right to Remove Individuals: "Add-Subject to Applicable Law the" (Delete-The ) Purchasing Entity shall have the right at any time to (delete require) "add- request" that the Contractor remove from interaction with Purchasing Entity any Contractor representative who the Purchasing Entity "add-reasonably" believes is detrimental to its working relationship with the Contractor. (Submitted: Jan 12, 2016 8:55:55 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 2:26:19 PM MST)

**Question 39**

Exhibit 1, (SaaS) 20. Compliance with Accessibility Standards-Please add language in quotation marks as most accessibility standards would apply to the equipment being utilized such as the computer and not the software.

The Contractor shall comply, with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973, or any other state laws or administrative regulations identified by the Participating Entity "Add- if they are applicable to the software or material provided. " (Submitted: Jan 12, 2016 8:57:41 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 2:26:19 PM MST)

**Question 40**

Exhibit 1 (SaaS) 23. Subscription Services-Please add language in quotation marks. The Click T&C's of software should govern. Vendors utilizing third party software do not have the right to waive click T&C's.

(i) access and use the Service for its business purposes; (ii) for SaaS, use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use Contractor's documentation. No Contractor terms, including standard click through license or website terms or use of privacy policy, shall apply to Purchasing Entities unless such terms are included in this Master Agreement. "Add- Subscription terms are limited and governed by the terms of the manufacturer's software license as provide in the RFP response. " (Submitted: Jan 12, 2016 8:59:51 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 2:26:19 PM MST)

**Question 41**

Exhibit 2-(PaaS) 5.c. Breach Responsibilities-Please add language in quotation marks and delete language in parenthesis. Costs should be limited to that which is reasonable to move than just the Purchasing Entity.

c. Unless otherwise stipulated, if a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release (Delete- as reasonably determined by the Purchasing Entity) the Contractor shall bear the "add-reasonable" costs associated with (1) the investigation and resolution of the data breach; (Submitted: Jan 12, 2016 9:02:20 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 2:26:19 PM MST)

**Question 42**

Exhibit 2 (PaaS) 19. Compliance with Accessibility Standards-Please add language in quotation marks as most accessibility standards would apply to the equipment being utilized, not the software.

The Contractor shall comply, with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973, or any other state laws or administrative regulations identified by the Participating Entity "Add- if they are applicable to the software or material provided. " (Submitted: Jan 12, 2016 9:03:57 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 2:26:19 PM MST)

**Question 43**

Exhibit 2, (PaaS) 22. Subscription Terms- Please add language in quotation marks as click T&C should govern. Vendors do not have the right to waive the click T&C of third party software. Also, please clarify that if we include click T&C's of the software that we are offering with our bid, that they will become a part of our offer and award and will take precedence.

(iii) view, copy, upload and download (where applicable), and use Contractor's documentation.

No Contractor terms, including standard click through license or website terms or use of privacy policy, shall apply to Purchasing Entities unless such terms are included in this Master Agreement. "Add-Subscription terms are limited and governed by the terms of the manufacturer's software license as provide in the RFP response.

" (Submitted: Jan 12, 2016 9:07:38 AM MST)

#### **Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 2:26:19 PM MST)

#### **Question 44**

Exhibit 1 (SaaS) and Exhibit 3 (IaaS) 4. Security Incident or Data Breach Notification b and c.

We believe that this should say "unreasonable" instead of "reasonable". Please confirm and correct.

b. Security Incident Reporting Requirements: The Contractor shall report a security incident to the Purchasing Entity identified contact immediately as soon as possible or promptly without out "Add-un"reasonable delay, or as defined in the SLA. (Submitted: Jan 12, 2016 9:10:46 AM MST)

#### **Answer**

- Correct. The should be "unreasonable delay". It will be changed in the final RFP document. (Answered: Jan 12, 2016 2:26:19 PM MST)

#### **Question 45**

Exhibit 1 (SaaS) and 3 (IaaS) 5. c. Breach Responsibilities-Please delete language in parenthesis and add language in quotation marks. Cost should be limited to that which is reasonable to more than just the Purchasing Entity.

c. Unless otherwise stipulated, if a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data or otherwise prevent its (Delete- release as reasonably determined by the Purchasing Entity) the Contractor shall bear the "Add-reasonable" costs associated with (1) the investigation and resolution of the data breach; (Submitted: Jan 12, 2016 9:31:38 AM MST)

#### **Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 2:26:19 PM MST)

#### **Question 46**

Exhibiti 1 (SaaS) and 3 (IaaS) 19-Subscription terms.

Please clarify that this paragraph allows vendors to submit the click terms and conditions of software, and that these terms will become a part of the Master Agreement.

Exhibit 1 and 3-to Master Agreement Item 19- No Contractor terms, including standard click through license or website terms or use of privacy policy, shall apply to Purchasing Entities unless such terms are included in this Master Agreement. (Submitted: Jan 12, 2016 9:36:13 AM MST)

#### **Answer**

- If an offeror has click through agreements or additional terms and conditions then it must attach them to its proposal. The agreement or additional terms and conditions will be negotiated and , if awarded a contract, will become a part of the final Master Agreement for that offeror.

This term is to prevent offerors from requiring purchasing entities to agree to click through agreements before using an offeror's service even though a Master Agreement and Participating Addendum have been signed.

(Answered: Jan 12, 2016 2:26:19 PM MST)

#### **Question 47**

Exhibit 1 (SaaS), 2 (PaaS) and 3 (IaaS) 2. Data Protection a. Please allow additional language in quotation marks as vendor can only maintain security measures within their own organization.

2. a. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures "Add- within its own organization" to safeguard against unauthorized access, ... (Submitted: Jan 12, 2016 9:38:14 AM MST)

#### **Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12,

2016 2:26:19 PM MST)

#### Question 48

Exhibit 1 (Saas), 2 (Paas) and 3 (laas) 2. Data Protection e and f.

Add language in quotation marks as data should be limited to what is intended for the exclusive use of the Purchasing Entity and exclusively in connection with the Master Agreement

e. At no time shall any data or processes "that either belong to or are intended for the "Add- exclusive" use of a Purchasing Entity or its officers, agents or employees " be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the Purchasing Entity.

f. The Contractor shall not use any information collected "Add-exclusively" in connection with the Services issued from this Master Agreement for any purpose other than fulfilling the Services. (Submitted: Jan 12, 2016 9:40:04 AM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 2:26:19 PM MST)

#### Question 49

Exhibit 1 (Saas), 2 ((Paas) and 3 (laas) 3. Background Checks

Add language in quotation marks as background check should be subject to applicable law-

8. Background Checks : Upon the request of the Purchasing Entity "ADD-and subject to applicable law," the Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, (Submitted: Jan 12, 2016 9:41:22 AM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 2:26:19 PM MST)

#### Question 50

Exhibiti 1, (Saas) 2 (Paas) and 3 (laas) 10. Contract Audit

Please add language in quotation marks as notice should be reasonable and be performed during a Contractors normal working hours. Delete language in parenthesis.

Add language in blue as notice should be reasonable and be performed during a contractors normal working hours. , delete language in red-10.

Contract Audit: (Delete-The) "ADD-Upon reasonable written notice to the" Contractor, the Contractor shall allow the Purchasing Entity to audit conformance to the Master Agreement terms. The Purchasing Entity may perform this audit or contract with a third party at its discretion and at the Purchasing Entity's expense "ADD- during Contractor's normal business hours with minimum business disruption to Contractor. All audits shall be limited to records in the possession or control of Contractor that solely and directly relate to Contractor's performance under the Master Agreement and shall be treated by Purchasing Entity as confidential." (Submitted: Jan 12, 2016 9:45:32 AM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. If an offeror takes exception and/or additions to the Master Agreement Terms and Conditions, then Offeror must provide all documents in Microsoft Word format for redline editing. (Answered: Jan 12, 2016 2:26:19 PM MST)

#### Question 51

Exhibits 1 (Saas) 2, (Paas) and 3 (laas) 15. Import and Export of Data-Please clarify that "Contractors" should not be capitalized. (Submitted: Jan 12, 2016 9:46:48 AM MST)

#### Answer

- Yes contractors should not be capitalized. (Answered: Jan 12, 2016 2:26:19 PM MST)

#### Question 52

RFP Section 5.5.14- Please clarify that click through agreements and terms of use of respective manufacturers of the hardware and software products that encompass the proposed Cloud solution may be attached to a vendor's offer, and will be made a part of the Master Agreement. (Submitted: Jan 12, 2016 9:48:23 AM MST)

#### Answer

- If an offeror has click through agreements or additional terms and conditions then it must attach them to its proposal. The agreement or additional terms and conditions will be negotiated and , if awarded a contract, will become a part of the final Master Agreement for that offeror. (Answered: Jan 12, 2016 2:26:19 PM MST)

#### Question 53

RFP Section 3.12, paragraph 1 and RFP Section 5.1 call for a completed and signed RFP page which is to be provided by the Lead State as an attachment in BidSync.

This document is currently provided as a .htm file and also appears in the Packet\_for\_Bid with significant white space splitting the pages. Can the Lead State provide this as a print-friendly PDF and/or as an official standard form for us to complete and sign? (Submitted: Jan 12, 2016 1:47:50 PM MST)

**Answer**

- This file will be uploaded as a separate document by 1/13/2016. (Answered: Jan 12, 2016 3:00:37 PM MST)

**Question 54**

Per RFP 5.2.8, we are to provide a statement of proposal validity for 180 days from the "proposal opening date." Does this mean the date the RFP was released or the date the Government opens proposal packages for evaluation? (Submitted: Jan 13, 2016 9:40:53 AM MST)

**Answer**

- It means the date the government opens the proposals, which will be the closing date of the solicitation. (Answered: Jan 13, 2016 12:28:55 PM MST)

**Question 55**

RFP Section 1.1.1

Can state confirm that OEMs can use resellers as fulfillment partners to issue quotes, receive orders, and take payments directly from the customer?

Also, in addition to OEM's own cloud service offerings, can an OEM also offer separate value-added cloud service offerings of its authorized resellers, which may not otherwise be available on the OEM's price list?

(Submitted: Jan 13, 2016 2:04:33 PM MST)

**Answer**

- OEMs can use resellers as fulfillment partners.

OEMs may only provide value-added services that have been included in the contract. (Answered: Jan 21, 2016 4:24:21 PM MST)

**Question 56**

RFP Section 3.16 "As an OEM, we plan to use resellers if we are awarded this contract. Therefore, could such resellers use their Service Provider Identification Number or "SPIN" numbers in processing E-Rate orders? (Submitted: Jan 13, 2016 2:07:11 PM MST)

**Answer**

- Yes. (Answered: Jan 14, 2016 12:39:31 PM MST)

**Question 57**

Section 5.5.8

Section states "Offeror must at a minimum complete, provide, and maintain a completed a Level 1 CSA STAR Registry Self-Assessment and submit a copy under this RFP. Offeror must represent and warrant that it will keep this CSA Star Self-Assessment current on an annual basis and must be provide it to a Purchasing Entity when requested. Offeror must also represent and warrant the accuracy and currency of the information on the completed CSA Star Self-Assessment Form."

This appears contradicted by 8.13.a: "Level 1 CSA STAR Registry Self-Assessment complete an available through CSA STAR, as required by Mandatory Minimum 4.1.9."

Must the self assessment be uploaded to CSA STAR?. 5.5.8 implies that that is not necessary. (Submitted: Jan 13, 2016 2:10:22 PM MST)

**Answer**

- No the assessment does not need to be uploaded to CSA Star. The completed document needs to be attached to an Offeror's proposal. (Answered: Jan 25, 2016 2:23:05 PM MST)

**Question 58**

Section 5.5.12

States that "Offeror, as part of its proposal, must provide a sample of its Service Level Agreement (SLA) that contains at a minimum, the terms described in Section 8.13 of the RFP"

Section 8.13 describes the CSA STAR Assessment not SLA terms. What section should be referenced?

(Submitted: Jan 13, 2016 2:11:49 PM MST)

**Answer**

- The section that should be referenced is 8.12. This change will be made in the final RFP document. (Answered: Jan 14, 2016 12:39:31 PM MST)

**Question 59**

Section 8.1.1

Offerors are instructed to "Keep responses brief and to the point of how the service meets the requirement, within the indicated page limit."

Where is the indicated page limit stated? (Submitted: Jan 13, 2016 2:12:40 PM MST)

**Answer**

- There is no page limit to this solicitation; however, Offerors are strongly encouraged to keep responses concise.

(Answered: Jan 14, 2016 12:39:31 PM MST)

**Question 60**

Section 8.1.3

States "Offeror must identify for each service category(ies) the areas that each service category. For example if an Offeror provides a SaaS offering then it should be divided into education SaaS offerings, e-procurement SaaS offerings, information SaaS offering, etc. "

Please clarify, especially the first sentence. (Submitted: Jan 13, 2016 2:13:53 PM MST)

**Answer**

- It should state that "Offeror must identify for each service category(ies) the subcategories for each service category."

If an Offeror provides SaaS services then it should provide a list of the subcategories within the SaaS category so that participating entities are aware of an offeror's services. (Answered: Jan 25, 2016 2:23:05 PM MST)

**Question 61**

Section 8.16.5

"Ability to apply participating entity defined administration policies in managing solution"

Please define which policies are relevant to solution management. (Submitted: Jan 13, 2016 2:14:52 PM MST)

**Answer**

- 8.16.5 is modified as follows: "8.16.5 Ability to apply a participating entity's defined administration policies in managing a solution." (Answered: Jan 14, 2016 12:39:31 PM MST)

**Question 62**

1. RFP, The General Provisions, paragraph 10. SALES TAX ID NUMBER (page 8 of the published 301 page RFP) states that it "requires anyone filing a proposal with the state for the sale of tangible personal property or any other taxable transaction under UCA 59-12-103(1) to include their Utah sales tax license number with their proposal." We have spoken with the Utah Tax Commission and they are unable to advise whether or not Cloud Solutions sales require a Utah Sales Tax ID Number. They suggested we ask NASPO ValuePoint for clarification. Our question: Do all Offerors have to obtain a Utah Sales Tax ID Number in order to be eligible to submit a proposal?

2. RFP, Master Agreement Terms and Conditions, Section 16. Insurance:

What is the minimum insurance coverage for Data Breach and Privacy/Cyber Liability?

What are the low, medium, and high designations for Crime Insurance. What is meant by Crime Insurance? Please clarify what the different limits are for.

Can our Professional Liability and Cyber/Tech E&O policy be written on a claims-made basis? (Submitted: Jan 13, 2016 9:02:31 PM MST)

**Answer**

- 1. No. Offerors do not need to submit a Utah Sales Tax ID number to be eligible to submit a proposal. (Answered: Jan 21, 2016 4:24:21 PM MST)

- 2. Crime insurance has been removed from Attachment A. The minimum insurance requirements are listed in Section 16 of the Master Agreement Terms and Conditions.

If an Offeror requests that the insurance be made on a claims-made basis then it need to take exception to the Master Agreement Terms and Conditions as described in the RFP document.

Low, Moderate, and High are defined as:

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

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

High Risk Data is as defined in FIPS PUB 199, Standards for Security Categorization of Federal Information and Information Systems ("High Impact Data"). (Answered: Jan 27, 2016 11:46:12 AM MST)

**Question 63**

3. Cloud Service Types "SaaS, IaaS, and PaaS. Is it permissible to bid on just one or two of these? Please confirm that Vendors are not required to submit all three?

4. RFP Section 4.3. Evaluation Process. Will each Cloud Service Type (SaaS, IaaS, and PaaS) be reviewed separately and graded on the 1375 point scale, or would all submittals combined be subject to a maximum technical proposal review of 1375 points?

5. RFP Section 3.1.1. Electronically Submitted Proposals "Paragraph two states "All attachments shall be submitted in a format acceptable to the Lead State. Acceptable formats include .doc (Microsoft Word Document), .xls (Microsoft excel spreadsheet), and .pdf (Adobe Acrobat portable document format). Will you also accept .docx format?

6. RFP Attachment B, Consensus Assessments Initiative Questionnaire (CAIQ), and Cloud Controls Matrix (CCM).



Please advise if Vendors should submit one or both of these for each Cloud Service Type (SaaS, IaaS, and PaaS) they are proposing. While we realize these are optional submittals, should one be prepared for each IaaS, SaaS, PaaS that an Offeror submits?

7. Does the entire Q&A period end on January 29, 2016 at 12:00 p.m. MST? If so, please confirm that the deadline for all questions to be answered is therefore also January 29, 2016 at 12:00 p.m. MST. If so, what is the last date/time that questions can be posted prior to the end of the Q&A Period? (Submitted: Jan 13, 2016 9:02:50 PM MST)

**Answer**

- 7. The Q&A Period will end on January 29, 2016 at 12:00pm. However, the answering of questions may be posted after that deadline because some questions may be coming in on January 29, 2016 at 11:59. The State of Utah will to the best of its ability answer questions quickly. (Answered: Jan 14, 2016 12:39:31 PM MST)

- 3. Offerors are not required to submit on all three. However, an Offerors proposal must be clear which Cloud Service Types it offers.

4. All submittals will be combined and be subject to a maximum technical proposal review of 1375.

5. Yes. .docx type is acceptable. (Answered: Jan 21, 2016 4:24:21 PM MST)

- 6. The final RFP documents request that both documents be completed. And that only one be completed for both, but that it has enough detail to cover all of an Offeror's proposed services. (Answered: Jan 25, 2016 2:23:05 PM MST)

**Question 64**

1) Financial Requirements:

Section 6.3 on Financial of the RFP states:

Offeror must provide audited financial statements to the State and should meet a minimum Dun and Bradstreet (D&B) credit rating of 4A2 or better, or a recognized equivalent rating. Please provide the Respondent's D&B Number and the composite credit rating. The State reserves the right to verify this information. If a branch or wholly owned subsidiary is bidding on this RFP, please provide the D&B Number and score for the parent company that will be financially responsible for performance of the agreement.

Seeing as a credit rating 4A2 would require a minimum net worth of \$10M, this does not seem applicable for a small business. The cloud community is comprised largely of small businesses in their infancy due to the newness of cloud technology. According to the State, what is an acceptable "recognized equivalent rating" for a small business? (Submitted: Jan 14, 2016 8:23:14 AM MST)

**Answer**

- The State has decided to modify the 4A2 to a 3A2 rating or the equivalent. (Answered: Jan 25, 2016 2:23:05 PM MST)

**Question 65**

2) In your response to question #3 dated 12/31/2015, "Is it the intent of the State to exclude small businesses from this bid? The minimum D&B rating requirement is extremely exclusionary to small businesses and we would suggest that small businesses will offer the State the best opportunity for innovation in the fast moving cloud market." the state wrote:

"The participating states want some assurance that a vendor is financially stable and able to complete IT projects of this nature. States are putting significant amounts of tax payer dollars into a contractor to provide a solution. If a small business would like to participate on this effort and cannot qualify on their own, they may want to consider partnering with a larger firm in order to qualify."

However, section 5.7 of the RFP regarding the use of sub-contractors states that "Any Subcontractor that an Offeror chooses to use in fulfilling the requirements of the RFP must also meet all Administrative, Business and Technical Requirements of the RFP, as applicable to the Services provided." Is it the intent of ValuePoint to remove the 4A2 requirement for subcontractors so that small businesses are able to qualify as stated in the answer above? (Submitted: Jan 14, 2016 8:23:30 AM MST)

**Answer**

- Yes. An Offerors' subcontractors do not need to comply with Section 4A2. (Answered: Jan 14, 2016 12:39:31 PM MST)

**Question 66**

3) CSA "As an authorized reseller and Advanced Consulting Partner, our company inherits the controls and security procedures from our IaaS provider. Are cloud brokers allowed to leverage the CSA from our cloud provider (ie, Amazon, Microsoft, Google, Softlayer, Virtustream) or do we need complete our own audit? (Submitted: Jan 14, 2016 8:23:46 AM MST)

**Answer**

- Yes. Cloud providers are able to leverage the CSA from their cloud providers. (Answered: Jan 14, 2016 12:39:31 PM MST)

**Question 67**

RFP Sections 8.12.4 and 8.12.5 appear to be unintentionally duplicated requirements. Please confirm.

(Submitted: Jan 14, 2016 8:37:29 AM MST)

**Answer**

- RFP Section 8.12.5 has been deleted. It will be removed from the final version of the RFP. (Answered: Jan 14, 2016

12:39:31 PM MST)

#### Question 68

Question 62 and 63 are the upload of a total of 7 questions. Will these be answered separately? Do we need to re-upload each question as a separate upload in order to have each question answered? (Submitted: Jan 14, 2016 2:00:14 PM MST)

#### Answer

- The State will answer all of the questions in Questions 62 and 63 in the space provided for those questions. So the questions do not need to be uploaded separately. (Answered: Jan 14, 2016 3:51:50 PM MST)

#### Question 69

There are some sub-categories under the Saas, Paas and Iaas Service Types that we are not prepared to price today, but that are on our development roadmap; some to be released in as soon as 6 months, that could be pertinent to the services that Participating Entities are able to procure through this contract. The contract has a term of ten years, and certainly technology and service offerings will change over that period. Will there be a process to add capability to the scope of a vendor's contract offering(s) as new capabilities are developed? (Submitted: Jan 14, 2016 2:47:09 PM MST)

#### Answer

- Please see Section 2.8 that states: The awarded Master Agreement(s) may be modified as a result of technological upgrades for the procurement item(s). Any modification for upgraded technology must be substantially within the scope of the original procurement or contract, and if both parties agree to the modification, then the contract may be modified, but it may not extended beyond the term of the original awarded contract unless otherwise permitted by law. The awarded contract(s) may be modified for new technology related to the procurement item(s).

However, if an Offeror is not awarded a Service Category during this solicitation then an Offeror may attempt to be awarded a Service Category if the Lead State re-issues the solicitation, as permitted in 2.8. (Answered: Jan 15, 2016 11:56:21 AM MST)

#### Question 70

Section 5.3, Acknowledgement of Amendments, states: "If the RFP is amended, the Offeror must acknowledge each amendment with a signature on the acknowledgement form provided with each amendment. Failure to return a signed copy of each amendment acknowledgement form with the proposal may result in the proposal being found non-responsive.". We are not finding acknowledgement forms posted with the four amendments that are currently reflected in BidSync. Where can they be located? (Submitted: Jan 15, 2016 8:28:57 AM MST)

#### Answer

- The acknowledgement form will be posted after all amendments to the RFP have been included in the final RFP documents. It is anticipated that the final RFP documents will be posted on February 5, 2016. The final RFP documents will not include new information, but will contain clarifications made as a result of the Q&A period. (Answered: Jan 15, 2016 11:56:21 AM MST)

#### Question 71

RFP Section 5.5.15 requires an Offeror to provide a statement certifying that it is willing to sign a Business Associate Agreement or any other agreement that may be necessary to protect data with a Purchasing Entity. Statement: We cannot provide a blanket agreement to comply, as in the past, we have received certain HIPAA BAA's that are not relevant or applicable to our Cloud Services. Question: Will you please consider deleting the clause or revising the clause as written to be less restrictive? (Submitted: Jan 15, 2016 6:59:16 PM MST)

#### Answer

- In the final version of the RFP document this section will be moved and deleted. It will not be in Section 8.9 and state: 8.9.2 Offeror must identify whether or not it is willing to sign relevant and applicable Business Associate Agreement or any other agreement that may be necessary to protect data with a Purchasing Entity. Some Participating Entities want to know if an Offeror is willing to sign a BAA. (Answered: Jan 20, 2016 1:36:53 PM MST)

#### Question 72

Per RFP Section 3.10 Proposal Content and Format Requirements, reads in part, "Include a Table of Contents in the Technical Proposal identifying contents of each section, including page numbers of major sections. Proposals should follow the numerical order of the RFP starting at the beginning and continuing through the end of the RFP, etc." AND, Per RFP Section 3.12 Submission of Proposal, covers the specific format for submitting Proposals. It reads in part, "Offerors should title each document with the names listed below." We will be submitting electronically only (not hard copy). Question: Do you want each proposal section to be uploaded as separate documents (i.e., Section 1 Signature Page, Section 2, Executive Summary, Section 3 Mandatory Minimums, Section 4 Business Profile) or do you want the core Proposal document to be contained in one document so that page numbers are consistently shown? Please clarify. Note: Section 3.12 does not mention the placement of the Cover Letter in terms of upload order. Please clarify or restate the upload criteria for the Proposal. ( We understand that all Attachments and Exhibits can be uploaded separately.) (Submitted: Jan 15, 2016 7:14:19 PM

MST)

**Answer**

- A proposal can be uploaded as a single document or in multiple documents. If a proposal is uploaded as a single document then the Offeror only needs to provide one table of contents page. If a proposal is uploaded in multiple documents then a table of contents should be created for each uploaded document. However, Offerors should take into consideration that if an Offeror's proposal contains confidential information then the Offeror needs to upload two documents, an unredacted version and a redacted version. (Answered: Jan 20, 2016 1:36:53 PM MST)

**Question 73**

Please confirm that the recently posted "State of Utah Vendor Information" form is the RFP signature page, and also confirm that it replaces the original form provided in the RFP that was titled "State of Utah Request for Proposal." (Submitted: Jan 15, 2016 7:17:49 PM MST)

**Answer**

- The "State of Utah Vendor Information" is the RFP signature page. And it replaces the original form titled "State of Utah Request for Proposal." The original document did not format correctly when downloaded. (Answered: Jan 20, 2016 1:36:53 PM MST)

**Question 74**

Section 7.1 calls for the resume of the proposed "Contract Manager" with the only absolute requirement of 3 years experience managing cloud solution contracts. Section 5.5.1 describes a "Contracts Administrator" to manage compliance with the scope, terms, and conditions for the contract. Section 5.5.2 describes a "Usage Report Administrator" responsible for quarterly sales reporting as described in the MSA terms and conditions. Request that the Government change "Contracts Administrator" and "Usage Report Administrator" to read "Contract Manager".

Request that the Government provide additional description of the expected roles and responsibilities, as well as any required skills and/or experience, for the "Contract Manager" position. (Submitted: Jan 18, 2016 12:04:51 PM MST)

**Answer**

- Section 5.5.1 has been deleted from the final RFP document. However, 5.5.2 will remain the same. Offerors must provide a Usage Report Administrator to provide usage reports to NASPO ValuePoint and Participating Entities. The Usage Report Administrator can be the same person. In order to meet the requirement of 5.5.2 an Offeror just needs to certify that it will, if awarded a contract, provide a Usage Report Administrator. (Answered: Jan 27, 2016 11:46:12 AM MST)

**Question 75**

May other questions be answered via an attachment or an embedded document or embedded link? (Submitted: Jan 18, 2016 1:57:51 PM MST)

**Answer**

- All questions will be answered through Bidsync. However, the RFP documents are subject to change based on the questions and answers. (Answered: Jan 20, 2016 1:36:53 PM MST)

**Question 76**

Can we embed SLA attachments in our RFP response document? If not, how are they to be included in the response? (Submitted: Jan 18, 2016 1:58:43 PM MST)

**Answer**

- Please attach your SLA attachments to your RFP response. If in responding to a section a vendor needs to refer to its SLA attachments then it can simply reference the SLA attachments. (Answered: Jan 19, 2016 1:26:19 PM MST)

**Question 77**

If multiple questions in the RFP, have essentially the same response details and that detail is 1-2 pages long, do you wish the vendor to a) repeat the answer after each question or b) refer back to the first time the answer appears in the RFP or c) provide full details once and provide highlights with reference back to the full answer in earlier question? e.g Security Policies. (Submitted: Jan 18, 2016 1:59:23 PM MST)

**Answer**

- An Offeror can refer back to information as long as it is clear on which information it is referring back to. (Answered: Jan 20, 2016 1:36:53 PM MST)

**Question 78**

Two sections (7 & 8) refer to Personnel who will be involved at various stages (refer to the persons/roles identified in Section/Attachment D. Attachment D does not identify roles, please clarify.

Section 7:

**7 ORGANIZATION AND STAFFING**

This Section focuses on the individual persons and roles that will be involved in performance of the Master Agreement. The State has identified a number of roles that are necessary based on the requirements of Attachment D; these titles are not meant to be restrictive, but are used to identify key roles. The State recognizes

that different Offerors may use different titles, have different organizational structures, and employ roles that have not been specifically identified by the State.Â For the roles that have been identified, provide the required information about the person/role that will meet the requirements identified by the State; feel free to provide the title your business uses for that role.Â If multiple identified roles are performed by the same person, be sure to include that information in your response.Â Â

Section 8:

### 8.3 (E) WORKING WITH PURCHASING ENTITIES

Describe in detail how you will work with Purchasing Entities before, during, and after a Data Breach, as defined in the Attachments and Exhibits.Â Include information such as:Â

Â· Personnel who will be involved at various stages (refer to the persons/roles identified in Section 7);Â (Submitted: Jan 18, 2016 2:01:12 PM MST)

#### Answer

- That paragraph in Section 7 has been deleted in the final RFP document.

Section 8.3 has been modified to state: "Personnel who will be involved at various stages, include detail on how the Contract Manager in Section 7 will be involved;" (Answered: Jan 27, 2016 11:46:12 AM MST)

#### Question 79

Do we understand correctly that only Section 8 (Sections 8.1 - 8.24) must be answered SEPARATELY FOR EACH OFFERING BEING MADE for IaaS, SaaS, PaaS? If yes, then please confirm the proposal response will have two completed Sections 8, one following the other in the final Proposal. (Submitted: Jan 18, 2016 2:32:49 PM MST)

#### Answer

- If information can be provided for all three offering then an Offeror can provide one answer and identify that it applies to all three offerings. However, where an Offeror's proposal needs to identify different responses to the different sections for each offering then it can identify how it intends to respond. It can be done in one document or by splitting it out into multiple Section 8s. (Answered: Jan 20, 2016 1:36:53 PM MST)

#### Question 80

Section 3.10 Proposal Content and Format Requirements Paragraph 1 states "Include a Table of Contents in the Technical Proposal identifying the contents of each section, including page numbers of major sections. Proposals should follow the numerical order of the RFP starting at the beginning and continuing through the end of the RFP. However in Section 3.12 submission of proposal paragraph 2 you mention "All Proposals must be submitted in the following format. Offerors should title each document with the names listed below. Detailed information on submitting each of these sections is contained later sections of this RFP." "Do you require each proposal section to be uploaded as a separate document or should it be in one single document? Please confirm?" (Submitted: Jan 19, 2016 10:34:18 AM MST)

#### Answer

- A proposal can be uploaded as a single document or in multiple documents. If a proposal is uploaded as a single document then the Offeror only needs to provide one table of contents page. If a proposal is uploaded in multiple documents then a table of contents should be created for each uploaded document. However, Offerors should take into consideration that if an Offeror's proposal contains confidential information then the Offeror needs to upload two documents, an unredacted version and a redacted version. The final version of the RFP document will not have the word "Technical". (Answered: Jan 20, 2016 1:36:53 PM MST)

#### Question 81

RFP Section 3.10 states in part "Proposals should follow the numerical order of the RFP starting at the beginning and continuing through the end of the RFP. Proposal sections and subsections shall be identified with the corresponding numbers and headings used in the RFP." Question: Since no Vendor responses are required until Section 5. Mandatory Minimum Requirements, may the Proposal submittal begin with Section 5 (retaining the Section and Sub-Subsection numbering scheme as shown in the RFP)? (Submitted: Jan 19, 2016 12:48:51 PM MST)

#### Answer

- Proposals should follow the format described in Section 3.12. (Answered: Jan 20, 2016 1:36:53 PM MST)

#### Question 82

Section 1.a, would State please clarify whether State of Utah Standard Terms and Conditions take precedence over the master terms? (Submitted: Jan 20, 2016 10:01:30 AM MST)

#### Answer

- A state's terms and conditions will take precedence over the master agreement terms and conditions if negotiated during the Participating Addendum stage. (Answered: Jan 20, 2016 1:36:53 PM MST)

#### Question 83

Will the State entertain a reasonable limitation of liability, since global IT companies are very unlikely to enter into agreements which have no limitation on liability, especially given the nature of the cloud services to be provided under this RFP? (Submitted: Jan 20, 2016 10:02:08 AM MST)

**Answer**

- Limitations of liability can be included in an Offeror's exceptions and/or additions to the Master Agreement Terms and Conditions. (Answered: Jan 20, 2016 1:36:53 PM MST)

**Question 84**

## Section 2.3 Definitions

Eligible Users means every agency, political subdivision, or nonprofit that has the statutory authority to purchase from state cooperative contracts established by a Participating Entity to qualify for the cloud solutions described in the RFP. The Participating Entity will have sole discretion to determine who qualifies as an Eligible User.

Request that the Eligible Users be defined as those approved by the manufacturer. (Submitted: Jan 20, 2016 11:54:47 AM MST)

**Answer**

- Eligible Users of state cooperative contracts are determined by the Participating Entity/State. (Answered: Jan 20, 2016 1:36:53 PM MST)

**Question 85**

## Sections 5.5.8, 5.5.9, and 5.5.10

o 5.5.8 Offeror must at a minimum complete, provide, and maintain a completed a Level 1 CSA STAR Registry Self-Assessment and submit a copy under this RFP. Offeror must represent and warrant that it will keep this CSA Star Self-Assessment current on an annual basis and must be provide it to a Purchasing Entity when requested. Offeror must also represent and warrant the accuracy and currency of the information on the completed CSA Star Self-Assessment Form.

o 5.5.9 Offeror must provide a statement certifying that it agrees to adhere to the services, definitions, and deployment models identified in the Scope of Services, in Attachment D, during the term of the contract.

o 5.5.10 Offeror must provide a statement that its auditing capabilities and reports are consistent with SAS 70 or later versions including, SSAE 16 6/2011, or greater.

Please confirm that the manufacturer/cloud service provider's ability to meet the requirements identified in these sections also satisfies the requirement for the reseller responding on the manufacturer/cloud service provider's behalf. (Submitted: Jan 20, 2016 11:56:21 AM MST)

**Answer**

- Yes. If a provider can meet these requirements then it satisfies this requirement for resellers. (Answered: Jan 25, 2016 2:23:05 PM MST)

**Question 86**

## Attachment B: Cloud Security Alliance Questionnaires

Please confirm whether the response requires both the CAIQ (Attachment B Exhibit 1) and CCM (Attachment B Exhibit 2) questionnaires, or if only one of the two is required. (Submitted: Jan 20, 2016 11:56:58 AM MST)

**Answer**

- The final RFP document will require that both documents be attached to a proposal. (Answered: Jan 25, 2016 2:23:05 PM MST)

**Question 87**

## Section 5.5.11

o 5.5.11 Offer must provide a statement acknowledging that all support and training shall be provided at no additional cost under the Master Agreement, except for customized support and training expressly requested by a Purchasing Entity.

Please delineate between "support" and "training" and provide additional detail around expectations for each. (Submitted: Jan 20, 2016 11:57:33 AM MST)

**Answer**

- Support may be technical support, while training is demonstrating a specific service so that a purchasing entity can use it. (Answered: Jan 20, 2016 1:52:45 PM MST)

**Question 88**

## Section 5.5.14.

o Offeror must provide a statement acknowledging that no click-through, or other end user terms and conditions or agreements required by the Contract Vendor ("Additional Terms") provided with any Services hereunder shall be binding on Participating Entities or Purchasing Entities, even if use of such Services requires an affirmative "acceptance" of those Additional Terms before access is permitted, unless agree to in the Master Agreement Terms and Conditions or in a Participating Addendum.

Seeking clarification on "click-through" terms. Please define "click-through" terms. (Submitted: Jan 20, 2016 12:00:24 PM MST)

**Answer**

- The master agreement and participating addendums should contain all of the terms necessary for a purchasing entity and an awarded contractor to work together once a SLA is agreed upon.

Purchasing entities should not have to click through or agree to additional terms beyond what is in the master

agreement and the relevant participating addendum. (Answered: Jan 20, 2016 1:52:45 PM MST)

#### Question 89

Section 5.6.13

o 5.6.13 Offeror must provide a statement certifying that its scale-up and scale-down is available 24x365, and that new instances can be added in one hour or less.

Please clarify what is intended by the "scale-up and scale-down" requirement for non-metered subscription services, such as SaaS. (Submitted: Jan 20, 2016 12:01:16 PM MST)

#### Answer

- This section will not apply to SaaS services. If a section is not applicable to its offering then an Offeror must identify and explain why it is not applicable. However, if an Offeror identifies a section as not applicable to its proposal then it could hinder an Offeror's contract award. (Answered: Jan 20, 2016 1:52:45 PM MST)

#### Question 90

Section 5.6.12 and 5.6.15

o 5.6.12 Offeror must provide a statement certifying that its on-demand deployment is supported 24x365.

o 5.6.15 Offeror must provide a statement certifying that on-demand support is provided 24x365.

Please explain the intended difference between these requirements. (Submitted: Jan 20, 2016 12:01:37 PM MST)

#### Answer

- Section 5.6.15 will be deleted from the final version of the RFP document. (Answered: Jan 20, 2016 1:36:53 PM MST)

#### Question 91

Currently we do not hold any 3rd party certifications (security, process, quality, etc). Are the certification mandatory to be considered for this bid? If so which ones must we have to submit an RFP that will be considered for review. (Submitted: Jan 20, 2016 12:16:12 PM MST)

#### Answer

- 3rd Party Certification are not required. If an Offeror does not have any certifications it must state so. However, if an Offeror does not have any third party certifications then it may affect the Offeror's technical score. (Answered: Jan 27, 2016 11:46:12 AM MST)

#### Question 92

Section 5.7 and Section 8.2. Subcontractors

In the SaaS model, a manufacturer will provide cloud services. Because of this involvement, as a reseller, are we to classify the manufacturer/cloud service provider as our subcontractor, the cloud service provider, or both?

(Submitted: Jan 20, 2016 12:29:52 PM MST)

#### Answer

- Can you define who "we" is in your question?

Thank you. (Answered: Jan 27, 2016 11:46:12 AM MST)

#### Question 93

Section 6.2 Scope of Experience

6.2.1 Describe in detail the business's experience with government or large consortium contracts similar to the Master Agreements sought through this RFP. Provide the approximate dollar value of the business's five (5) largest contracts in the last two (2) years, under which the business provided services identical or very similar to those required by this RFP. Government experience is preferred.

6.2.2 Describe in detail the size and scope of the cloud solutions for which you have provided the types of services required by in this RFP.

Please confirm that the cloud service provider's experience can be utilized to satisfy this requirement for the reseller that is responding on behalf of the cloud service provider. (Submitted: Jan 20, 2016 12:30:36 PM MST)

#### Answer

- Section 6.2 refers to the Offeror responding to the solicitation. (Answered: Jan 20, 2016 1:42:41 PM MST)

#### Question 94

Section 2.12 and Attachment D: Scope of Services

o 2.12 During the term of the Master Agreement(s), Offerors may submit a request to update the awarded Services as services are introduced or removed from the Offeror's offerings.

o Attachment D: A successful Offeror must provide at least one of the following cloud based service models [SaaS, PaaS, IaaS] in order to be considered for award.

Please confirm that if a bidder responds with only one cloud based service model, ex. SaaS, and if awarded a contract, it is acceptable to add other cloud based service models (PaaS and/or IaaS) to the contract, that were originally in scope of the RFP, at a later date. (Submitted: Jan 20, 2016 12:32:06 PM MST)

#### Answer

- Section 2.12 allows awarded contractors the ability to update their price schedules or product lists for awarded categories. For example, if an awarded contractor is awarded a contract to provide only SaaS services then it can request to update its price schedule or product list for only SaaS services. An awarded contract cannot add on a

new service model.

However, an awarded contractor can submit a proposal to include a new service model if the Lead State re-issues a solicitation under Section 2.8. (Answered: Jan 20, 2016 1:41:12 PM MST)

#### Question 95

Is there a tentative award date that can be shared? (Submitted: Jan 20, 2016 12:32:55 PM MST)

#### Answer

- As soon as all of the proposals have been evaluated and scored then the State of Utah will award the contracts.

(Answered: Jan 20, 2016 1:36:53 PM MST)

#### Question 96

If a cloud service provider's (CSP) business model is to sell its solutions to end users via agents whom represent the CSP, will the State/NASPO allow the CSP to add agents under them on their contract for fulfillment of their product? (Submitted: Jan 20, 2016 1:54:51 PM MST)

#### Answer

- Yes. (Answered: Jan 25, 2016 11:40:18 AM MST)

#### Question 97

Section 5.8, Recertification. The section states that the vendor needs to commit to certify every year with the lead State (Utah) that we continue to meet the minimum requirements of the RFP.

Is there a requirement to also certify/recertify with individual State participants as well? (Submitted: Jan 20, 2016 1:56:19 PM MST)

#### Answer

- Currently there is no requirement to also have an awarded contract recertify with each state. However, a state may request recertification in its Participating Addendum. (Answered: Jan 21, 2016 4:24:21 PM MST)

#### Question 98

How will or does the NASPO ValuePoint eMarket Center support the ordering and the provisioning of cloud based services (which are not simple drop-ship products/services)? (Submitted: Jan 20, 2016 2:28:06 PM MST)

#### Answer

- Sections of the RFP will be modified as a result of this question including Section 39 of the Master Agreement Terms and Conditions, as follows:

The awarded cloud service contractors will not have any type of catalog within the eMarket Center, they will have Ordering Instructions. These instructions provide visibility to the contractor within the eMarket Center as well as provide information about the contractor and how to order directly from the contractor, outside of the eMarket Center.

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

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

At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have. (Answered: Jan 25, 2016 11:40:18 AM MST)

#### Question 99

Will a Vendor be able to redirect a customer to its own on-line purchasing site (i.e., AppDirect?) via eMarket? If not, please clarify how eMarket will be configured to take and process orders for complex Cloud Solution Services.

(Submitted: Jan 20, 2016 2:31:41 PM MST)

#### Answer

- Sections of the RFP will be modified as a result of this question including Section 39 of the Master Agreement Terms and Conditions, as follows:

The awarded cloud service contractors will not have any type of catalog within the eMarket Center, they will have Ordering Instructions. These instructions provide visibility to the contractor within the eMarket Center as well as provide information about the contractor and how to order directly from the contractor, outside of the eMarket Center.

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

is referred to as the NASPO ValuePoint eMarket Center.

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

At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have. (Answered: Jan 27, 2016 11:46:12 AM MST)

#### Question 100

Regarding the State Specific Terms and Conditions in Attachment E, are those binding on the Contract Vendor once the Master Agreement is awarded? Or will the Contract Vendor have the chance to negotiate with the State during the Participating Addendum process? (Submitted: Jan 20, 2016 4:37:21 PM MST)

#### Answer

- The state specific terms and conditions are not binding, but are for reference only. An awarded contractor will be allowed to negotiate the state specific terms and conditions during the Participating Addendum process.

(Answered: Jan 21, 2016 4:24:21 PM MST)

#### Question 101

Regarding the State Specific Terms and Conditions in Attachment E, are those binding on the Contract Vendor once the Master Agreement is awarded? Or will the Contract Vendor have the chance to negotiate with the State during the Participating Addendum process? (Submitted: Jan 20, 2016 4:37:35 PM MST)

#### Answer

- The state specific terms and conditions are not binding, but are for reference only. An awarded contractor will be allowed to negotiate the state specific terms and conditions during the Participating Addendum process.

(Answered: Jan 21, 2016 4:24:21 PM MST)

#### Question 102

Section 5 of the RFP reads:

#### MANDATORY MINIMUM REQUIREMENTS

This section contains mandatory minimum requirements that must be met in order for an Offeror's proposal to be considered for the technical evaluation phase of the RFP. Failure to meet any one of the mandatory minimum requirements will result in the proposal being rejected pursuant to UCA § 63 G-6a-704 and the proposal will not move forward in the evaluation process.

All of the items described in this section are non-negotiable. A rejection of a proposal due to a proposal not meeting mandatory minimum requirements can occur at any time in the evaluation process

Offerors are required to provide a point-by-point response to each of the following mandatory minimum requirements:

Several of requirements do not apply to some of the products we intend to bid.

How can indicate that the individual requirements does not apply to a specific product we are proposing without having our proposal rejected? (Submitted: Jan 20, 2016 7:30:14 PM MST)

#### Answer

- If a mandatory minimum does not apply to a specific product the vendor is proposing then an offeror may state in its response why the mandatory minimum is not applicable. The State of Utah reserves the right to clarify if it believes the mandatory minimum is applicable. (Answered: Jan 21, 2016 4:24:21 PM MST)

#### Question 103

Will the State of Utah's Participating Agreement Terms and Conditions be negotiated after award of the Master Agreement, or since Utah is the lead State, will their Participating Agreement Terms and Conditions be a part of the Master Agreement award? (Submitted: Jan 21, 2016 6:21:19 AM MST)

#### Answer

- The State of Utah's terms and conditions will be negotiated during the Participating Addendum stage. (Answered: Jan 21, 2016 4:24:21 PM MST)

#### Question 104

Please confirm that offerors may submit differing minimum discounts by vendor for each of the product categories identified (SaaS, IaaS, PaaS) in Attachment G. (Submitted: Jan 21, 2016 10:25:47 AM MST)

#### Answer

- Correct, Offerors may submit differing minimum discounts. (Answered: Jan 21, 2016 4:24:21 PM MST)

#### Question 105

Please confirm that offerors must submit a price catalog with detailed product offerings for each category by line item, to include manufacturer name, manufacturer part number, list price, product category, and sub category (e.g.,



education SaaS, e-procurement SaaS, information SaaS, etc.) as applicable. (Submitted: Jan 21, 2016 10:26:49 AM MST)

**Answer**

- Correct, Offerors must submit a price catalog with detailed product offerings for each category by line item, to include manufacturer name, manufacturer part number, list price, product category, and sub category (e.g., education SaaS, e-procurement SaaS, information SaaS, etc.) as applicable. (Answered: Jan 21, 2016 4:24:21 PM MST)

**Question 106**

Section 3.13 of the RFP notes that "Pricing may not be classified as confidential or protected and will be considered public information after award of the contract." Please confirm that pricing may be classified as confidential prior to award; it is understood that pricing will be considered public information following award. (Submitted: Jan 21, 2016 10:27:22 AM MST)

**Answer**

- Proposals and pricing will be confidential until contract award. (Answered: Jan 21, 2016 4:24:21 PM MST)

**Question 107**

What is the criteria for allocating the 152.8 points in the evaluation of cost proposals? (Submitted: Jan 21, 2016 10:27:46 AM MST)

**Answer**

- If a vendor completes the Cost Proposal form and provides a minimum discount for each category then it will be awarded the full 152.8 points. (Answered: Jan 25, 2016 2:06:20 PM MST)

**Question 108**

Would an implementation timeline be acceptable to meet the security requirements? (Submitted: Jan 21, 2016 12:11:16 PM MST)

**Answer**

- It may be acceptable, but an Offeror must provide enough detail to the implementation timeline to describe how it meets the security requirements. If the evaluation committee does not believe it meets the security requirements then it may be scored lower. (Answered: Jan 27, 2016 11:46:12 AM MST)

**Question 109**

If we take exception to security requirements will we be able to provide our current security protocol? (Submitted: Jan 21, 2016 12:11:30 PM MST)

**Answer**

- An Offeror's proposal must include its current security protocol, which must meet or exceed the security requirements listed in the RFP. (Answered: Jan 27, 2016 11:46:12 AM MST)

**Question 110**

If we take exception to security requirements will we be able to provide our current security protocol? Will the vendor receive partial points or zero points? (Submitted: Jan 21, 2016 12:11:45 PM MST)

**Answer**

- An Offeror's proposal must include its current security protocol, which must meet or exceed the security requirements listed in the RFP.

Points will be determined by the evaluation committee. (Answered: Jan 27, 2016 11:46:12 AM MST)

**Question 111**

In the service level agreement is it a general service agreement or an individual (customer) agreement? (Submitted: Jan 21, 2016 12:11:57 PM MST)

**Answer**

- The service level agreement should be the one that the Offeror intends to use if awarded contract. (Answered: Jan 21, 2016 4:24:21 PM MST)

**Question 112**

In reference to Section 3.12 Submission of Proposal, in particular the sentence "Offerors should title each document with the names listed below." Does NASPO VP/ State of Utah want a separate/ individual document file for each Section Title, or can Offerors present responses for each section, aside from the Cost Proposal, in one single document file? (Submitted: Jan 21, 2016 2:50:40 PM MST)

**Answer**

- An Offeror may submit its response as one document or multiple documents. (Answered: Jan 21, 2016 4:24:21 PM MST)

**Question 113**

In line with this RFP of providing public entities with choices of qualified Offerors, multiple States have historically leveraged the below proposal wording - Are Joint Proposals allowed for this contract?

Joint Proposals: A joint proposal (2 or more bidders proposing jointly on a single proposal) may be submitted. Each participating bidder must sign the joint proposal. If the contract is awarded to joint bidders, it shall be one indivisible contract. Each joint bidder will be jointly and severally responsible for the performance of the entire contract, and the joint bidders must designate, in writing, one individual having authority to represent them in all matters relating to the contract. The State assumes no responsibility or obligation for the division of orders or purchases among the joint bidders. (Submitted: Jan 22, 2016 11:55:58 AM MST)

**Answer**

- Yes. (Answered: Jan 25, 2016 2:06:20 PM MST)

**Question 114**

In Attachment G, Cost Schedule, can the Offeror add additional Value Added Services categories and provide separate pricing for those additional categories? (Submitted: Jan 22, 2016 12:53:51 PM MST)

**Answer**

- Yes. The cost proposal form has been modified to reflect this question. (Answered: Jan 25, 2016 2:06:20 PM MST)

**Question 115**

In Exhibit 1 to Attachment A, Paragraph 2.d, if the Contractor is a reseller and not the provider, the reseller does not have the ability to encrypt the Non-Public Data. It would be the responsibility of the provider. How should the Offeror distinguish between what the reseller is responsible for and what the provider is responsible for?

(Submitted: Jan 22, 2016 12:54:31 PM MST)

**Answer**

- Offerors need to describe in their proposals what they are responsible for and what providers are responsible for, but with (Answered: Jan 28, 2016 2:00:48 PM MST)

**Question 116**

In reference to Section 7. Organization and Staffing, the RFP states, "The State has identified a number of roles that are necessary based on the requirements of Attachment D..." Did Utah/NASPO VP intend to list additional roles beyond that of the Contract Manager? (Submitted: Jan 22, 2016 12:59:09 PM MST)

**Answer**

- Section 7 has been modified to only reference the Contract Manager role. (Answered: Jan 28, 2016 2:00:48 PM MST)

**Question 117**

If a Reseller is submitting offerings to be provided through our CSP partners, are they consider subcontractors under this contract and subject to section 8.2 of the RFP? (Submitted: Jan 22, 2016 1:01:39 PM MST)

**Answer**

- Any Offeror submitting a proposal must address each mandatory minimum requirement and technical evaluation criteria. (Answered: Jan 28, 2016 2:00:48 PM MST)

**Question 118**

Question 1 (Reference RFP 9.1):

RFP 9.1 states: "It is more favorable for Purchasing Entities to have the Master Agreement be based on minimum discounts off the Offeror's commercially published pricelists versus fixed pricing." Many cloud providers do not maintain published pricelists. Will offerors that do not have commercially published pricelists be considered for award of a Master Agreement?

Question 2 (Reference RFP 9.1):

RFP 9.1 states: "The hourly rates should be a fully burdened rate that includes labor, per diem, travel, overhead, and any other costs related to the service."

We recommend that the hourly rates include labor, overhead, and fee, but not per diem and travel costs since per diem and travel costs will vary widely and cannot be estimated at this time.

Question 3 (Reference Attachment A, Section 19):

Please clarify how services will be ordered under this Master Agreement. In particular:

- 1) Will ordering entities release task order requests/solicitations that firms having a Master Agreement are allowed to bid to?
- 2) Will all firms having a Master Agreement be allowed an opportunity to bid on a task order/solicitation?
- 3) Does a firm have the option of not bidding on a particular task order/solicitation?
- 4) Can an entity order directly from a firm's pricelist without going through a task order/solicitation process?

(Submitted: Jan 22, 2016 2:07:11 PM MST)

**Answer**

- 1. Offerors must provide a price list so that the Participating States know how much an Offeror's services may cost.
2. Agreed. Per diem and travel will be removed from the final RFP documents.
3. If an Offeror is awarded a contract then an Offeror must negotiate a Participating Addendum with Participating Entities (States). If awarded a Master Agreement it does not guarantee that a Participating Entity will sign a Participating Addendum with an offeror. (Answered: Jan 25, 2016 2:02:24 PM MST)

**Question 119**

With respect to section 5.2.5, if a parent company and a subsidiary planned to submit separate bids, can an employee of the parent company assist in the preparation of both? (Submitted: Jan 22, 2016 3:32:18 PM MST)

**Answer**

- Yes. (Answered: Jan 25, 2016 11:40:18 AM MST)

**Question 120**

To meet minimum requirements, are Exhibit 1 to Attachment B - CAIQ v3.0.1-09-16-2014.xls) and Exhibit 2 to Attachment B - CSA\_CCM\_v3.0.1-09-16-2014.xlsx expected to be completed? I don't see these listed as a set of minimum requirements. (Submitted: Jan 25, 2016 1:56:09 PM MST)

**Answer**

- 5.5.8 Offeror must at a minimum complete, provide, and maintain a completed a Level 1 CSA STAR Registry Self-Assessment and submit a copy under this RFP. Offeror must represent and warrant that it will keep this CSA Star Self-Assessment current on an annual basis and must be provide it to a Purchasing Entity when requested. Offeror must also represent and warrant the accuracy and currency of the information on the completed CSA Star Self-Assessment Form. (Answered: Jan 25, 2016 2:08:52 PM MST)

**Question 121**

8.17.1 Documented cloud hosting provisioning processes, and the your defined/standard cloud provisioning stack.

Please clarify what is meant by cloud provisioning stack and/or provide examples. Specifically interested in the context of SaaS. (Submitted: Jan 25, 2016 2:27:38 PM MST)

**Answer**

- If this section does not apply to SaaS then Offerors offering SaaS are required to describe why it is not applicable in their proposals. (Answered: Jan 27, 2016 1:00:04 PM MST)

**Question 122**

¶ Section 3.9 & 3.12 Pg. 12 Paragraph numbering sequence. The Paragraph sequencing skips 3.10 and 3.11. Is there missing content? Please clarify. (Submitted: Jan 26, 2016 4:45:52 AM MST)

**Answer**

- This was a numbering issue that will be corrected in the final version of the RFP documents. (Answered: Jan 27, 2016 1:00:04 PM MST)

**Question 123**

¶ 4.1.2 Pg. 16 Offerors are encouraged to demonstrate compliance with a mandatory minimum and to demonstrate that they exceed to the requirement. The phrase "exceed to the requirement" is confusing. Was "exceed to the requirement" intended? (Submitted: Jan 26, 2016 4:46:18 AM MST)

**Answer**

- The sentence you are referring to in 4.1.2 has been modified to the following: "Offerors are encouraged to demonstrate compliance with a mandatory minimum and to demonstrate that they meet or exceed to the requirement." (Answered: Jan 27, 2016 1:00:04 PM MST)

**Question 124**

¶ 5.6.6 Pg. 23 Offeror must provide a statement certifying that it on request you can isolate that data to servers and data centers residing entirely in the United States of America or its territories. Please reword for clarity. (Submitted: Jan 26, 2016 4:46:39 AM MST)

**Answer**

- Offeror must certify that it can isolate that data, if required, to servers and data centers residing entirely in the United States of America or its territories.

Certain Purchasing Entity data must reside in the United States.

If an Offeror cannot meet this mandatory minimum requirement it will not be rejected, but it will restrict the type of award the Offeror can receive. (Answered: Jan 27, 2016 1:00:04 PM MST)

**Question 125**

¶ 7.1 Pg. 27 It is this offerors opinion that the minimum requirement for Contract Manager, "3 years" experience managing contracts for cloud solutions, is un-necessarily restrictive due primarily to newness and developing cloud market place. This offeror recommends removing the "mandatory" language and evaluate the years' experience only. i.e. Change from (ME) to (E). (Submitted: Jan 26, 2016 4:47:03 AM MST)

**Answer**

- The minimum requirement will remain, but the three years will be removed. (Answered: Jan 27, 2016 1:00:04 PM MST)

**Question 126**

¶ 8.12.1 Pg. 31 "Additional points will be awarded for 99.99% or greater availability" Base on the language of ¶ 8.12.1 can the maximum points for ¶ 8.12 exceed 50? (Submitted: Jan 26, 2016 4:47:29 AM MST)

**Answer**

- No the expectation is that an Offeror can guarantee reliability and uptime greater than 99.9%, which would result in 30 points. If an offerors provides greater availability then it could receive 40 or 50 points. (Answered: Jan 27, 2016 1:00:04 PM MST)

**Question 127**

5.5.3 Pg 25 SciQuest: Offeror must agree to cooperate with NASPO ValuePoint and SciQuest (and any authorized agent or successor entity to SciQuest) with uploading ordering instructions Will the state provide vendors with detail requirements that they must provide to SciQuest for ordering instructions? (Submitted: Jan 26, 2016 7:06:07 AM MST)

**Answer**

- Offerors that are awarded contract must provide their orders instructions to SciQuest there are no detailed requirements. (Answered: Jan 27, 2016 1:00:04 PM MST)

**Question 128**

Â¶ 8.23 (E) Pg. 33 RFP requires a response to review Cyber Insurance requirements as detailed in Attachment A (Master Agreement). If you have cyber insurance, what levels of protection does it provide to Purchasing Entities. Will the state please clarify the intent for this response? The Offeror understands that in its proposal response, it will include whether or not it has Cyber Insurance and to what level detailed in Attachment A; however, we ask for clarification regarding what Cyber Insurance coverage is required to be offered to Purchasing Entities. (Submitted: Jan 26, 2016 7:06:45 AM MST)

**Answer**

- 8.23 has been deleted from the final RFP documents. Offerors must review Attachment A for Cyber Insurance requirements. (Answered: Jan 27, 2016 1:00:04 PM MST)

**Question 129**

Â¶ Bid Sync Questions Close Period January 29, 2016 Based on answers provided after the question close period, if additional clarification is required will the government consider additional questions to clarify those responses? (Submitted: Jan 26, 2016 7:07:29 AM MST)

**Answer**

- No. The question and answer period ends on January 29th. (Answered: Jan 27, 2016 1:00:04 PM MST)

**Question 130**

Â¶ 3.8 Pg. 11  
 Â¶ 3.11.1 Pg. 11  
 Â¶ 3.11.2 Pg. 12  
 Â¶ 3.9.3 Pg. 13  
 Â¶ 3.12 Pg. 10  
 Â¶ 4.3 Pg. 18

Multiple references to "cost" and "cost proposal." This Offeror understands "cost" in these instances to mean "price" and not the actual cost build up behind the prices proposed for products or services within our proposal response.

Please clarify the State's meaning when using "cost" as detailed in this question. (Submitted: Jan 26, 2016 7:09:39 AM MST)

**Answer**

- In these sections "cost" has been replaced with "cost proposal". (Answered: Jan 27, 2016 1:00:04 PM MST)

**Question 131**

Attachment G "Cost Proposal N/A Onsite and Remote Hourly Rates To accommodate a 10 year contract term and adjust for cost increase over time, will vendors be able to increase their Onsite and Remote rates during the contract term? Would the State consider using a published index (i.e. CPI) for annual rate increases?

(Submitted: Jan 26, 2016 7:10:05 AM MST)

**Answer**

- Yes. Annual increases are acceptable, but only if the awarded contractor is able to demonstrate that the price increase is justified, such as by using a published index. (Answered: Jan 27, 2016 1:00:04 PM MST)

**Question 132**

5.2.5 Pg. 20 In the cover letter, an Offeror must include a statement that it hasn't employed any company or person other than an employee or a company regularly employed as a marketing agent to respond to the RFP. Will the State please clarify the intent of this requirement? Is the intent to determine whether a lobbyist has been or will be utilized or is the intent to determine whether the proposal response has been written by a person or company other than the Offeror's? (Submitted: Jan 26, 2016 7:10:32 AM MST)

**Answer**

- The intent is to determine who helped the Offeror write its proposal to ensure that no conflict of interest is present. (Answered: Jan 27, 2016 1:00:04 PM MST)

**Question 133**

RFP Section 1 Last sentence If any provision of this RFP conflicts with the UCA or UAC, the UCA or UAC will take precedence. Exception  
 Microsoft respectfully takes exception to this requirement, as written. Microsoft complies with all laws applicable to it, both as an IT service provider and as a corporation, in general. However, Microsoft does not agree to comply with laws applicable solely to its Purchasing Entities and their government or industry functions. (Submitted: Jan 26, 2016 7:10:39 AM MST)

**Answer**

- This section is used to ensure that the procurement is performed in accordance with Utah's procurement laws. (Answered: Jan 27, 2016 1:00:04 PM MST)

**Question 134**

RFP Section 2.2 Contract Vendors must submit an annual certification that they are still compliant with the mandatory minimum requirements and technical specification of the RFP Exception  
 Microsoft's Online Services are subject to change, so Microsoft is unable to agree to maintain static technical specifications for the duration of the Master Agreement. To the extent that Microsoft has identified protective security and privacy terms and conditions in its Online Services Terms (OST), with respect to those services the OST expressly applies to, Microsoft will not diminish those terms and conditions with respect to those specific products. (Submitted: Jan 26, 2016 7:10:55 AM MST)

**Answer**

- The annual certification is intended to ensure that all awarded contractor still comply with the terms of the contracts and can still provide the offerings as specified in the Master Agreement. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 135**

¶ 38. Pg. 23 No Guarantee of Service Volumes: The Contractor acknowledges and agrees that the Lead State and NASPO ValuePoint makes no representation, warranty or condition as to the nature, timing, quality, quantity or volume of business for the Services or any other products and services that the Contractor may realize from this Master Agreement, or the compensation that may be earned by the Contractor by offering the Services. The Contractor acknowledges and agrees that is has conducted its own due diligence prior to entering into this Master Agreement as to all the foregoing matters. Will the state please clarify the bolded language to clarify the state's intent? (bold added to highlight for questions) This Offeror agrees we should conduct reasonable due diligence but the wording is unclear. Does "all the foregoing matters" refer to Service Volumes (as the content of the specific paragraph). If not, please specify what this language means. (Submitted: Jan 26, 2016 7:11:05 AM MST)

**Answer**

- The intent of this term and condition is to ensure that Offerors understand that even by being awarded a contract that there is no guarantee of use by any of the purchasing entities. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 136**

RFP Section 2.7.2 Master Agreement

The Master Agreement(s) awarded from this RFP will consist of the RFP document, including all Exhibits, Attachments, and the winning Offeror's Proposal, in that order of precedence. Exception.  
 Offeror respectfully takes exception to the requirement to incorporate Exhibit E. While Exhibit E contains the boilerplate of Participating Addenda proposed by certain Participating States, it is unreasonable to expect Offeror to have prepared detailed Exception statements for each of the provisions in that 143 page document prior to engaging in negotiation with each of the individual Participating States after award, in accordance with RFP Sections 2.7.3 and 5.2.3.

Additionally, neither Appendix C nor Appendix D are written in such a way as to constitute contract terms, per se. While offeror does not take exception to following the instructions for submitting information with as required by those Appendices, Offeror respectfully asks that those Appendices be struck from the "Entire Agreement," as they contain no terms and conditions, per se. (Submitted: Jan 26, 2016 7:11:18 AM MST)

**Answer**

- The Master Agreement will contain the following documents:

- (1) A Participating Entity's Participating Addendum ( "PA" );
- (2) NASPO ValuePoint Master Agreement Terms & Conditions, including the applicable Exhibits to the Master Agreement;
- (3) The Solicitation;
- (4) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State; and
- (5) A Service Level Agreement issued against the Participating Addendum. (Answered: Jan 28, 2016 2:00:48 PM MST)

**Question 137**

Exceptions to scope/content of the RFP within an Offeror's proposal that have not been previously addressed within the Q&A period of the procurement are not allowed and may result in the Offeror's proposal being considered non-responsive. Exception.

While Microsoft and Offeror have endeavored to submit during the Q&A period all Exceptions made necessary by our current understanding of the RFP requirements, it is possible that the answers we later receive from the Lead State to our questions (and those of other vendors) may cause us to reevaluate our interpretation of requirements, in light of those answers. Microsoft and Offeror therefore reserve the right to add any Exceptions that may result based upon the subsequent answers to the questions. (Submitted: Jan 26, 2016 7:11:42 AM MST)

**Answer**

- Exceptions to the the RFP document should occur during the Q&A period. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 138**

5.6.4 Pg. 23 Offeror must provide a statement certifying that it is NIST compliant with the service models it offers. Will the state please confirm that it requires offers to certify compliance with NIST Special Publication 800-145?

(Submitted: Jan 26, 2016 7:11:53 AM MST)

**Answer**

- Yes. This clarification is made in the final RFP document. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 139**

RFP Section 3.4 Offerors may not submit requests for exceptions and/or additions by reference to a vendor's website or URL. URLs provided with a proposal may result in that proposal being rejected as non-responsive. Exception.

Microsoft respectfully asserts that URLs are necessary and reasonable for clarifying certain terms and conditions which must reasonably be able to evolve over time. For example, we are constantly adding to our IaaS and PaaS offerings, and believe it is reasonable to announce and clarify those updates using a public website. In general, changes are not more restrictive but rather are additive with respect to certain protections offered for the services.

(Submitted: Jan 26, 2016 7:12:07 AM MST)

**Answer**

- Correct. This section is used to ensure that Offerors do not offer blanket exceptions by referring to a URL. URLs may be necessary and reasonable to clarify certain terms and conditions.

However, many evaluators will print off the proposals and may not have access to a URL. So it is recommended that Offerors do not solely rely on URLs. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 140**

5.6.5 Pg. 23 Offeror must provide a statement certifying that its service model offering(s) meet or exceed NIST definitions for service models Will the state please confirm that it requires offers to certify compliance with NIST Special Publication 800-145? (Submitted: Jan 26, 2016 7:12:09 AM MST)

**Answer**

- Yes. This clarification is made in the final RFP document. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 141**

RFP Section 5.5.4 (M) Offeror must provide a statement certifying that its computer applications and Web sites must be accessible to people with disabilities, and must comply with Participating entity accessibility policies and the Americans with Disability Act, as applicable. Exception

Microsoft complies with all laws applicable to it as IT service provider, but not laws applicable to a Purchasing Entity's own operations. Microsoft's research indicates that most if not all State accessibility laws (and the Federal ADA) applies to our customers (and not to Microsoft, as service provider), so we respectfully take exception with this clause, as written. Microsoft supports the government's obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts (including applicable California provisions). We encourage our customers (including Purchasing Entities under the Master Agreement and Participating Addenda) to judiciously compare product accessibility performance. The Voluntary Product Accessibility Templates (VPATs) for the Microsoft technologies used in providing the online services can be found at Microsoft's VPAT page. Further information regarding Microsoft's commitment to accessibility can be found at [www.microsoft.com/enable](http://www.microsoft.com/enable). (Submitted: Jan 26, 2016 7:12:29 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 142**

RFP Section 5.5.4 (M) Offeror must provide a statement certifying that its computer applications and Web sites must be accessible to people with disabilities, and must comply with Participating entity accessibility policies and the Americans with Disability Act, as applicable. Exception

Microsoft complies with all laws applicable to it as IT service provider, but not laws applicable to a Purchasing Entity's own operations. Microsoft's research indicates that most if not all State accessibility laws (and the Federal ADA) applies to our customers (and not to Microsoft, as service provider), so we respectfully take exception with this clause, as written. Microsoft supports the government's obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its

state law counterparts (including applicable California provisions). We encourage our customers (including Purchasing Entities under the Master Agreement and Participating Addenda) to judiciously compare product accessibility performance. The Voluntary Product Accessibility Templates (â€œVPATsâ€ ) for the Microsoft technologies used in providing the online services can be found at Microsoftâ€™s VPAT page. Further information regarding Microsoftâ€™s commitment to accessibility can be found at [www.microsoft.com/enable](http://www.microsoft.com/enable). (Submitted: Jan 26, 2016 7:13:30 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 143**

RFP Section 5.5.5 (M) Offeror must provide a statement certifying that its applications and content delivered through Web browsers must be accessible using current released versions of multiple browser platforms (such as Internet Explorer, Firefox, Chrome, and Safari) at minimum. Exception and Clarifying Statement  
For each of the Microsoft cloud services offered by Offeror, to the extent they deliver content through Web browsers, Microsoft generally endeavors to ensure compatibility with the latest versions of the most popular browsers including Internet Explorer, Firefox, Chrome and Safari. As of the date of Offerorâ€™s Proposal, each of these are supported. However, Microsoft respectfully declines to commit to any requirement that would constrain its ability to evolve its services to meet market needs. Over the 10 year term of the Master Agreement, it is likely that browser technology will change, and Microsoft will make decisions (independent of contractual commitments) as to how it will support future versions of these browsers. Microsoft therefore respectfully declines to accept this Section as written. (Submitted: Jan 26, 2016 7:13:58 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 144**

RFP Section 5.5.6 (M) Offeror must provide a statement certifying that it shall only use data for purposes defined in the Master Agreement, participating addendum, or related service level agreement. Offeror shall not use the government data or government related data for any other purpose including but not limited to data mining or bids on other government contracts. Offeror and/or its agents shall not resell nor otherwise redistribute information gained from its access to the Purchasing Entity. Clarifying Statement  
Customer Data will be used only to provide a Purchasing Entity the Online Services including purposes compatible with providing those services. Microsoft will not use Customer Data or derive information from it for any advertising or similar commercial purposes. As between the parties, the Purchasing Entity retains all right, title and interest in and to Customer Data. Microsoft acquires no rights in Customer Data, other than the rights Customer grants to Microsoft to provide the Online Services to Customer. This paragraph does not affect Microsoftâ€™s rights in software or Online Services Microsoft licenses to Purchasing Entity.  
Microsoft uses data mining solely for the purposes of providing the cloud services, subject to the above-mentioned restrictions. Microsoft will not use data mining for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security or service delivery analysis that is not explicitly authorized. (Submitted: Jan 26, 2016 7:14:14 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 145**

¶16.b Pg. 12 Specific insurance requirements Please clarify whether the Offeror is required or is not required to add Participating States or Purchasing Entities as an additional insured for Data Breach and Privacy/Cyber Liability including Technology Errors & Omissions and Crime Insurance as outlined in section 16 b. (Submitted: Jan 26, 2016 7:14:24 AM MST)

**Answer**

- This issue will need to be addressed in negotiations with Participating Entities during the negotiation of the participating addendums. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 146**

RFP Section 5.5.8 (M)  
Also Attachment B

Also RFP Section 8.13 (E) (5.5.8) Offeror must at a minimum complete, provide, and maintain a completed a Level 1 CSA STAR Registry Self-Assessment and submit a copy under this RFP. Offeror must represent and warrant that it will keep this CSA Star Self-Assessment current on an annual basis and must be provide it to a Purchasing Entity when requested. Offeror must also represent and warrant the accuracy and currency of the information on the completed CSA Star Self-Assessment Form.

**(8.13) CLOUD SECURITY ALLIANCE QUESTIONNAIRES**

Describe your level disclosure of compliance with the Cloud Controls Matrix for each Cloud solutions offered for the three levels below.

- a. Level 1 CSA STAR Registry Self-Assessment complete an available through CSA STAR, as required by Mandatory Minimum 4.1.9.
- b. Level 2 CSA STAR Registry Assessment Certification
- c. Level 2 CSA STAR Registry Attestation Exception and Clarifying Statement

Microsoft is on the Board of Directors of the Cloud Security Alliance (CSA). See <https://cloudsecurityalliance.org/about/board-of-directors/>.

While Microsoft represents that all CCMs were complete to the best of the knowledge of the authors thereof as of the time they were completed, Microsoft respectfully declines to represent and warrant the accuracy of CCMs. Additionally, for services that do not store or process sensitive Customer Data (e.g. applications such as Office 365 ProPlus, which is merely a delivery mechanism for on-premises software bits), Microsoft does not complete CCMs. (Submitted: Jan 26, 2016 7:14:28 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 147**

¶16.b.2 and 16.b.4 Pg. 12 Specific insurance requirements Please clarify how Professional Liability as outlined in section 16 b. 4 is different from Technology Errors & Omissions coverage in section 16 b. 2 (Submitted: Jan 26, 2016 7:14:44 AM MST)

**Answer**

- Tech E&O policies cover both liability and property loss exposures. Major liability insuring agreements include losses resulting from: (1) technology services, (2) technology products, (3) media content, and (4) network security breaches. Key property insuring agreements provide coverage for extortion threats, crisis management expense, and business interruption.

And some of the value added services may need to be covered by professional liability insurance. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 148**

RFP Section 5.5.9 (M)

Also RFP Section 5.6.1 (M) (5.5.9) Offeror must provide a statement certifying that it agrees to adhere to the services, definitions, and deployment models identified in the Scope of Services, in Attachment D, during the term of the contract.

(5.6.1) Offeror must provide a statement certifying that its Cloud Solutions meet the definitions described in Attachment D Exception and Clarifying Statement

Microsoft is able to provide, for Offeror's response, statements as to how each Microsoft Online Service meets certain definitions and deployment models shown in Attachment D (and the related Attachment C). However, because of the wide variety of Microsoft Online Services proposed for the Master Agreement, and the diversity of features, functionality and intended uses for each such Online Service, it is not possible for all elements of Attachments D and C to logically apply to each Online Service.

Additionally, over time, Microsoft Online Services will evolve to meet the needs of the marketplace, and the marketplace can be expected to drive evolution and improvements of standards such as NIST 800-53. Microsoft, as provider of these services to many thousands of customers with millions of users, can be expected to provide services that meet its customers' needs in this regard, but cannot reasonably freeze its design and operation of cloud services based upon any individual customer contract.

Lead State and Participating States may evaluate the Proposal to determine for themselves the suitability of any Microsoft Online Service for their Purchasing Entities. However, Microsoft must respectfully decline to certify that all statements in these attachments apply to all Online Services offered hereunder. (Submitted: Jan 26, 2016 7:14:52 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 149**



¶19. Ordering Pg. 15 h. Resale. Subject to any explicit permission in a Participating Addendum, Purchasing Entities may not resell goods, software, or Services obtained under this Master Agreement. This limitation does not prohibit: payments by employees of a Purchasing Entity as explicitly permitted under this agreement; sales of goods to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities under cooperative agreements and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

Will the state please clarify the bolded language to clarify what the state means (bold added to highlight for questions)? For example, to what type of fees is the state referring; what inventory; and what transactions?

(Submitted: Jan 26, 2016 7:15:04 AM MST)

**Answer**

- Bolding does not show up on questions. (Answered: Jan 28, 2016 2:00:48 PM MST)

**Question 150**

RFP Section 5.5.10 (M) Offeror must provide a statement that its auditing capabilities and reports are consistent with SAS 70 or later versions including, SSAE 16 6/2011, or greater Clarifying Statement

For Office 365 Services (exclusive of Yammer), Microsoft Dynamics CRM Online Services, Microsoft Azure Core Services, and Microsoft Intune Online Services (each, as defined in the Microsoft Online Services Terms), each such Microsoft Online Service Each Online Service follows a written data security policy (Information Security Policy) that complies with the control standards and frameworks of SSAE 16 SOC 1 (Type II) and SOC 2 (Type II). Additional standards are listed in the Microsoft Online Services Terms, which also include terms and conditions pursuant to which the audit findings may be provided to Purchasing Entities under non-disclosure agreement. Additionally, please see our response on Section 5.6.4, which pertains to other certifications and compliance with other standards. (Submitted: Jan 26, 2016 7:15:11 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 151**

RFP Section 5.5.12 (M) Offeror, as part of its proposal, must provide a sample of its Service Level Agreement (SLA) that contains at a minimum, the terms described in Section 8.13 of the RFP. Exception and Clarifying Statement

Note that the reference to Section 8.13 appears to be a typographic error, as that section does not apply to Service Level Agreements.

Offeror will provide Microsoft's most recent SLA with its Proposal.

Microsoft respectfully declines to conform its SLA to the terms of any section of the RFP. For clarity, Microsoft's SLAs are administered in a consistent and in some cases automated way for all its customers, and may therefore not be customized. For any given cloud service, our SLA in effect as of the time a subscription order is first placed is locked and will not change during the term of a subscription order. Upon renewal of a customer's subscription order, Microsoft's then-current SLA will supersede the previous SLA. The Purchasing Entity's renewal of its subscription will constitute its written approval of the then-current (new) SLA.

Microsoft's historical practice has been to improve its SLAs over time, and we have never before adversely changed any SLA terms.

However, our SLAs may not be customized for any customer, and we must reserve the right to change SLAs over time at our sole discretion, except to the extent one is locked for a subscription as noted above. (Submitted: Jan 26, 2016 7:15:44 AM MST)

**Answer**

- The typographic error has been corrected. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 152**

RFP Section 5.5.13 (M) Offeror must provide a statement certifying that it cannot change the SLA in any manner that adversely affects a Purchasing Entity or degrades the service levels applicable to a Purchasing Entity, without the Purchasing Entity's written approval. Clarifying Statement

Microsoft's SLAs are administered in a consistent and in some cases automated way for all its customers, and may therefore not be customized. For any given cloud service, our SLA in effect as of the time a subscription order is first placed is locked and will not change during the term of a subscription order. Upon renewal of a customer's subscription order, Microsoft's then-current SLA will supersede the previous SLA. The Purchasing Entity's renewal of its subscription will constitute its written approval of the then-current (new) SLA.

Microsoft's historical practice has been to improve its SLAs over time, and we have never before adversely changed any SLA terms.

However, our SLAs may not be customized for any customer, and we must reserve the right to change SLAs over time at our sole discretion. (Submitted: Jan 26, 2016 7:16:00 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 153**

RFP Section 5.5.12 (M) Offeror, as part of its proposal, must provide a sample of its Service Level Agreement (SLA) that contains at a minimum, the terms described in Section 8.13 of the RFP. Exception and Clarifying Statement

Note that the reference to Section 8.13 appears to be a typographic error, as that section does not apply to Service Level Agreements.

Offeror will provide Microsoft's most recent SLA with its Proposal.

Microsoft respectfully declines to conform its SLA to the terms of any section of the RFP. For clarity, Microsoft's SLAs are administered in a consistent and in some cases automated way for all its customers, and may therefore not be customized. For any given cloud service, our SLA in effect as of the time a subscription order is first placed is locked and will not change during the term of a subscription order. Upon renewal of a customer's subscription order, Microsoft's then-current SLA will supersede the previous SLA. The Purchasing Entity's renewal of its subscription will constitute its written approval of the then-current (new) SLA.

Microsoft's historical practice has been to improve its SLAs over time, and we have never before adversely changed any SLA terms.

However, our SLAs may not be customized for any customer, and we must reserve the right to change SLAs over time at our sole discretion, except to the extent one is locked for a subscription as noted above. (Submitted: Jan 26, 2016 7:17:26 AM MST)

**Answer**

- The typographic error has been corrected. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 154**

RFP Section 5.5.13 (M) Offeror must provide a statement certifying that it cannot change the SLA in any manner that adversely affects a Purchasing Entity or degrades the service levels applicable to a Purchasing Entity, without the Purchasing Entity's written approval. Clarifying Statement

Microsoft's SLAs are administered in a consistent and in some cases automated way for all its customers, and may therefore not be customized. For any given cloud service, our SLA in effect as of the time a subscription order is first placed is locked and will not change during the term of a subscription order. Upon renewal of a customer's subscription order, Microsoft's then-current SLA will supersede the previous SLA. The Purchasing Entity's renewal of its subscription will constitute its written approval of the then-current (new) SLA.

Microsoft's historical practice has been to improve its SLAs over time, and we have never before adversely changed any SLA terms.

However, our SLAs may not be customized for any customer, and we must reserve the right to change SLAs over time at our sole discretion. (Submitted: Jan 26, 2016 7:18:35 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 155**

Part 1:

Offeror must provide a statement acknowledging that no click-through, or other end user terms and conditions or agreements required by the Contract Vendor (Additional Terms) provided with any Services hereunder shall be binding on Participating Entities or Purchasing Entities, even if use of such Services requires an affirmative acceptance of those Additional Terms before access is permitted, unless agree to in the Master Agreement Terms and Conditions or in a Participating Addendum.

Exception and Clarifying Statement.

Contractual commitment: For the Microsoft Online Services sold and licensed to Purchasing Entities hereunder, no click-through licensing terms presented to end users or administrators, as they pertain to the delivery, operation or use of such services, shall be binding. For clarity, to the extent that certain services may present terms of use for a web portal used to administer and configure the Online Services, or to download software in conjunction with the Online Services, such terms of use shall be binding, to the extent that there are no equivalent terms and conditions in the Master Agreement which pertain to the use of such web portals. (Submitted: Jan 26, 2016 7:19:47 AM MST)

**Answer**

- All terms and conditions that an Offeror believes will apply must be disclosed and provided under the Master Agreement. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 156**

Part 2

Other than the foregoing, Microsoft respectfully takes exception to the additional requirement in this section 5.5.14 that would prevent any other form of "Additional Terms" from applying. Specifically:

(1) Because Microsoft is constantly adding to its list of Azure (and some other) Online Services, Microsoft must rely on URL-published lists of these Online Services in order to update its customers about such things as (i) whether they are included in Microsoft's Government Community Cloud; (ii) whether they are subject to particular certifications; etc.

(2) Microsoft publishes and regularly updates its Microsoft Online Services Terms (OST), which are incorporated into the terms and conditions of the Master Agreement applicable to Purchasing Entities and include (but are not limited to) both licensing and security/privacy terms and conditions, both generally and on a product-specific basis. Offeror has attached with its Proposal a copy of the latest version of the OST. Microsoft endeavors to improve the terms and conditions of the OST over time, and also must reasonably be able to update its terms in order to accommodate new products and changes to existing technology.

As such, Offeror and its subcontractor Microsoft will be willing to stipulate the following:

A. The mutually-agreed terms of the Master Agreement and Participating Addenda will take precedence over the OST, in the event of a conflict between them.

B. With respect to any individual subscription for an individual Online Service, changes to the OST during the term of the subscription shall not apply unless a Purchasing Entity elects to apply them. At the onset of a subsequent renewal subscription term, the then-current OST shall apply. (Submitted: Jan 26, 2016 7:24:09 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 9:57:54 AM MST)

**Question 157**

RFP Section 5.6.2 (M) Offeror must provide a statement certifying that its Service Level Agreement must define the performance and other operating parameters within which the infrastructure must operate to meet IT System and Purchasing Entity's requirements. Exception

Microsoft respectfully takes exception to this requirement as unreasonable. It is impossible for the provider of a standardized multi-tenant cloud service, provided uniformly to thousands of customers and millions of users, to design that service to meet each and every one of its customer's individual requirements. Microsoft transparently provides information about its Online Services to all customers so that they may judge for themselves whether the Online Services meet their needs. (Submitted: Jan 26, 2016 7:24:32 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 10:25:20 AM MST)

**Question 158**

Due to the size of the following question the reference info will be in this question and the question in the following entry:

RFP Section 5.6.4 (M)

Also RFP Section 5.6.5 (M) (identical)

Also RFP Section 8.6.1 (E)

Also RFP Section 8.6.2 (E)

Also RFP Section 8.6.6 (E)

Offeror must provide a statement certifying that it is NIST compliant with the service models it offers.

Specify your commitment to your commitment to comply with NIST, and any other relevant industry standards, as it relates to the Scope of Services described in this RFP, including supporting the different types of data that you may receive. You should include detailed response on how you plan to maintain security certifications.

List all government or standards organization security certifications you currently hold that apply specifically to the

hosted environment described in your firm's RFP response, as well as those in process at time of response. Specifically include HIPAA, FERPA, CJIS Security Policy, PCI Data Security Standards (DSS), IRS Publication 1075, FISMA, NIST 800-53, NIST SP 800-171, and FIPS 200 if they apply.

Provide a detailed list of the third-party attestations, reports, security credentials (e.g., FedRamp), and certifications relating to data security, integrity, and other controls. (Submitted: Jan 26, 2016 7:27:21 AM MST)

**Answer**

- I do not see a question in this question. (Answered: Jan 28, 2016 2:00:48 PM MST)

**Question 159**

part 1:

Microsoft will agree that, during the term of a Purchasing Entity's subscription for its "Government Community Cloud Services" (as defined in Microsoft's terms and conditions), those services will be operated in accordance with a written data security policy and control framework that is consistent with the requirements of NIST 800-53 Revision 4, or successor standards and guidelines (if any), established to support Federal Risk and Authorization Management Program (FedRAMP) accreditation at a Moderate Impact level. Microsoft intends for Government Community Cloud Services to support FedRAMP Authority to Operate (ATO), and Microsoft will use commercially reasonable efforts to obtain an ATO from a Federal agency, and to maintain such ATO through continuous monitoring processes and by conducting regular FedRAMP audits. Also see the Microsoft Trust Center at <https://www.microsoft.com/en-us/TrustCenter/default.aspx> and click on the applicable link for information about Microsoft's compliance and adherence to other standards, such as CJIS, IRS 1075, HIPAA, FERPA, ISO/IEC 27001 and (Submitted: Jan 26, 2016 7:29:35 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 10:25:20 AM MST)

**Question 160**

part 2:

27018, SOC1 and 2, and others. Also, please refer to our Exception and Clarifying Statements for Attachment A, Section 17, below in this document. Please note that some of these standards apply only to certain services (e.g. CJIS applies only our Government Community Cloud services) and that some of them require special Amendments and/or Agreements (e.g. CJIS requires that a State's CJIS Systems Agency must execute a special agreement with Microsoft, before Microsoft will provide an FBI CJIS Addendum for use in each such state). Microsoft welcomes the opportunity to discuss this in more detail during negotiation. Additionally, for the commercial and education versions of Office 365 Services (which are not Government Community Cloud Services), Microsoft Dynamics CRM Online Services, Microsoft Azure Core Services, and Microsoft Intune Online Services (each, as defined in the Microsoft Online Services Terms), each such Microsoft Online Service Each Online Service follows a written data security policy ("Information Security Policy") that complies with the control standards and frameworks shown in the table below. (Submitted: Jan 26, 2016 7:30:13 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 10:25:20 AM MST)

**Question 161**

Part I: Question will be part 2:  
RFP Section 5.6.6 (M)

Also RFP Section 8.8.2, subsections c and d (E) Offeror must provide a statement certifying that it on request you can isolate that data to servers and data centers residing entirely in the United States of America or its territories. Explain and specify methodologies for the following backup and restore services:

c. Digital location of backup storage (secondary storage, tape, etc.)

d. Alternate data center strategies for primary data centers within the continental United States. (Submitted: Jan 26, 2016 7:53:32 AM MST)

**Answer**

- I do not see a question in this question. (Answered: Jan 28, 2016 2:00:48 PM MST)

**Question 162**

Exception and Clarifying Statement

For its Government Community Cloud Services (as defined in Microsoft's service terms and conditions), or "GCC," Customer Content is stored at rest in the United States. In the cases of the GCC versions of

Exchange Online, SharePoint Online, Skype for Business, and Dynamics CRM Online, the Customer Content is stored in encrypted format, whereas in the GCC version of Azure Core Services, customers are given the option to encrypt non-public Customer Content.

For the non-GCC (public) versions of the equivalent services, as well as for Microsoft Intune Online Services, certain types of Customer Content are stored at rest in the United States, if set up by the users in the United States. The terms and conditions governing where Customer Data will be stored may be found in the Microsoft Online Services Terms. Finally, for the non-GCC version of Azure Core Services, customers are given the choice of which of Microsoft's worldwide data centers to store and/or process data in.

For purposes of the above, "Customer Content" means the subset of Customer Data created by users. For Office 365 Services, Customer Content shall at least include Exchange Online mailbox content (e-mail body, calendar entries, and the content of e-mail attachments), SharePoint Online site content and the files stored within that site, and Skype for Business Online archived conversations. For Microsoft Dynamics CRM Online Services, Customer Content shall be the entities of Customer Data managed by the Microsoft Dynamics CRM Online Services (Submitted: Jan 26, 2016 7:55:58 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 10:25:20 AM MST)

**Question 163**

RFP Section 5.6.7 (M) Offeror must provide a statement certifying that it will comply with all applicable laws and related to data privacy and security, which will be defined in the relevant Participating Addendum and/or Service Level Agreement. Exception

Microsoft will comply with all applicable laws (including but not limited to privacy and security related laws) applicable to IT service providers. For clarity, however, Microsoft does not agree to comply with laws written to apply solely to governments and their government functions (or to companies and their industry functions). For example, some laws pertaining to notification of security incidents apply to our government customers (not to IT Service Providers), so Microsoft does not agree to comply with those (but we believe our contractual commitments for Security Incident reporting are sufficient to help customers comply with their own laws).

Additionally, Microsoft respectfully declines to agree in advance to comply with laws to be listed in Participating Addenda, as Microsoft cannot reasonably be expected to review (and determine applicability of) all the possible laws that Participating States may list on those in the future. Microsoft sincerely hopes that its general contractual commitment to comply with all laws applicable to IT Service Providers will satisfy all Participating States.

(Submitted: Jan 26, 2016 7:56:24 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 10:25:20 AM MST)

**Question 164**

RFP Section 5.6.14 (M)

Also RFP Section 8.18 (E) (5.6.14) If applicable, Offeror must provide a statement certifying that its application-hosting environments also support a user test/staging environment that is identical to production.

(8.18) Describe your testing and training periods that your offer for your service offerings. Clarifying Statement For RFP Section 5.6.14, Microsoft asserts the following:

- a. Microsoft currently, as of the date of the Proposal, has a mechanism by which 30-day Trial subscriptions may be ordered for some, but not all, of the cloud services offered hereunder. Microsoft will provide additional information about this upon request of Lead State, Participating States, or any Purchasing Entity.
- b. It is possible for any Purchasing Entity to purchase a separate subscription for the purpose of establishing a second environment for test and/or staging purposes. Such separate Subscription would be at an additional cost, and additional contract paperwork may be required. (Submitted: Jan 26, 2016 7:56:57 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 10:25:20 AM MST)

**Question 165**

**TECHNICAL REQUIREMENTS**

<Long section, not printed here - these notes and disclaimers apply to the Section as a whole, although we will also address individual subsections, below.> Clarifying Statement.

The Microsoft Online Services in this Proposal provide highly-scalable and configurable solutions to address each customer's stated business needs in a cost-effective manner. These Online Services are multi-tenant "cloud" solutions hosted by Microsoft, operating on standardized terms, protocols and procedures.

Microsoft is not able to customize the Online Services or their operational protocols for any individual government

customer.

As with any standardized cloud service, Microsoft expects to evolve and improve the features and functions of these Online Services. For that reason, Microsoft reserves the right to update and change features and functionality described in this response during the term of the agreement between parties.

The features and functionality listed in the Proposal represent the Microsoft Online Services as of our response date, but neither Offeror nor Microsoft can guarantee that these features and functions will not change over time. Microsoft generally provides advance notice to its customers of major changes, but might not in all cases notify regarding minor changes. It is Microsoft's goal to improve the service over time. (Submitted: Jan 26, 2016 7:57:44 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 10:25:20 AM MST)

#### **Question 166**

RFP Section 8.4.1 (3rd bullet point) (E) Service Level Agreement (SLA). Please note that the terms and conditions of this RFP and all exhibits take precedence over any conflicting terms and conditions in the SLA. Exception

Microsoft respectfully takes exception to this requirement. Microsoft's SLA applies to standardized cloud services that cannot be customized for any one customer, as they are delivered uniformly to all customers. The process by which Microsoft administers its SLA is also standardized, relying upon both automated processes and standard operating procedures. As such, Microsoft cannot reasonably be expected to conform to any of its customers' individual SLAs. (Submitted: Jan 26, 2016 7:58:07 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 10:25:20 AM MST)

#### **Question 167**

Certify that all traffic to and from the hosting environment can and will be guaranteed to stay within the United States. Exception and Clarifying Statement

Microsoft respectfully takes exception to this requirement, as it is impossible to restrict data flowing through the public Internet (through which traffic to and from the hosting environment passes) to the United States. This is the case for all internet-based cloud services from all vendors.

For an additional fee, Microsoft offers optional services such as private IPsec VPN or ExpressRoute to provide a direct connection between a Purchasing Entity's network equipment and Microsoft's Online Services offered hereunder. The private IPsec VPN service provides a protected connection over the internet between the Purchasing Entity's network and Microsoft's Online Services. ExpressRoute provides a direct network connection between the Purchasing Entity's network and Microsoft's Online Services bypassing the Internet. (Submitted: Jan 26, 2016 7:58:31 AM MST)

**Answer**

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 28, 2016 10:25:20 AM MST)

#### **Question 168**

RFP Section 8.10 (E) Describe whether your sample Service Level Agreement is negotiable. Clarifying Statement

Microsoft's Service Level Agreement is not negotiable, as it pertains to standardized multitenant cloud services, uniformly delivered to many thousands of customers and millions of users, and relies upon automated processes and standard operating procedures. (Submitted: Jan 26, 2016 7:59:00 AM MST)

**Answer**

- Responses to the RFP document need to be provided in an Offeror's proposal, not during the Question and Answer period. (Answered: Jan 26, 2016 4:42:34 PM MST)

#### **Question 169**

RFP Section 8.16 Ability to provide anti-virus protection, for data stores. Clarifying Statement

For Office 365 Services, Microsoft Azure Core Services, Microsoft Dynamics CRM Online Services, and Microsoft Intune Online Services (as each is defined in the Microsoft Online Services Terms), Microsoft will implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with the terms and conditions of the Microsoft Online Services Terms, at all times during the term of the Master Agreement, to secure Customer Data from Security Incident, protect Customer Data and the applicable Online Services from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt a customer's access to its Customer Data.

Additionally, see the section of Microsoft's Service Level Agreement pertaining to anti-virus. (Submitted: Jan 26, 2016 7:59:36 AM MST)

**Answer**

- Responses to the RFP document need to be provided in an Offeror's proposal, not during the Question and Answer period. (Answered: Jan 26, 2016 4:42:34 PM MST)

#### Question 170

RFP Section 8.16 Ability to provide anti-virus protection, for data stores. Clarifying Statement

For Office 365 Services, Microsoft Azure Core Services, Microsoft Dynamics CRM Online Services, and Microsoft Intune Online Services (as each is defined in the Microsoft Online Services Terms), Microsoft will implement and maintain all appropriate administrative, physical, technical and procedural safeguards in accordance with the terms and conditions of the Microsoft Online Services Terms, at all times during the term of the Master Agreement, to secure Customer Data from Security Incident, protect Customer Data and the applicable Online Services from hacks, introduction of viruses, disabling devices, malware and other forms of malicious or inadvertent acts that can disrupt a customer's access to its Customer Data.

Additionally, see the section of Microsoft's Service Level Agreement pertaining to anti-virus. (Submitted: Jan 26, 2016 8:03:29 AM MST)

#### Answer

- Responses to the RFP document need to be provided in an Offeror's proposal, not during the Question and Answer period.

Any response/question will not be considered part of an Offeror's response if it is posted on Bidsync. (Answered: Jan 26, 2016 8:18:40 AM MST)

#### Question 171

A: Master Agreement Terms and Conditions. Describe if you have cyber insurance; and if so what is the coverage and what levels of protection does it provide to Purchasing Entities. Please see our Exception and Clarifying Statement, below, for Attachment A, Section 16. (Submitted: Jan 26, 2016 8:03:52 AM MST)

#### Answer

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:18:40 AM MST)

#### Question 172

Attachment A, Section 2, definition of "Confidential Information" Confidential Information means any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity. Exception Microsoft requests the following alternative definition, which we believe is no less protective and is more appropriate for a cloud services contract, to the extent it contemplates Customer Data. We have merged much of the RFP's definition into ours.

"Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand to be confidential, including (1) Customer Data; (2) any Purchasing Entity's records, (3) personnel records, and (4) information concerning individuals. Confidential Information does not include information that (a) becomes publicly available without a breach of this agreement, (b) was lawfully known or received by the receiving party without an obligation to keep it confidential, (c) is independently developed, or (d) is a comment or suggestion one party volunteers about the other's business, products or services. (Submitted: Jan 26, 2016 8:04:31 AM MST)

#### Answer

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:18:40 AM MST)

#### Question 173

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

#### Exception

Microsoft respectfully request to use its definition (see below). Issues with the RFP's definition are as follows:

1) The RFP's definition conflates electronic data with oral and other written data. Microsoft necessarily divides these into separate categories: (a) data stored and processed by our Online Services, which Microsoft calls "Customer Data" in its documents and is subject to the protections of Microsoft's robust Online Services Terms; vs. (b) other types of data exchanged between the parties which, if that data meets the definition of Confidential Information, will be protected solely by the confidentiality terms. To provide just one example of

relevance, Customer Data stored on our servers used to provide our Government Community Cloud Services will be subjected to NIST 800-53 controls necessary to meet the FedRAMP Moderate specification, whereas oral data exchanged between the parties will not be subjected to those controls (although, if confidential, will be treated as such). (Submitted: Jan 26, 2016 8:09:33 AM MST)

**Answer**

- The definition of "Data" is contained in the Master Agreement Terms and Conditions. As such, an Offeror should not be taking exception to the terms and conditions during the the questions and answer period.

As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:18:40 AM MST)

**Question 174**

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

Question 2:

) The RFP's definition would treat metadata (e.g. data generated by the systems of an Online Services based upon the analysis or categorization of Customer Data) equally with the data input by Purchasing Entities. Metadata will be used by Microsoft only for the provision of the Online Services, including but not limited to spam and virus filtering, data loss prevention, spillage support, transaction logs, temp files, and memory buffers.. Neither Customer Data nor metadata will be used by Microsoft for purposes of data mining to target advertisements to users. However, unlike Customer Data, Microsoft retains ownership of metadata and customers may not delete or extract it.

Proposed alternative language:

"Customer Data" means all data, including all text, sound, software, or image files that are provided to Microsoft by, or on behalf of, an Enrolled Affiliate through its use of the Online Services. All references to "Data" in the Master Agreement shall be deemed to mean customer data. (Submitted: Jan 26, 2016 8:10:21 AM MST)

**Answer**

- The definition of "Data" is contained in the Master Agreement Terms and Conditions. As such, an Offeror should not be taking exception to the terms and conditions during the the questions and answer period.

As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:18:40 AM MST)

**Question 175**

Attachment A, Section 2, Definitions of "Data Breach" and "Security Incident" Data Breach means any actual or reasonably suspected non-authorized access to or acquisition of computerized Non-Public Data or Personal Data that compromises the security, confidentiality, or integrity of the Non-Public Data or Personal Data, or the ability of Purchasing Entity to access the Non-Public Data or Personal Data.

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

Suggested alternative language:

"Security Incident" means any unlawful access, use, theft or destruction to any Customer Data stored on Microsoft's equipment or in Microsoft's facilities, or unauthorized access to such equipment or facilities resulting in use, theft, loss, disclosure, alteration or destruction of Customer Data. All references to "Data Breach" in the Master Agreement shall be deemed to mean Security Incident (Submitted: Jan 26, 2016 8:24:43 AM MST)

**Answer**

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

**Question 176**

Because of the maximum, this question will be in two parts. The first is the language and the second is



question:

Part 1:

Attachment A, Section 2, Definitions of "Data Breach" and "Security Incident" Data Breach means any actual or reasonably suspected non-authorized access to or acquisition of computerized Non-Public Data or Personal Data that compromises the security, confidentiality, or integrity of the Non-Public Data or Personal Data, or the ability of Purchasing Entity to access the Non-Public Data or Personal Data.

Security Incident means the possible or actual unauthorized access to a Purchasing Entity's Non-Public Data and Personal Data the Contractor believes could reasonably result in the use, disclosure or theft of a Purchasing Entity's Non-Public Data within the possession or control of the Contractor. A Security Incident also includes a major security breach to the Contractor's system, regardless if Contractor is aware of unauthorized access to a Purchasing Entity's Non-Public Data. A Security Incident may or may not turn into a Data Breach. (Submitted: Jan 26, 2016 8:25:51 AM MST)

**Answer**

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

**Question 177**

Part 2

Exception.

Microsoft respectfully takes exception with both these definitions, and asks that both of them be consolidated into a single defined term "Security Incident" using the alternative language proposed by Microsoft below, for the following reasons:

- 1) Microsoft maintains standardized multitenant Online Services that involve standardized processes, including but not limited to the processes involved with notification and mitigation of Security Incidents. Microsoft cannot feasibly customize its Security Incident processes.
- 2) Microsoft's processes do not recognize any distinction between "Data Breach" and "Security Incident." Microsoft defines "Security Incident" (below) to describe precisely what sort of event will be reported to customers pursuant to Microsoft's standard processes.
- 3) Neither Microsoft, nor any other provider of similar multitenant cloud services we are aware of, report suspected Security Incidents. We constantly monitor for events that raise suspicions, and investigate those accordingly. But the number of suspected incidents we investigate is large. It is only when we confirm that a Security Incident has actually happened that we report it.
- 4) Neither Microsoft's processes, nor those of our similarly-situated competitors providing standardized multitenant cloud services, include reporting of events that do not result in loss, disclosure or alteration of Customer Data. (Submitted: Jan 26, 2016 8:26:25 AM MST)

**Answer**

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

**Question 178**

Because of space allowed, first we are listing the RFP language. Part 2 will be the exceptions/clarifications: Attachment A, Section 2, definition of "Protected Health Information" Protected Health Information (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer. PHI may also include information that is a subset of health information, including demographic information collected from an individual, and (1) is created or received by a health care provider, health plan, employer or health care clearinghouse; and (2) relates to the past, present or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) that identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual. (Submitted: Jan 26, 2016 8:27:53 AM MST)

**Answer**

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

**Question 179**

Part 2:

Exception:

Microsoft does not object to defining PHI as is defined in statute. However, to the extent that the definition in statute may change, the RFP (by fixing the definition to the current one) would create conflict if, in the future, the definition in statute is updated.

Additionally, for purposes of Microsoft's role as Business Associate with respect to PHI processed in our Online Services, we respectfully request to clarify that only that which is stored and processed by those Online Services will apply.

We therefore respectfully request the following alternative language be used:

"Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR Â§ 160.103 of HIPAA, provided that it is limited to such protected health information that is received by Microsoft from, or created, received, maintained, or transmitted by Microsoft on behalf of, Customer.

(Submitted: Jan 26, 2016 8:28:32 AM MST)

#### Answer

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

#### Question 180

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

Microsoft's SLA reflects standardized and automated processes by which service credits are provided in the event that certain performance standards are not adhered to, as stated in the SLA document. As stated in our response to Section 8.10 of the RFP, Microsoft's SLA is not negotiable, to the extent that Microsoft must reasonably administer our SLA in a uniform manner for all its customers.

Microsoft therefore respectfully requests to use the following alternative language:

"Service Level Agreement" (SLA) means the document which specifies the standards to which Microsoft agrees to adhere and by which it measures the level of service for an Online Service. Microsoft's current and archived prior version SLAs are available at the Microsoft Volume Licensing Site ([www.microsoft.com/contracts](http://www.microsoft.com/contracts) of a successor site). With respect to any Microsoft Online Service ordered under the Master Agreement, the most current SLA available at the onset of a subscription License term shall apply to that Online Service for the duration of that subscription License Term, after which (for any subsequent renewal subscription License term) it will be superseded by the version current at the time of renewal. (Submitted: Jan 26, 2016 8:28:58 AM MST)

#### Answer

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

#### Question 181

Because of the entry limit part 1 is the RFP language and our second question will be the exception question; Attachment A, Section 7 Termination: Unless otherwise stated, this Master Agreement may be terminated by either party upon 60 days written notice prior to the effective date of the termination. Further, any Participating Entity may terminate its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Termination may be in whole or in part. Any termination under this provision shall not affect the rights and obligations attending orders outstanding at the time of termination, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for Services delivered and accepted, data ownership, Contractor obligations regarding Purchasing Entity Data, rights attending default in performance an applicable Service Level of Agreement in association with any Order, Contractor obligations under Termination and Suspension of Service, and any responsibilities arising out of a Security Incident or Data Breach. Termination of the Master Agreement due to Contractor default may be immediate. (Submitted: Jan 26, 2016 8:30:17 AM MST)

#### Answer

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

#### Question 182

Part 2:

Exception.

Microsoft respectfully requests a cure period before any termination for default becomes effective, provided that a breach is curable. To that end, we respectfully request to modify that last sentence accordingly. In addition, we have found and corrected a few typographical errors in the original language.

Proposed revision:

Termination: Unless otherwise stated, this Master Agreement may be terminated by either party upon 60 days written notice prior to the effective date of the termination. Further, any Participating Entity may terminate its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Termination may be in whole or in part. Any termination under this provision shall not affect the rights and obligations attending orders outstanding at the time of termination, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for Services delivered and accepted, data ownership, Contractor obligations regarding Purchasing Entity Data, rights attending default in performance of an applicable Service Level Agreement in association with any Order, Contractor obligations under Termination and Suspension of Service, and any responsibilities arising out of a Security Incident or Data Breach. Termination of the Master Agreement due to Contractor default may be immediate if defaults cannot be reasonably cured as allowed per Default and Remedies terms. (Submitted: Jan 26, 2016 8:30:47 AM MST)

**Answer**

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

**Question 183**

This question will be spread out over 4 questions because of the size:

Part 1 of RFP Language

Subsection b.) Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, (Submitted: Jan 26, 2016 8:32:48 AM MST)

**Answer**

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

**Question 184**

Part 2 RFP language:

and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. (Submitted: Jan 26, 2016 8:33:25 AM MST)

**Answer**

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

**Question 185**

exceptions from previous 2 'questions':

Exception

First, in Subsection b., Microsoft respectfully request to strike the sentence "Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information." This is unreasonable to expect either Offeror or its subcontractor and service provider, Microsoft, to do, to the extent that how any end user may or may not use a service is beyond the scope of

control of any outside party. Having said this, some of Microsoft's Online Services Licenses include Data Loss Prevention (DLP) technology, which may be able to assist Purchasing Entities in this regard. Additional technical and licensing information about DLP is available upon request.

Next, in the following sentence (beginning with "Without limiting the generality of," Microsoft respectfully requests to change the word "person" to "Contractor's Employees," to the extent that Contractor only has visibility to and control over the actions of its own employees.

Finally, because Customer Data is considered Confidential Information, and because Microsoft reasonably must be able to limit its liability in the event of a Security Incident. Except in the case of gross negligence or willful misconduct, Microsoft reasonably limits its liability with respect to Security Incidents (see our next Exceptions, in which we request a Limitation of Liability section, for additional details). Microsoft therefore respectfully requests to add the following subsection e to Section 8, as follows:

e. Notwithstanding the foregoing, damages attributable to Security Incidents shall be subject to the Section of the Master Agreement titled "Limitation of Liability." (Submitted: Jan 26, 2016 8:34:11 AM MST)

#### Answer

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

#### Question 186

Part 1:

Microsoft respectfully requests that the following additional Section, titled "Limitation of Liability," be inserted into Attachment A as Section 43, and that the existing Section 43, titled "Entire Agreement," be renumbered as Section 44.

Note that "Affiliate" will be defined as:

"For a Purchasing Entity, any entity eligible to purchase under the Master Agreement or a Participating Addendum to which a Purchasing Entity sublicenses the use of the Online Service.

"For Microsoft, any company that Microsoft owns, that owns Microsoft, or is under common ownership with Microsoft.

Proposed language:

43. Limitation of Liability for Microsoft Online Services. The parties agree that, other than Online Services, no other Microsoft Products shall be sold pursuant to the Master Agreement. As applicable to Online Services, the following terms and conditions shall apply: (Submitted: Jan 26, 2016 8:36:45 AM MST)

#### Answer

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

#### Question 187

Part 2:

a. General. The total liability of each party for a purchase hereunder (Microsoft and each Purchasing Entity), including their Affiliates and contractors, for claims arising under the Master Agreement is limited to direct damages up to the amount a Purchasing Entity paid for the Online Service during the prior 12 months before the cause of action arose; but in no event will a party's aggregate liability for any Online Service exceed the total amount paid for that Online Service under this Agreement. In the case of Online Services provided free of charge, previews, or code that a Purchasing Entity is authorized to redistribute to third parties without separate payment to Contractor, Microsoft's liability is limited to direct damages up to U.S. \$5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

b. Affiliates and contractors. Microsoft and Purchasing Entity each agree not to bring any action against the other's Affiliates or contractors in respect of any matter disclaimed on their behalf in this Agreement. Each party will be responsible for its actions in the event of any breach of this provision. (Submitted: Jan 26, 2016 8:38:53 AM MST)

#### Answer

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

#### Question 188

Part 3:

c. EXCLUSION OF CERTAIN DAMAGES. Neither party nor their Affiliates or contractors will be liable for any indirect, consequential, special or incidental damages, or damages for lost profits, revenues, business interruption, or

loss of business information in connection with this agreement, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable.

d. Limits. The limits and exclusions in this section titled "Limitation of liability" do not apply to either party's (1) obligations under the section titled "Defense of third party claims", (2) liability for damages caused by either party's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication (provided that, in jurisdictions that do not recognize a legal distinction between "gross negligence" and "negligence," "gross negligence" as used in this subsection shall mean "recklessness"); and (3) liability for violation of its confidentiality obligations (except obligations related to Customer Data) or the other party's intellectual property rights. (Submitted: Jan 26, 2016 8:39:39 AM MST)

**Answer**

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

**Question 189**

Attachment A, Section 10, Subsection a(4) (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

Exception

Microsoft respectfully requests to make this paragraph reciprocal. Please see the following proposed revised language:

(4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against either party to this Master Agreement or to a Participating State or Purchasing Entity, or the appointment of a receiver or similar officer for any such party or any of such party's property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or (Submitted: Jan 26, 2016 8:40:16 AM MST)

**Answer**

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

**Question 190**

The following will be in two parts because of the size limit.

part 1 RFP language:

Attachment A, Section 10, Subsections b and c b. Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 30 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages.

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

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Suspend Contractor from being able to respond to future bid solicitations; and
- (4) Suspend Contractor's performance; and
- (5) Withhold payment until the default is remedied. (Submitted: Jan 26, 2016 8:41:10 AM MST)

**Answer**

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

**Question 191**

Part 2

Exception.

The minor changes we have made to these two Subsections are related to the above changes to Subsection a.

(4), to the extent these are needed to support those changes. Revised language follows:

b. Upon the occurrence of an event of default, the party claiming default shall issue a written notice of default,

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

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

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) In the event of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, the Lead State shall have the right to suspend Contractor from being able to respond to future bid solicitations; and
- (4) Suspend Contractor's performance; and
- (5) Withhold payment until the default is remedied. (Submitted: Jan 26, 2016 8:41:56 AM MST)

#### Answer

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

#### Question 192

This will be 4 parts. 1 and two the RFP language 3 and 4 the question.

Part 1:

Indemnification

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

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

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

(Submitted: Jan 26, 2016 8:44:53 AM MST)

#### Answer

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

#### Question 193

part 2:

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

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

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

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

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor and then only to the extent of the prejudice or expenses. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all

costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement. (Submitted: Jan 26, 2016 8:45:27 AM MST)

**Answer**

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

**Question 194**

part 3 Exception

Microsoft respectfully takes exception with this Section 13, as written, as it is overly broad in scope. Microsoft proposes the following alternative language:

Indemnification

13. Indemnification

a. Subject to the exceptions below and the NASPO Participants' (as defined below) compliance with the notice and defense provisions below, in the event of any defect or deficiency in any Contractor Products or Services purchased by a Participating Entity or Purchasing Entity, Contractor agrees to defend NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees (collectively, the "NASPO Participants") 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 suffered by such third party and caused by the negligence, or willful misconduct of Contractor, its employees or subcontractors or volunteers, at any tier, during the performance of this Master Agreement (a "PI Claim"). This clause shall not be construed to bar any legal remedies Contractor may have with respect to the NASPO Participants' failure to fulfill their obligations pursuant to the Master Agreement or any Participating Addendum.

(Submitted: Jan 26, 2016 8:46:40 AM MST)

**Answer**

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

**Question 195**

part 4 (of now 6 or 7)

To qualify for such defense, the Participating Entities/Purchasing Entities shall promptly notify Contractor of any PI Claim of which the Participating Entities/Purchasing Entities become aware which may give rise to a right of defense pursuant to this Section. Notice of any PI Claim that is a legal proceeding, by suit or otherwise, must be provided to Contractor within thirty (30) days of the Participating Entities'/Purchasing Entities' first learning of such proceeding. If the Participating Entity's/Purchasing Entity's laws require approval of a third party to defend Participating Entity/Purchasing Entity, Participating Entity/Purchasing Entity will seek such approval and if approval is not received, Contractor is not required to defend that Participating Entity/Purchasing Entity. If a PI Claim is settled, to the extent permitted by law, the Participating Entities/Purchasing Entities shall not publicize the settlement and will cooperate with Contractor so that Contractor can make every effort to ensure the settlement agreement contains a non-disclosure provision.

Notwithstanding anything to the contrary contained herein, Participating Entities/Purchasing Entities agree that Contractor has no obligation for any PI Claim covered by this Section arising out of or resulting from the Participating Entities'/Purchasing Entities' or any of their respective employees', contractors' or agents' acts of negligence, gross negligence or misconduct. THE FOREGOING SHALL CONSTITUTE EACH AND EVERY PARTICIPATING ENTITY'S/PURCHASING ENTITY'S SOLE REMEDY AND CONTRACTOR'S SOLE AND EXCLUSIVE LIABILITY FOR ALL PI CLAIMS. (Submitted: Jan 26, 2016 8:48:45 AM MST)

**Answer**

- As stated in Section 3.4 of the RFP: "Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal."

The State will not negotiate or approve a change to the Master Terms and Conditions during the question and answer period. (Answered: Jan 26, 2016 8:53:13 AM MST)

**Question 196**

From the RFP, it appears we should ask for our exceptions during this Q and A period. If not, please confirm formally. From the RFP:

3 SOLICITATION REQUIREMENTS, INFORMATION AND INSTRUCTIONS

3.1 QUESTION AND ANSWER PERIOD

The RFP is issued by the State of Utah Division of Purchasing via Bidsync. The Division of Purchasing is the only

contact for this solicitation. Do not contact any other Participating Entity about the RFP.

All questions MUST be submitted through BIDSYNC (www.bidsync.com) during the designated time for questions (Q&A period) listed on Bidsync. Questions submitted through any other channel will not be answered. Questions may be answered in the order that they are submitted or may be compiled into one document and answered via an addendum. Answers disseminated by the State through the BidSync system shall serve as the official and binding position of the State and will constitute an addendum to this RFP.

Questions, exceptions, or notification to the State of any ambiguity, inconsistency, excessively restrictive requirement, or error in this RFP, MUST be submitted as a question through BidSync during the Q&A period. Questions may be answered individually or may be compiled into one document. Questions may also be answered via addenda. An answered question or addenda may modify the specification or requirements of this RFP. Answered questions and addendums will be posted on BidSync. Offerors should periodically check BidSync for answered questions and addendums before the closing date. It is the responsibility of the Offerors to submit their proposal as required by this RFP, including any requirements contained in an answered question and/or addendums.

Exceptions to scope/content of the RFP within an Offeror's proposal that have not been previously addressed within the Q&A period of the procurement are not allowed and may result in the Offeror's proposal being considered non-responsive. (Submitted: Jan 26, 2016 9:15:15 AM MST)

**Answer**

- Exceptions to the Master Terms and Conditions do not need to come through Bidsync. These can be attached to an Offeror's proposal.

If an Offeror believes that the RFP document contains an ambiguity, inconsistency, excessively restrictive requirement, or error in this RFP, then it MUST be submitted as a question through BidSync during the Q&A period. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 197**

The latest Q&A contains the following question and answer:

Question

Attachment B: Cloud Security Alliance Questionnaires

Please confirm whether the response requires both the CAIQ (Attachment B Exhibit 1) and CCM (Attachment B Exhibit 2) questionnaires, or if only one of the two is required. (Submitted: Jan 20, 2016 11:56:58 AM MST)

Answer(s)

The final RFP document will require that both documents be attached to a proposal. (Answered: Jan 25, 2016 2:23:05 PM MST)

The CAIQ contains specific questions with space for answers in columns E-I. The CCM does not. What expectations does NASPO have of vendors to properly respond to the Control Specifications in the CCM?

(Submitted: Jan 26, 2016 10:07:36 AM MST)

**Answer**

- Offerors can complete separate documents that answers the questions contained in both the CAIQ and the CCM. An Offeror is not required to use the spreadsheets uploaded.

However, if an Offeror completes a separate document then it should keep the questions in the same order as listed on the spreadsheets. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 198**

1. GENERAL PROVISIONS Section 2. SUBMITTING A PROPOSAL: By submitting a proposal in response to this RFP, the Offeror acknowledges that the minimum requirements, technical specifications, scope of work, and the evaluation process, outlined in this RFP are fair, equitable, not unduly restrictive, and understood. Any exceptions to the content of this RFP, including the specifications and minimum requirements, must be addressed during the Question and Answer period or protested in writing to the Division of Purchasing before the closing date and time.

Q: Please clarify how exceptions addressed in this way will be integrated into the Offeror's final proposal?

(Submitted: Jan 26, 2016 10:28:39 AM MST)

**Answer**

- Any exception to the RFP documents as posted must be protested before the closing of the RFP.

Exceptions/additions to the Master Terms and Conditions will be negotiated as provided in the RFP documents.

An Offeror should not submit a proposal that takes exceptions to the mandatory minimum or technical criteria.

Those exceptions/questions should take place during the Question and Answer period. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 199**

4. GENERAL PROVISIONS Section 18. PERFORMANCE AND COST ANALYSIS: The State reserves the right to review the awarded contract(s) on a regular basis regarding performance and cost, and may negotiate price and service elements during the term of the contract.

Q: Please clarify the process for price adjustments. Will this be done via an amendment process? (Submitted: Jan 26, 2016 10:29:35 AM MST)



**Answer**

- Offerors are providing a minimum discount to their price list in the cost proposal. As such, Offerors in providing the offerings need to do so at the price list minus the minimum discount.

If an offeror want to lower is minimum discount from say 5% to 3% then that needs to occur through an amendment. However, if an Offeror provides a discount greater than its minimum discount in its cost proposal then it does not need to go through an amendment. (Answered: Jan 28, 2016 2:00:48 PM MST)

**Question 200**

GENERAL PROVISIONS Section 19. AWARDED CONTRACT(S): Contract(s) awarded from this RFP will include the following documents: the scope of work, the appropriate State of Utah Standard Terms and Conditions, and any other documents listed in this RFP.

Q: Please clarify what is included in the "scope of work". Is this from a PO from the ordering agency?

Q: What are these other documents? (Submitted: Jan 26, 2016 10:30:27 AM MST)

**Answer**

- For this contract the scope of work will be the PO from the purchasing entities.

The other documents include the documents listed as part of this RFP. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 201**

## 6. GENERAL INFORMATION Section 2.1 PURPOSE

The State of Utah, Division of Purchasing (Lead State) is requesting proposals for cloud solutions in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The purpose of this Request for Proposals (RFP) is to establish Master Agreements with qualified Offerors to provide services related to cloud solutions for all Participating Entities. The objective of this RFP is to obtain best value, and 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 shall be extended to state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the individual state procurement director and compliance with local statutory and regulatory provisions. The initial term of the Master Agreement shall be ten (10) years with no renewal provisions; however, Contract Vendors must submit an annual certification that they are still compliant with the mandatory minimum requirements and technical specification of the RFP.

Q: Will the MA and/or the PA list all eligible entities. (Submitted: Jan 26, 2016 10:30:59 AM MST)

**Answer**

- States that are participating in this solicitation via the Master Agreement are listed in Attachment E.

For the State of Utah there is no list of eligible users. It is any entity that is entitled to use a cooperative contract by statute. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 202**

GENERAL INFORMATION Section 2.3 DEFINITIONS Participating Addendum means a written statement of agreement signed by the Contract Vendor and a Participating State or Participating Entity that clarifies the operation of the Master Agreement for the Participating Entity (e.g. ordering procedures specific to Participating State) and may add other state-specific language or other requirements. A Participating Addendum evidences the Participating Entity's willingness to purchase and the Contract Vendor's willingness to provide Offerings under the terms and conditions of the Master Agreement with any and all exceptions noted and agreed upon.

Q: Is there a template of the Participating Addendum or can the Offeror use its own template?

Q: Can a state extend the PA after the expiration of the MA? (Submitted: Jan 26, 2016 10:31:30 AM MST)

**Answer**

- A template of the participating addendum will be customized after contract award.

A PA cannot be extended after the expiration of the MA. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 203**

GENERAL INFORMATION Section 2.7.2 Master Agreement The Master Agreement(s) awarded from this RFP will consist of the RFP document, including all Exhibits, Attachments, and the winning Offeror's Proposal, in that order of precedence.

Q: Can an Offeror add their order specific terms on a master level or must it be done at the state level?

Q: Can an Offeror expand the documents to include an ordering document template. (Submitted: Jan 26, 2016 10:31:50 AM MST)

**Answer**

- 1. Yes. Ordering specific terms and conditions can be done at either level. However, it is encouraged to negotiate as many terms and conditions during the Master Agreement.

2. Yes. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 204**

GENERAL INFORMATION Section 2.14 NASPO ValuePoint eMarket Center In July 2011, NASPO ValuePoint

entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint entity's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center Contract. Because of the nature of these services, the NASPO ValuePoint Master Agreement Terms and Conditions (Attachment A) require only cooperation in providing ordering instructions on the eMarket Center.

Q: Is this the dedicated website referred to in Section 2.12? (Submitted: Jan 26, 2016 10:32:34 AM MST)

**Answer**

- Yes. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 205**

SOLICITATION REQUIREMENTS, INFORMATION AND INSTRUCTIONS Section 3.4 Exceptions to RFP and NASPO ValuePoint Master Agreement Terms and Conditions

Q: Does this Section mean that an Offeror can provide a list of exceptions or a proposed amendment that would form the basis of a negotiated agreement as part of their response?

Q: Can an Offeror reference its global policies that are referenced in URLs? (Submitted: Jan 26, 2016 10:35:51 AM MST)

**Answer**

- 1. Yes, an Offeror can take exception/addition to the Master Terms and Conditions as part of its response to the RFP. An Offeror does not need to list its exceptions/additions to the Master Terms and Conditions during the Question and Answer Period.
- 2. Please provide more context regarding your second question. However, regarding the Master Terms and Conditions Offerors may not submit requests for exceptions and/or additions by reference to a vendor's website or URL. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 206**

Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions Section 1.a. Master Order of Precedence

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

• A Participating Entity's Participating Addendum ( )

• NASPO ValuePoint Master Agreement Terms & Conditions including the applicable Exhibits to the Master Agreement

• The Solicitation

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

• A Service Level Agreement issued against the PA

Q: Can an Offeror add its Ordering Document to these list of documents? (Submitted: Jan 26, 2016 10:36:39 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. The Lead State will not consider proposed modifications and/or additions to the Master Agreement Terms and Conditions after the deadline for proposals. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 207**

Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions Section 8 Confidentiality, Non-Disclosure, and Injunctive Relief

Q: These terms seem to be one-sided. Can this be made mutual? (Submitted: Jan 26, 2016 10:37:17 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. The Lead State will not consider proposed modifications and/or additions to the Master Agreement Terms and Conditions after the deadline for proposals. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 208**

Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions Section 19.b and c Ordering

b. This Master Agreement permits Purchasing Entities to define project-specific requirements and informally compete the requirement among other firms having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to Purchasing Entity rules and policies. The Purchasing Entity may in its sole discretion determine which firms should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

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

Q: Will this be governed by state procurement procedures or the Master Agreement terms along with the PA? (Submitted: Jan 26, 2016 10:37:47 AM MST)

**Answer**

- This will be governed by a purchasing entities procurement procedures. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 209**

On Page 34 Section 6.3 States "Offeror... should meet a minimum Dun and Bradstreet (D&B) credit rating of 4A2." Would a Dun and Bradstreet Credit rating of 1R3 result in a fail of section 6.3. If so could the provided audited financial statements overcome that score? (Submitted: Jan 26, 2016 10:48:30 AM MST)

**Answer**

- Offeror's proposals under 6.3 must meet the financial strength identified in that Section. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 210**

Could you provide an example cloud scenario that we would be able to work with to demonstrate our capabilities? (Submitted: Jan 26, 2016 10:49:55 AM MST)

**Answer**

- Unfortunately, there is no example of a cloud scenario used in this RFP to demonstrate an offeror's capabilities. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 211**

Please confirm that offerors wishing to submit cloud solutions for multiple manufacturers may specify distinct discount percentages for products or product lines offered by each manufacturer within each of the three product categories identified (SaaS, IaaS, PaaS) in Attachment G.

For example:

Company A

SaaS Discount % 1

IaaS Discount % 2

PaaS Discount % 3

Company B

SaaS Discount % 4

IaaS Discount % 5

PaaS Discount % 6 (Submitted: Jan 26, 2016 11:07:59 AM MST)

**Answer**

- Yes. This would be acceptable. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 212**

In regards to question 207... what safeguards and assurances does a vendor have that items marked confidential or private will remain as such? Is the information retained, where is it retained and what assurances does a vendor have that this information will be properly secured? (Submitted: Jan 26, 2016 11:39:43 AM MST)

**Answer**

- The documents are maintained on Bidsync. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 213**

2 part question: Is the cyber insurance part of the minimum mandatory requirements? Is this scored and can it be negotiable? (Submitted: Jan 26, 2016 11:42:01 AM MST)

**Answer**

- The reference to cyber insurance from the RFP document has been removed. An Offeror can take exception to the insurance requirements in the Master Terms and Conditions. (Answered: Feb 1, 2016 4:19:32 PM MST)

**Question 214**

Document: Cloud\_Solutions\_-\_Request\_for\_Proposals\_-\_CH16012; Page: 23; Section: 5.6.5 "Offeror must provide a statement certifying that its service model offering(s) meet or exceed NIST definitions for service models." Is this referring to the service model definitions in Attachment D? (Submitted: Jan 26, 2016 12:18:48 PM MST)

**Answer**

- Yes. (Answered: Feb 1, 2016 4:19:32 PM MST)

**Question 215**

Document: Cloud\_Solutions\_-\_Request\_for\_Proposals\_-\_CH16012; Page: 28; Section: 8.1.3 "Offeror must identify for each service category(ies) the areas that each service category."

1) Can a supplier add categories during the 10 year term?

2) Can a supplier add Services during the 10 year term?

3) Can a supplier move Services between service categories during the 10 year term?

4) Can a supplier remove services during the 10 year term?

5) Are there any restrictions around timing for these changes? If so, what is the process for these changes?

(Submitted: Jan 26, 2016 12:21:28 PM MST)

**Answer**

- An Offeror is not awarded a Service Category during this solicitation then an Offeror may attempt to be awarded a Service Model if the Lead State re-issues the solicitation, as permitted in 2.8.  
For example if during this solicitation an Offeror is awarded a contract only for SaaS it cannot amend its contract to include PaaS or IaaS offerings unless it is awarded those service models during a re-solicitation. (Answered: Feb 1, 2016 4:19:32 PM MST)

**Question 216**

Page 61, Section 31 Warranty (c) - This section appears to be missing what the Contractor is representing. Please confirm that this is a statement that Contractor is representing that the Contractor's representations in response to the Solicitation by the Lead State are accurate. (Submitted: Jan 26, 2016 12:33:24 PM MST)

**Answer**

- Yes. (Answered: Feb 1, 2016 4:19:32 PM MST)

**Question 217**

Document: Cloud\_Solutions\_-\_Request\_for\_Proposals\_-\_CH16012; Page: 30; Section: 8.8.1.c Specify how you would respond to the following situations; include any contingency plan or policy. c. Experiences a business failure.  
Can you provide a couple of specific example scenarios to clarify the type of event you intend in this question? (c. Experiences a business failure) (Submitted: Jan 26, 2016 12:39:27 PM MST)

**Answer**

- No. Offerors should provide their general policies on how they respond to situations. (Answered: Feb 1, 2016 4:19:32 PM MST)

**Question 218**

The answer to question 69. CH16012 - NASPO ValuePoint Cloud Solutions, in part states "However, if an Offeror is not awarded a Service Category during this solicitation then an Offeror may attempt to be awarded a Service Category if the Lead State re-issues the solicitation, as permitted in 2.8."  
Service Category is not defined in the RFP. Please clarify the definition of this term. (Submitted: Jan 26, 2016 1:16:19 PM MST)

**Answer**

- Answer 69 should replace "Service Category" with Service Model, as defined in Attachment D. (Answered: Feb 1, 2016 4:19:32 PM MST)

**Question 219**

RFP 8.2.13(B) asks for "b. Level 2 CSA STAR Registry Assessment Certification."  
Our CSP will certify that they have this, but their standard practice is to only provide the certification document by request under NDA. We can therefore make a statement but we cannot provide the actual document.  
Is this acceptable to NASPO? (Submitted: Jan 26, 2016 1:20:38 PM MST)

**Answer**

- An Offeror must demonstrate how it meets this requirement under 8.2.13. (Answered: Feb 1, 2016 4:19:32 PM MST)

**Question 220**

If an Offeror is awarded one Cloud Service Type may the offeror add offerings from another Cloud Service Type during the term of the Master Agreement? For example if an offeror is awarded SAAS, are they permitted to later add IAAS products to the Master Agreement? (Submitted: Jan 26, 2016 1:23:16 PM MST)

**Answer**

- If an Offeror is awarded an offering for SaaS during this solicitation then it would be permitted to later add IaaS or PaaS if there was a re solicitation. An Offeror could amend its contract to later add on an offering. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 221**

RFP section 7.0 states ".....The State has identified a number of roles that are necessary based on the requirements of Attachment D; these titles are not meant to be restrictive, but are used to identify key roles." We are unable to locate the roles the State has identified. They are not listed in Attachment D. What section contains the list of key roles, as identified by the State? (Submitted: Jan 26, 2016 2:08:27 PM MST)

**Answer**

- Section 7 have been modified to only include the role of a contract manager. (Answered: Feb 1, 2016 4:19:32 PM MST)

**Question 222**

"8.13 (E) CLOUD SECURITY ALLIANCE QUESTIONNAIRES - A" references a Mandatory Minimum Requirement described in section 4.1.9 though I don't see anything in the RFP doc beyond 4.1.2, did I miss it? Also, is the expectation that each response will include both the CCM and CAIQ or is it either / or? The language "can submit two different types of reports" in attachment B implies the option to choose which one we include, is

that correct? (Submitted: Jan 26, 2016 2:43:39 PM MST)

**Answer**

- This was a mistake in the RFP document. The reference should be to Section 5.5.8. This will be corrected in the final version of the RFP document. (Answered: Jan 26, 2016 4:42:34 PM MST)

**Question 223**

If we are a current NASPO ValuePoint contract holder would it be possible to use the terms and conditions of the previous contract that are already negotiated and approved? (Submitted: Jan 26, 2016 4:14:20 PM MST)

**Answer**

- This cannot be guarantee. This solicitation contains specific terms and conditions that are specific to this solicitation. (Answered: Jan 26, 2016 4:43:16 PM MST)

**Question 224**

Mandatory Minimum Requirements Section 5.5.10 our data is housed in colocation centers. Can we submit the data center SOC reports? (Submitted: Jan 26, 2016 4:44:13 PM MST)

**Answer**

- Yes. This should be the 5.5.10 requirement. (Answered: Jan 27, 2016 11:24:19 AM MST)

**Question 225**

Can you please provide us with the excel sheet format (showing the specific 20+ column headers) of the Quarterly Sales Reports that will be required under the contract? (Submitted: Jan 26, 2016 8:37:31 PM MST)

**Answer**

- NASPO ValuePoint is going to work with awarded contractors, once awards are made, to create a reasonable and effective detailed report template.

What NASPO ValuePoint will want to know is very limited in the Cloud case - what entities are using it, which offerings and how much are they paying. (Answered: Jan 28, 2016 1:14:43 PM MST)

**Question 226**

Document: Cloud\_Solutions\_-\_Request\_for\_Proposals\_-\_CH16012; Page: 23; Section: 8.15.2. This section 8.15.2 appears to be a duplicate of section 8.8.2. Is that correct, or is there a different answer expected? Can you please clarify? (Submitted: Jan 27, 2016 8:01:00 AM MST)

**Answer**

- Section 8.15.2 has been deleted from the final version of the RFP. (Answered: Jan 27, 2016 11:24:19 AM MST)

**Question 227**

Document: Cloud\_Solutions\_-\_Request\_for\_Proposals\_-\_CH16012; Page: 30; Section: 8.14.2 Describe in detail the standard lead-time for provisioning Services defined in section 8.4.2 of the RFP. Section 8.4.2 reads, Specify your ability to comply with the following customer service requirements:

- a. You must have one lead representative for each entity that executes a Participating Addendum. Contact information shall be kept current.
- b. Customer Service Representative(s) must be available by phone or email at a minimum, from 7AM to 6PM on Monday through Sunday for the applicable time zones.
- c. Customer Service Representative will respond to inquiries within one business day.
- d. You must provide design services for the applicable categories.
- e. You must provide Installation Services for the applicable categories.

Can you clarify how these two sections are related? (Submitted: Jan 27, 2016 8:03:24 AM MST)

**Answer**

- These section are not related. And Section 8.14.2 has been modified to remove the reference to 8.4.2. (Answered: Jan 27, 2016 11:24:19 AM MST)

**Question 228**

Page 31, Section 5.5.14 indicates that end users will not be bound by additional terms and conditions, unless agreed to in the Master Agreement Terms and Conditions or in a Participating Addendum. Will NASPO review new terms and conditions over the term of the contract, as appropriate to keep pace with changes and new technologies?

Page 31, Section 5.5.14 indicates that end users will not be bound by additional terms and conditions, unless agreed to in the Master Agreement Terms and Conditions or in a Participating Addendum. Some cloud manufacturers will require end users to complete a document to enroll in cloud services. It is our understanding that this step (as applicable) would be permissible to properly establish the cloud solution for the end user, can you confirm? (Submitted: Jan 27, 2016 1:07:49 PM MST)

**Answer**

- Yes. Master Agreement terms and conditions may be modified as a result of changes and new technologies. (Answered: Jan 28, 2016 1:14:43 PM MST)

**Question 229**

Page 43, Section 9.1 Cost Proposal states that "Pricing must be all-inclusive of infrastructure and software costs and management of infrastructure, network, OS, and software." We interpret this to mean that pricing should be provided for all aspects of the cloud solution that are typically offered by the manufacturer, can you confirm? Alternatively, if there are additional expectations around infrastructure and management of infrastructure beyond what might typically be offered by a cloud solutions provider, can you please clarify what those expectations are? (Submitted: Jan 27, 2016 1:08:12 PM MST)

**Answer**

- Your interpretation is correct. (Answered: Jan 28, 2016 1:14:43 PM MST)

**Question 230**

RFP Section 5.2.5 prohibits employment of "any company or person other than a bona fide employee working solely for the Offeror or a company regularly employed as its marketing agent, to respond to the RFP." What about cases where authorized resellers or value added resellers of a service provider wish to submit proposals as prime contractors, for the purpose of providing cloud services for which the cloud service provider sells via an "indirect through reseller" sales model "is this allowed? (Submitted: Jan 27, 2016 1:09:09 PM MST)

**Answer**

- This is allowed. (Answered: Jan 28, 2016 1:14:43 PM MST)

**Question 231**

RFP Section 5.5.12 refers to SLA requirements in RFP Section 8.13. But Section 8.13 appears to apply to the STAR Registry Self-Assessment, not SLA. Is this a typo, and if so then what section was intended? If not, please explain the relationship to SLA. (Submitted: Jan 27, 2016 1:10:48 PM MST)

**Answer**

- The reference should be to 8.12. (Answered: Jan 28, 2016 1:14:43 PM MST)

**Question 232**

RFP Section 9.1 requires that Offerors bid a minimum discount off of their published government price catalog. Will alternative models be considered in cases where no such published price list exists? For example, in the case of an Offeror which is a systems integrator or reseller of cloud services provided by another company that does not publicly publish such a price catalog. (Submitted: Jan 27, 2016 1:11:45 PM MST)

**Answer**

- A price list is required in order to respond. The participating entities need to know the prices that are attached to the offerings of an Offeror. (Answered: Jan 28, 2016 1:14:43 PM MST)

**Question 233**

Attachment A contains the defined terms "Disabling Code," "Fulfillment Partner," and that do not appear to be used anywhere in that Attachment or the other RFP documents. Please advise if, and how, NASPO intends to use these terms in the Master Agreement. (Submitted: Jan 27, 2016 1:12:13 PM MST)

**Answer**

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

Fulfillment Partner means a third-party contractor qualified and authorized by Contractor, and approved by the Participating State under a Participating Addendum, who may, to the extent authorized by Contractor, fulfill any of the requirements of this Master Agreement including but not limited to providing Services under this Master Agreement and billing Customers directly for such Services. Contractor may, upon written notice to the Participating State, add or delete authorized Fulfillment Partners as necessary at any time during the contract term. Fulfillment Partner has no authority to amend this Master Agreement or to bind Contractor to any additional terms and conditions. (Answered: Jan 28, 2016 11:00:02 AM MST)

**Question 234**

Section 9 of Attachment A ("Right to Publish") appears to prohibit any sort of mention of the Agreement without advance permission. Will a Contractor need to seek permission in each case where it wants to alert a prospective Purchasing Entity in a Participating State of the existence of the Master Agreement, in order that the Contractor may encourage the prospective Purchasing Entity to utilize the Master Agreement for its needs? (Submitted: Jan 27, 2016 1:12:39 PM MST)

**Answer**

- No. (Answered: Jan 28, 2016 9:12:16 AM MST)

**Question 235**

RFP Section 7.2 requires incorporation of all Attachments. If an exception is not taken to Attachment E would an offeror be bound by those state specific terms and conditions when they attempt to negotiate a Participating Addendum with that respective State? Must exceptions to Attachment E's state specific terms and conditions be taken at this phase? Or will additional time be granted for Offerors to prepare exceptions to the Participating Addenda in Attachment E? (Submitted: Jan 27, 2016 1:13:05 PM MST)

**Answer**

- No. State specific terms and conditions will be negotiated when an awarded contractor negotiates a participating addendum (the same applies for the State of Utah's terms and conditions). The only set of terms and conditions that an Offeror needs to take exception to are the Master Agreement Terms and Conditions. (Answered: Jan 28, 2016 9:12:16 AM MST)

**Question 236**

In each of the Exhibits 1 and 2 to Attachment A, please explain what is meant by the section titled "Web Services" which says "the Contractor shall use Web services exclusively to interface with the Purchasing Entity's data in near real time." (Submitted: Jan 27, 2016 1:13:44 PM MST)

**Answer**

- The applications are accessible from various client devices through a thin-client interface such as a Web browser (e.g., Web-based email) or a program interface. (Answered: Jan 28, 2016 10:34:42 AM MST)

**Question 237**

Our company currently has a D&B rating of 1R2. We would like to confirm if this is considered an equivalent rating to the required D&B of 3A2 or higher? Our company is a Private S Corporation and like many other similar companies, we do not submit financials to D&B and therefore D&B cannot provide us a "A" rating. D&B has therefore provided us a rating of 1R2. We believe that 1R2 + financials (which we will be submitting with our proposal) to show our standing and financial strength is equivalent to 3A2 - this is based on satisfying the 3A2 threshold as a \$100M+ company and a composite rating of 2 which is equivalent. Please confirm if 1R2 with financials submitted directly to NASPO with our proposal will be deemed equivalent to 3A2. (Submitted: Jan 27, 2016 2:24:14 PM MST)

**Answer**

- The State's concerns with the D&B rating is the financial strength of the company. An Offeror's submitted financials must meet this requirement. (Answered: Jan 28, 2016 9:12:16 AM MST)

**Question 238**

When does the State intend to publish the revised, final RFP? (Submitted: Jan 28, 2016 2:11:45 AM MST)

**Answer**

- As soon as all the revisions have been made to the document. It is anticipated that it will be released by February 5, 2016. (Answered: Jan 28, 2016 9:12:16 AM MST)

**Question 239**

The RFP refers to a 'contract vendor'. In each cloud category, will multiple cloud vendors be chosen by the Lead State? (Submitted: Jan 28, 2016 7:18:21 AM MST)

**Answer**

- Yes, this is a multiple award contract, so the State intends to award multiple contracts to each category. (Answered: Jan 28, 2016 9:12:16 AM MST)

**Question 240**

Is there a document associated with Addendum #6? If not, can you specify what information was added? (Submitted: Jan 28, 2016 9:08:55 AM MST)

**Answer**

- This addendum is being provided to inform Offerors that the State of Alabama has provided its intent to participate in this RFP. (Answered: Jan 28, 2016 9:12:49 AM MST)

**Question 241**

Does the SSAE 16 requirement apply to every service offering? (Submitted: Jan 28, 2016 9:32:35 AM MST)

**Answer**

- If an Offeror does not believe the SSAE 16 requirement applies to its offering then it needs to describe why the requirement does not apply. However, the State reserves the right to determine if it does apply. (Answered: Jan 28, 2016 10:58:31 AM MST)

**Question 242**

Please provide additional details of the applicable roles for subcontractors and/or third party resellers. (Submitted: Jan 28, 2016 9:39:13 AM MST)

**Answer**

- Subcontractor means any organization, whether designated as a subcontractor, fulfillment partner, reseller, etc.,

that will assist an Offeror to provide an Offering if awarded a Master Agreement. (Answered: Jan 28, 2016 10:58:31 AM MST)

**Question 243**

Will subcontractors and/or third parties be able to provide functions of the service delivery? For example, if an OEM has a offering on it's GPL but part of that delivery will include a "wrapper" value added services from an authorized reseller. Is this joint offering from the OEM and it's authorized reseller permissible under the scope of this RFP? (Submitted: Jan 28, 2016 9:39:39 AM MST)

**Answer**

- Yes. (Answered: Jan 28, 2016 10:58:31 AM MST)

**Question 244**

Will subcontractors and/or third parties be able to list their service offerings under a Subcontractor price list? (Submitted: Jan 28, 2016 9:40:07 AM MST)

**Answer**

- Subcontractor will only be able to offer what the awarded contractor is able to offer. (Answered: Jan 28, 2016 10:58:31 AM MST)

**Question 245**

How can a cloud provider certify its offerings are NIST compliant? We can attest that our offering is NIST compliant but how can we certify it? (Submitted: Jan 28, 2016 9:40:24 AM MST)

**Answer**

- This requirement has been modified to request that Offerors describe how its offerings are NIST compliant. (Answered: Jan 28, 2016 10:58:31 AM MST)

**Question 246**

Section 5.6.13 seems to be applicable to IaaS only. If a requirement such as 5.6.13 is only applicable to IaaS, how can it be a mandatory requirement? (Submitted: Jan 28, 2016 9:40:54 AM MST)

**Answer**

- If a mandatory minimum does not apply to an Offeror's offering/solution then the Offeror must describe how that mandatory minimum does not apply. (Answered: Jan 28, 2016 10:58:31 AM MST)

**Question 247**

Is Cloud brokering and/or resale of other Cloud Service Providers offerings allowed in a respondents proposal? (Submitted: Jan 28, 2016 9:41:28 AM MST)

**Answer**

- Brokering and/or resale were not contemplated for this RFP apart from an Offeror using resellers. (Answered: Jan 28, 2016 1:14:43 PM MST)

**Question 248**

Attachment A T&Cs, Section 42B. Please explain what is meant ship date in the detailed sales report that is required. (Submitted: Jan 28, 2016 9:41:48 AM MST)

**Answer**

- "Ship date" should be removed. It is not applicable to this RFP. (Answered: Jan 28, 2016 1:14:43 PM MST)

**Question 249**

It appears that not all the sales reporting requirements in Attachment A 42B are reflected in the reporting template provided in Attachment F. Which document has precedents? (Submitted: Jan 28, 2016 9:42:22 AM MST)

**Answer**

- The sales reporting document will be modified once contracts have been awarded. (Answered: Jan 28, 2016 1:14:43 PM MST)

**Question 250**

Would the State entertain providing an extension to the submittal deadline in order to allow responders to provide a more detailed accurate response? (Submitted: Jan 28, 2016 9:42:55 AM MST)

**Answer**

- No. The RFP will have been posted for over 60 days. The State believes that it has provided Offerors time to provide a detailed accurate response. (Answered: Jan 28, 2016 10:00:55 AM MST)

**Question 251**

Revisions will be included in a final document available Feb. 5th, the responses are due Feb. 26th. This would require a complete review of the final document for any and all changes, which by the way include a new review by legal, finance/purchasing, product management, contractual review team, etc., is it normal to expect a complete response in this timeframe of 21 days? We would like to formally request a 30 day extension be granted to everyone. (Submitted: Jan 28, 2016 10:17:50 AM MST)



**Answer**

- The revisions that are being made are the ones being discussed during the question and answer period to address typos, numbering issues, and clarifications. (Answered: Jan 28, 2016 10:25:20 AM MST)

**Question 252**

If selected as an approved Offeror, is the vendor/Offeror required to accept all requests for services? Or can the vendor/Offeror decline service requests posed to them? (Submitted: Jan 28, 2016 10:37:15 AM MST)

**Answer**

- No. An Offeror may negotiate participating addendums with Participating Entities as they choose. (Answered: Jan 28, 2016 10:58:31 AM MST)

**Question 253**

Section #8.3- refers to roles, identified in Section 7, which refers to roles identified in Attachment D. Attachment D, has no roles identified.

What are the roles NASPO would like identified and described? (Submitted: Jan 28, 2016 10:48:52 AM MST)

**Answer**

- Section 7 has been modified to only reference the role of the Contract Manager. (Answered: Jan 28, 2016 10:58:31 AM MST)

**Question 254**

Section 8.15.1 is matching 8.8.1(e). This appears to be a duplicate question. Please confirm which question should be answered. (Submitted: Jan 28, 2016 10:51:06 AM MST)

**Answer**

- Yes this is a duplicate and 8.15.1 has been deleted from the final RFP document. (Answered: Jan 28, 2016 10:58:31 AM MST)

**Question 255**

5.5.5 (p.22) Please clarify that this requirement only applies to SaaS solutions (Submitted: Jan 28, 2016 10:54:49 AM MST)

**Answer**

- If an Offeror believes that a requirement or technical criteria only applies to a certain offering then it must describe that in its RFP. (Answered: Feb 1, 2016 4:19:32 PM MST)

**Question 256**

5.5.11 (p. 22) Please confirm that the no-cost training is limited to the training that the vendor will describe in response to RFP Section 8.18 (Submitted: Jan 28, 2016 10:55:12 AM MST)

**Answer**

- The word "training" in 5.5.11. will be removed from the final RFP document. (Answered: Jan 28, 2016 1:14:43 PM MST)

**Question 257**

5.6.2 (p. 23) Does the SLA have to include payment provisions for violation of the SLA? (Submitted: Jan 28, 2016 10:55:32 AM MST)

**Answer**

- Yes, if included in the Offeror's SLA. (Answered: Jan 28, 2016 1:14:43 PM MST)

**Question 258**

5.6.14 (p.23) Please confirm if the applicable production environment interfaces with purchasing party applications, the purchasing party will be responsible for providing test/staging interfaces in order to make the test/staging environment identical to production? (Submitted: Jan 28, 2016 10:56:00 AM MST)

**Answer**

- Correct. (Answered: Jan 28, 2016 1:14:43 PM MST)

**Question 259**

5.6.14 (p. 23) Please confirm that only the hardware/software configuration between test/staging and production environments needs to be identical. The actual data in various environments can be different. (Submitted: Jan 28, 2016 10:56:27 AM MST)

**Answer**

- Correct. (Answered: Jan 28, 2016 1:14:43 PM MST)

**Question 260**

8.1.1 (p. 28) This section refers to page limit for response. Please provide the page limit. (Submitted: Jan 28, 2016 10:56:51 AM MST)

**Answer**

- 8.1.1. has been modified so that ",within the indicated page limit." has been deleted. (Answered: Jan 28, 2016

11:02:01 AM MST)

#### Question 261

General Question

Will the vendors be scored individually for each solution submitted, or one combined score for all solutions provided? (Submitted: Jan 28, 2016 10:57:34 AM MST)

#### Answer

- Combined for all of the offering provided. (Answered: Jan 28, 2016 11:02:01 AM MST)

#### Question 262

We are a privately held corporation and do not have publicly traded debt; Therefore we do not file any financial / annual report documents with the Securities and Exchange Commission (SEC). We only distribute financial information to a limited number of parties; investors, debt holders/lenders, and customers and vendors with whom we have confidentiality or non-disclosure agreements with. Furthermore, financial statements are NOT generally available to the public since we neither file with the SEC nor do we disclose financials without confidentiality or non-disclosure agreements. Please confirm if the State will hold financial statements as Confidential should bidder clearly marks as confidential. (Submitted: Jan 28, 2016 1:05:27 PM MST)

#### Answer

- If documents, such as financial information as marked as Confidential and an Offeror has completed the appropriate form (Claim of Business Confidentiality form) then the State will not disclose the documents. (Answered: Jan 28, 2016 1:18:45 PM MST)

#### Question 263

5.6.13: some of the service offerings rely on connectivity to the PSTN (e.g.: mobile numbers for texting/sms services, local area voice calling, long distance access, audio circuits for web-based conferencing) may require non-automated intervention to increase capacity â€" is exclusion of such services from compliance to 5.6.13 a disqualifying event for a service offering relying on the PSTN connectivity? (Submitted: Jan 28, 2016 1:07:28 PM MST)

#### Answer

- An Offeror should discuss this issue in their proposal. It should not disqualify. (Answered: Jan 28, 2016 1:18:45 PM MST)

#### Question 264

Unlimited Training:

Is unlimited electronic training, such as online forums, API and SDK reference documents, video on demand and other electronic, automatic, self-paced documentation and training, considered a compliant response to requirement 5.5.11? Is there any expectation of in-person, or 1:1, or 1:many live training in this requirement? If so, what quantities of persons and session might contractor need to consider to establish cost basis for proposal? (Submitted: Jan 28, 2016 1:07:59 PM MST)

#### Answer

- This would meet the requirement. However, the word "training" has been removed from 5.5.11. (Answered: Jan 28, 2016 1:18:45 PM MST)

#### Question 265

Section 5.5.7; Is a Level 1 CSA STAR Registry Self-Assessment required for a remotely managed, on customer premises IaaS offer? (Submitted: Jan 28, 2016 1:10:01 PM MST)

#### Answer

- If an Offeror believes that a mandatory minimum requirement or technical criteria is not applicable to its offering then it should describe why it is not applicable in its proposal. (Answered: Feb 1, 2016 4:19:32 PM MST)

#### Question 266

Will NASPO supply a Vendor information Sheet that is unlocked for ease of use in developing the proposal?

(Submitted: Jan 28, 2016 2:00:18 PM MST)

#### Answer

- The Vendor Information Sheet does not have a password to protect it. (Answered: Jan 28, 2016 2:02:38 PM MST)

#### Question 267

FP Section 5.2.5 prohibits employment of â€œany company or person other than a bona fide employee working solely for the Offeror or a company regularly employed as its marketing agent, to respond to the RFP.â€ What about cases where authorized resellers or value added resellers of a service provider wish to submit proposals as prime contractors, for the purpose of providing cloud services for which the cloud service provider sells via an â€œindirect through resellerâ€ sales model â€" is this allowed? (Submitted: Jan 28, 2016 2:25:26 PM MST)

#### Answer

- Yes, this is allowed. (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 268**

RFP Section 5.5.12 refers to SLA requirements in RFP Section 8.13. But Section 8.13 appears to apply to the STAR Registry Self-Assessment, not SLA. Is this a typo, and if so then what section was intended? If not, please explain the relationship to SLA. (Submitted: Jan 28, 2016 2:25:40 PM MST)

**Answer**

- The reference to Section 8.13 should be 8.12. (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 269**

RFP Section 9.1 requires that Offerors bid a minimum discount off of their published government price catalog. Will alternative models be considered in cases where no such published price list exists? For example, in the case of an Offeror which is a systems integrator or reseller of cloud services provided by another company that does not publicly publish such a price catalog. (Submitted: Jan 28, 2016 2:25:49 PM MST)

**Answer**

- No specific format is required for an Offeror's price schedule. Pricing catalogs should include the price structures of the cloud solutions models and deployment models that it intends to provide including the types of data it is able to hold under each mod (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 270**

Attachment A contains the defined terms "Disabling Code," "Fulfilment Partner," and that do not appear to be used anywhere in that Attachment or the other RFP documents. Please advise if, and how, NASPO intends to use these terms in the Master Agreement. (Submitted: Jan 28, 2016 2:26:05 PM MST)

**Answer**

- The definition of Subcontractor on the RFP has been changed to include Fulfilment partner. An Offeror may request that the term disabling code be removed from the Master Terms and Conditions if it is not used in the final Master Agreement. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 271**

Section 9 of Attachment A ("Right to Publish") appears to prohibit any sort of mention of the Agreement without advance permission. Will a Contractor need to seek permission in each case where it wants to alert a prospective Purchasing Entity in a Participating State of the existence of the Master Agreement, in order that the Contractor may encourage the prospective Purchasing Entity to utilize the Master Agreement for its needs? (Submitted: Jan 28, 2016 2:26:14 PM MST)

**Answer**

- No. (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 272**

RFP Section 7.2 requires incorporation of all Attachments. If an exception is not taken to Attachment E would an offeror be bound by those state specific terms and conditions when they attempt to negotiate a Participating Addendum with that respective State? Must exceptions to Attachment E's state specific terms and conditions be taken at this phase? Or will additional time be granted for Offerors to prepare exceptions to the Participating Addenda in Attachment E? (Submitted: Jan 28, 2016 2:26:25 PM MST)

**Answer**

- No. An offeror will negotiate State specific terms and conditions during the participating addendum process. (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 273**

In each of the Exhibits 1 and 2 to Attachment A, please explain what is meant by the section titled "Web Services" which says "the Contractor shall use Web services exclusively to interface with the Purchasing Entity's data in near real time." (Submitted: Jan 28, 2016 2:26:34 PM MST)

**Answer**

- This question has been answered above. (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 274**

Regarding the following question:

6.2.2 Describe in detail the size and scope of the cloud solutions for which you have provided the types of services required by in this RFP.

What kind of details are you looking for? \$ value? Number of users? Duration? Other? And how many customer solutions would be appropriate? (Submitted: Jan 28, 2016 3:03:22 PM MST)

**Answer**

- Yes, all of those things list. (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 275**

Regarding Section 8.4.2.b, Customer Service: Is it acceptable for customer services representative(s) to be off-shore, as long as they are available during the time frame defined by the Purchasing Agencies? (Submitted: Jan 28, 2016 3:06:16 PM MST)

**Answer**

- Yes. As long as no sensitive data (high risk data) is being transferred to them. (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 276**

In Section 3.14, the RFP mentions References. It is unclear how these will be scored, if at all, in the Evaluation process. Can this be clarified? And how many references are requested for maximum scoring?

Finally, please define what information should be provided with these references. (Submitted: Jan 28, 2016 3:22:37 PM MST)

**Answer**

- Section 3.14 has been deleted. The State will not score/evaluate any references. (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 277**

There appears to be an ambiguity and inconsistency between section 3.1 requiring that all exceptions to scope/content be addressed within the Q&A period and section 3.4 which requires that exceptions be made in the Offeror's Proposal. Please clarify whether exceptions need to be submitted through BidSync pursuant to Section 3.1 of the RFP to later be considered within the Offeror's proposal pursuant to section 3.4. If an Offeror wishes to propose its commercial terms as an exception to an RFP requirement which is not specifically in the Master Ts and Cs, should it submit those commercial terms as an exception in its proposal, and not as a question via BidSync? If an Offeror only proposes and submits its commercial terms as an exception to the Master Ts and Cs when it submits its final proposal will that Offeror's exceptions be allowed or considered responsive since it was not addressed in the Q&A period per section 3.1 of the RFP? (Submitted: Jan 28, 2016 3:25:00 PM MST)

**Answer**

- 3.4 states that: Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

3.1 states: Exceptions to scope/content of the RFP within an Offeror's proposal that have not been previously addressed within the Q&A period of the procurement are not allowed and may result in the Offeror's proposal being considered non-responsive.

The difference between the two sections is that 3.1 relates to RFP document. If an Offeror questions a mandatory minimum or scoreable criteria then it needs to address it during the Q&A period.

If an Offeror wants to modify the T&Cs then it can submit a redline version as part of its proposal. (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 278**

Section 3.4 states that URLs provided with a proposal may result in that proposal being rejected as non-responsive. Does this apply to the total RFP or only to any Exceptions the Offerer submits? Can URLs be referenced in the response? (Submitted: Jan 28, 2016 4:22:04 PM MST)

**Answer**

- URLs relates to Offerors taking exception to terms and conditions. An Offeror cannot take exception to the Master Agreement terms and conditions by stating that an Offerors terms and conditions can only be found at a URL.

(Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 279**

6.3 states "Offeror must provide audited financial statements to the State." How many years of audited financial statements does the State require? (Submitted: Jan 28, 2016 4:22:31 PM MST)

**Answer**

- 6.3 has been modified to require the last two years. (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 280**

6.3 states that the Offeror "should meet a minimum Dun and Bradstreet (D&B) credit rating of 4A2 or better, or a recognized equivalent rating." Our D&B service does not provide a credit rating. Will you accept other forms of credit reference e.g. A letter of reference from our bank? (Submitted: Jan 28, 2016 4:23:00 PM MST)

**Answer**

- Yes. As long as you meet the financial strength component of the D&B rating. (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 281**

Which security certifications must the Offeror hold, or be in the process of obtaining, in order to comply with the RFP? (Submitted: Jan 28, 2016 4:23:35 PM MST)

**Answer**

- There is no requirement. An Offeror must list its security certifications to help purchasing entities make best value determinations. (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 282**

8.16 seems to imply that the Offeror will be storing data (other than CDR and similar data). Is there an expectation that the Offeror will be database of record for customer data? (Submitted: Jan 28, 2016 4:23:53 PM MST)

**Answer**

- For some solutions this could be the case. If 8.16 is not relevant to an Offeror's solution then an Offeror must describe why it is not relevant. (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 283**

Attachment A, Exhibits 1 and 2, Web Services state "The Contractor shall use Web services exclusively to interface with the Purchasing Entity's data in near real time." Will NASPO guarantee all Purchasing Entities are not only capable of consuming web services, but also willing to deny other potentially more desirable interface options, so that we as a Contractor may exclusively limit ourselves to their use as interfaces? (Submitted: Jan 28, 2016 4:24:13 PM MST)

**Answer**

- An offeror may take exceptions/additions to the master agreement terms and conditions in its proposal.

(Answered: Feb 1, 2016 4:19:32 PM MST)

**Question 284**

Attachment A, Exhibits 1 and 2, Encryption of Data at Rest state "The Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data as identified in the SLA, unless the Contractor presents a justifiable position that is approved by the Purchasing Entity that Personal Data, is required to be stored on a Contractor portable device in order to accomplish work as defined in the scope of work." As this is a defined requirement for software and platform as a service options, is this requirement absolute, as it requires all hard drives containing personal data to be encrypted, regardless of platform, database, or operating system?

(Submitted: Jan 28, 2016 4:24:26 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 285**

Please confirm that Offerors need to provide only the CAIQ or CCM and not both reports. (Submitted: Jan 28, 2016 4:25:12 PM MST)

**Answer**

- The State is requesting that Offerors complete both documents to help purchasing entities make "best value" determinations. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 286**

Can you provide specific direction regarding our insertion of list pricing into the response documents? The cost proposal section supports the insertion of discount percentages and only references itemized pricing. Where should the itemized pricing be included? (Submitted: Jan 28, 2016 4:25:27 PM MST)

**Answer**

- The items pricing should be included in the cost proposal. (Answered: Jan 28, 2016 5:04:29 PM MST)

**Question 287**

Unduly Restrictive

Attachment A Section 16

Microsoft is self-insured, so this must be noted. Microsoft's program of self-assurance does cover the amounts listed in this section, however it should be noted that (as of the time of Proposal) "Moderate" is the highest Level of Risk that any Microsoft product is represented to be suitable for. Please see our Exception and Clarifying Statements to Section 5.6.4 for additional information on FedRAMP and NIST 800-53 Moderate controls.

Additionally, as it pertains to its program of self-insurance, Microsoft does not agree to name individual customers (whether Lead State, Participating Entities, or Purchasing Entities) as named insureds.

Additionally, while Microsoft is able to provide its renewal certificates upon request, but (as a provider of standardized services to many thousands of customers and millions of user) cannot be expected to institute a one-off operational process to notify any particular customer of renewals, let alone within any time frame. Microsoft therefore respectfully requests the following changes to the subsections identified below, but otherwise accepts the remaining subsections of Section 16.

Revised Subsection a:

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

Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum. (Submitted: Jan 28, 2016 5:12:54 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 288**

Unduly Restrictive

Attachment A Section 16

Revised Subsection d:

Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.

Revised Subsection e:

e. Contractor shall furnish to the Lead State, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within thirty (30) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished upon request. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum E (Submitted: Jan 28, 2016 5:14:24 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 289**

Unduly Restrictive

The following 11 questions are based upon the following language:

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

The federal and state laws, regulations, policies, standards, and guidelines that Contractors doing business with the Participating Entities must be aware of, include, but not limited to: Criminal Justice Information Services (CJIS) Security Policy; Federal Educational Rights and Privacy Act (FERPA); Federal Information Security Management Act (FISMA); National Institute of Technology Standards; Gramm-Leach-Bliley Act (GLB) Act; Health Insurance Portability and Accountability Act (HIPAA); Health Information Technology for Economic and Clinical Health Act (HITECH); IRS Publication 1075; Payment Card Industry Data Security Standard (PCI DSS); Sarbanes-Oxley Act (SOX); Electronic Communications Privacy Act, Stored Communications Act and the PATRIOT Act. The list is intentionally United States-centric, and is not intended to be all-inclusive. Further, since laws, regulations, requirements and industry guidelines change, consulting definitive sources to assure a clear understanding of compliance requirements is critical. Many State Entities have additional program compliance requirements that must be considered in addressing compliance. (e.g., DMV Privacy Act, Public Service Law, etc.). (Submitted: Jan 28, 2016 5:22:54 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 290**

Unduly Restrictive

To take each of the individual laws and standards that are mentioned in the 2nd paragraph:

1) CJIS. Specifically as it pertains to certain (but not all) Government Community Cloud Services, Microsoft will execute an FBI CJIS Addendum Certification. This certifies Microsoft agreement to comply with Appendix H to FBI CJIS Policy (applicable to private contractors) but not to comply with all other portions of CJIS Policy, which are intended to apply to the Purchasing Entities that are subject to CJIS Policy. Microsoft's ability and willingness to execute FBI CJIS Addendum Certifications currently only applies to those 16 States (not currently including Utah, but including several other potential Participating States such as California, Massachusetts, Minnesota, Kansas, and others) in which the State's CJIS Systems Agency (CSA) has executed a special Microsoft agreement

called the CJIS Information Agreement, in which Microsoft and the CSA agree upon terms pursuant to which CJIS Policy audits will be conducted, and how the privacy of Microsoft personnel (subject to background checks by the CSA) will be protected, among other mutually-protective terms and conditions. Additionally, after each State's CSA executes CJIS Information Agreement, each individual Purchasing Entity in those States with CJIS Policy requirements must also execute an Amendment in which the Purchasing Entity agrees to delegate its rights to audit and adjudicate employees to the CSA. Microsoft will be happy to provide a copy of the standard boilerplate Microsoft CJIS Information Agreement for review, however this is not something that can be incorporated into the Master Agreement as it must be executed by each Participating State's CSA, specifically (Submitted: Jan 28, 2016 5:23:44 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 291**

unduly restrictive:

2) FERPA. The following contract language is included in the OST (Microsoft Online Services Terms, which is contractually incorporated). Note that "Customer" in this case "Customer" is equivalent to "Purchasing Entity": If a Customer is an educational agency or institution to which regulations under the Family Educational Rights and Privacy Act, 20 U.S.C. Â§ 1232g (FERPA) apply, Microsoft acknowledges that for the purposes of the OST, Microsoft is a "school official" with "legitimate educational interests" in the Customer Data, as those terms have been defined under FERPA and its implementing regulations, and Microsoft agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials. Customer understands that Microsoft may possess limited or no contact information for Customer's students and students' parents. Consequently, Customer will be responsible for obtaining any parental consent for any end user's use of the Online Service that may be required by applicable law and to convey notification on behalf of Microsoft to students (or, with respect to a student under 18 years of age and not in attendance at a postsecondary institution, to the student's parent) of any judicial order or lawfully-issued subpoena requiring the disclosure of Customer Data in Microsoft's possession as may be required under applicable law.

(Submitted: Jan 28, 2016 5:24:14 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 292**

Unduly Restrictive

3) Federal Information Security Management Act (FISMA). Microsoft commits itself to certifying for FISMA via FedRAMP. Please see our clarifying statement and proposed alternative contract language above, for Section 5.6.4, which explains our commitment in this regard. Note that this only applies to our Government Community Cloud services (Submitted: Jan 28, 2016 5:24:51 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 293**

Unduly Restrictive

4) National Institute of Technology. Here, we are unclear what the requirement is, because NIST is an organization that creates many different standards, only a few of which are applicable to cloud services. However, if NASPO means "NIST 800-53" then please see our response and proposed contract commitment pertaining to this, above in our Exception to RFP Section 5.6.4. (Submitted: Jan 28, 2016 5:25:16 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 294**

Unduly Restrictive

5) GLB. Without representing that it is subject to Gramm-Leach-Bliley Act (GLB), Microsoft understands that it may have access under the contract to a Purchasing Entity's financial information and other nonpublic personal information protected thereby. To assist Purchasing Entities in meeting their GLB obligations, Microsoft will implement, maintain, and use appropriate administrative, technical and physical security measures to protect the confidentiality and integrity of all electronically maintained or transmitted Customer Data. Microsoft will protect the Customer Data it receives from or on behalf of Purchasing Entities according to commercially acceptable standards and no less rigorously than it protects its own confidential information. (Submitted: Jan 28, 2016 5:25:36 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

#### Question 295

Unduly Restrictive

6) and 7) Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH). Microsoft has provided a Business Associate Agreement with this Proposal, and subject to that will comply with its obligations as Business Associate under these Statutes.

(Submitted: Jan 28, 2016 5:26:17 PM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

#### Question 296

LEVEL TWO: CSA STAR Certification

If the offeror possesses FedRAMP third party certification, would that meet requirements? (Submitted: Jan 28, 2016 5:26:45 PM MST)

#### Answer

- No. The certification is specific. (Answered: Jan 29, 2016 1:48:32 PM MST)

#### Question 297

Unduly Restrictive

8) IRS Publication 1075. For Purchasing Entities that must comply with this IRS regulation, Microsoft will execute the IRS's Safeguarding Contract Language for Technology Services (which is Exhibit 7 to IRS Publication 1075), solely for its Government Community Cloud versions of the following Online Services: Exchange Online, SharePoint Online, Exchange Online Archiving, Skype for Business, Office Web Apps when delivered as part of Office 365 Government E1 (formerly G1), E3 (formerly G3) and E4 (formerly G4) or other Government Community Cloud Offers, as well as the Azure Government services listed as being in the scope for IRS 1075 at <http://azure.microsoft.com/en-us/support/trust-center/compliance/irs1075/> or its successor site. As a condition of doing this, each applicable Purchasing Entity must execute Microsoft's protective and clarifying Amendment related to this. A copy of this Amendment has been enclosed with Offeror's Proposal. (Submitted: Jan 28, 2016 5:26:57 PM MST)

(Submitted: Jan 28, 2016 5:26:57 PM MST)

As a condition of doing this, each applicable Purchasing Entity must execute Microsoft's protective and clarifying Amendment related to this. A copy of this Amendment has been enclosed with Offeror's Proposal. (Submitted: Jan 28, 2016 5:26:57 PM MST)

(Submitted: Jan 28, 2016 5:26:57 PM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

#### Question 298

8.15.1 Ability to recover and restore data within 4 business hours in the event of a severe outage. Describe your Recovery Point Objective (RPO) and Recovery Time Objective (RTO).

Please confirm the intent of the 4 business hours recovery is for system outage and not those facility outages requiring activation of the Disaster Recovery Plan, which is where offerors are asked to provide their current service level RPO and RTO. (Submitted: Jan 28, 2016 5:27:18 PM MST)

#### Answer

- Yes. This has been modified. (Answered: Jan 29, 2016 1:48:32 PM MST)

#### Question 299

Unduly Restrictive

9) Payment Card Industry Data Security Standard (PCI DSS). A) The Azure platform is certified as compliant under PCI DSS version 3.0 at Service Provider Level 1 (the highest volume of transactions more than 6 million a year). Azure provides a platform that complies with the PCI DSS on which customers can develop a cardholder environment or card processing service. Customers can leverage Azure's validation in many of the underlying portions, thereby reducing the associated effort and costs of getting their own PCI DSS certification. It is, however, important to understand that Azure's PCI DSS compliance status does not automatically translate to PCI DSS certification for the services that Purchasing Entities (or their contractors) build or host on the Azure platform.

Purchasing Entities are responsible for ensuring that they achieve compliance with some PCI DSS requirements. Microsoft publishes an Azure Customer PCI Guide (a copy of which is enclosed with the Proposal) which specifies areas of responsibility for each PCI DSS requirement, and whether it is assigned to Azure or the customer, or if the responsibility is shared. B) Other Microsoft cloud services are not certified for PCI-DSS Compliance, and Microsoft does not recommend storing or processing payment card numbers with such other services. Certain levels of Office 365 licenses provide Data Loss Prevention (DLP) capability, and those cases Microsoft provides DLP templates for PCI-DSS, in order to help Purchasing Entities ensure that their users are not improperly using payment card information on the services. (Submitted: Jan 28, 2016 5:27:25 PM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)



**Question 300**

Unduly Restrictive

10) Sarbanes Oxley (SOX). As a corporation, Microsoft's business operations are subject to SOX. However, this is related to our own accounting practices and therefore not directly related to our customers use of any of our Online Services. Microsoft does not represent that its Online Services will assist Purchasing Entities with their SOX compliance, which is entirely the responsibility of the Purchasing Entities. (Submitted: Jan 28, 2016 5:27:45 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 301**

Unduly Restrictive

11), 12) and 13) Electronic Communications Privacy Act, Stored Communications Act and the PATRIOT Act. As stated above, Microsoft complies with all laws that apply to it as a corporation, and as an IT Service Provider. Microsoft does not accept responsibility for any portions of such laws that, as written, apply solely to Purchasing Entities.

Having explained the above, Microsoft respectfully declines to agree to Section 17, as written, but (a) will agree to comply with laws applicable to it as a corporation and as an IT Service Provider; and (b) to the extent that any of the above notes indicate specific Microsoft's willingness to sign amendments or agree to contract language, subject to the conditions outlined above, Microsoft will do so. (Submitted: Jan 28, 2016 5:28:19 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

However, the second paragraph in Section 17 has been deleted. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 302**

Unduly Restrictive:

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

As stated in the Microsoft Online Services Terms (OST), which is contractually incorporated, Microsoft is committed to helping protect the security of Customer's information. Microsoft has implemented and will maintain and follow appropriate technical and organizational measures intended to protect Customer Data against accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

However, to the extent that Exceptions have been provided by Offeror to any of the requirements of the Solicitation, Microsoft cannot guarantee compliance with the requirement in this section to meet or exceed those Solicitation standards to which Exceptions have been taken, nor that it will maintain certifications to which Exceptions have been taken. Microsoft sincerely hopes that the terms and conditions that it is able to offer NASPO through the Offerors of its cloud services, subject to final negotiation, will meet the needs of all Participating Entities and Purchasing Entities in all Participating States. (Submitted: Jan 28, 2016 5:30:20 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 303**

Unduly Restrictive:

Attachment A, Section 25 Purchasing Entity Data: Purchasing Entity retains full right and title to Data provided by it and any Data derived therefrom, including metadata.

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

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

Microsoft respectfully takes exception with the following words in the first sentence "and any data derived therefrom, including metadata," and asks that these words be struck. Microsoft has no objection to the other words in this clause.

For clarity, Microsoft may use metadata derived from Customer Data for purposes necessary for the provision of the Online Services. Such use of metadata may include, but is not limited to, spam and virus filtering, data loss prevention, spillage support, transaction logs, temp files, and memory buffers. Microsoft shall not use metadata

(or any other Customer Data) stored or transmitted by the Covered Service, or derive information from it, for any advertising or other commercial purpose of Microsoft or any third party. However, Metadata is not retrievable or extractable, and may not be deleted, by Purchasing Entities. It is stored in Microsoft's internal databases, and retained and protected by Microsoft. (Submitted: Jan 28, 2016 5:31:03 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 304**

Unduly Restrictive

Attachment A, Section 29 Title to Product: If access to the Product requires an application program interface (API), Contractor shall convey to Purchasing Entity an irrevocable and perpetual license to use the API. Microsoft respectfully takes exception to this clause, as unreasonable. To the extent that all Products provided by Microsoft shall be Online Services provided pursuant to subscription licenses, all aspects of such Online Services (including APIs, to the extent applicable) are only licensed for the duration of that subscription. (Submitted: Jan 28, 2016 5:31:53 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 305**

Unduly Restrictive

Attachment A, Section 30 Data Privacy: The Contractor must comply with all applicable laws related to data privacy and security, including IRS Pub 1075. Prior to entering into a SLA with a Purchasing Entity, the Contractor and Purchasing Entity must cooperate and hold a meeting to determine the Data Categorization to determine whether the Contractor will hold, store, or process High Risk Data, Moderate Risk Data and Low Risk Data. The Contractor must document the Data Categorization in the SLA or Statement of Work. Please refer to our Exception and Clarifying Statements for Attachment A, Section 17, above in this document, which clarifies which laws and regulations Microsoft agrees to comply with, as applicable to Microsoft as a corporation and IT Service Provider. Our Statements clarify how Microsoft approaches compliance to specific standards, such as IRS 1075, and which of our various cloud services are in scope for each of those standards. To reiterate a point made in that previous section, Microsoft does not agree to comply with laws (or portions of laws) that are written as applicable only to its customers and their industry or government function. (Submitted: Jan 28, 2016 5:32:43 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 306**

Unduly Restrictive

Attachment A, Section 33 Waiver of Breach: Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order. Microsoft respectfully request to make this section reciprocal, to the extent we believe this is reasonable. As such, we have modified it accordingly, as follows.

Revised language:

Waiver of Breach: Failure of a party to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by a party must be in writing. Waiver by a party of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order. (Submitted: Jan 28, 2016 5:33:37 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 307**

**Unduly Restrictive**

RFP Section 44 (which was renumbered from the original number 43 pursuant to Offeror's request to add a Limitation of Liability clause as Section 43) Entire Agreement: This Master Agreement, along with any attachment, contains the entire understanding of the parties hereto with respect to the Master Agreement unless a term is modified in a Participating Addendum with a Participating Entity. No click-through, or other end user terms and conditions or agreements required by the Contractor (Additional Terms) provided with any Services hereunder shall be binding on Participating Entities or Purchasing Entities, even if use of such Services requires an affirmative acceptance of those Additional Terms before access is permitted. Please see Exception and Clarifying Statements for RFP Section 5.5.14, pertain to Additional Terms. Offer and Microsoft are willing to make the commitments shown in the Clarifying Statements, but respectfully takes exception with this clause as written. (Submitted: Jan 28, 2016 5:34:47 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 308****Unduly Restrictive**

Exhibit 1 to Attachment A, Section 2c

Also Exhibit 2 to Attachment A, Section 2c All Personal Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the Personal Data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of the Master Agreement.

Please see explanations and definition of Customer Content in our exception to RFP Section 5.6.6, above. In that Exception, we explain that Customer Content in SaaS (of which, most Personal Data is a subset) is stored at rest in the US, and in what cases it is encrypted.

However, specifically as it pertains to the limited set of data in the Directory which is used to manage user accounts contains the names and email addresses of licensed users, that specific data is not encrypted at rest. This is not sensitive Customer Content. Microsoft respectfully takes exception with any requirement that Directory data be encrypted.

As such, Microsoft respectfully takes exception to this requirement as written, and requests that it be struck.

Please refer to the Microsoft Online Services Terms for Microsoft's contractual commitments pertaining to encryption.

Please refer to Microsoft's proposed contract language in its Exception and Clarifying Statements pertaining to RFP Section 5.6.6, above in this document. (Submitted: Jan 28, 2016 5:35:34 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 309****Unduly Restrictive**

Exhibit 1 to Attachment A, Section 2d

Also Exhibit 2 to Attachment A, Section 2d Unless otherwise stipulated, the Contractor shall encrypt all Non-Public Data at rest and in transit. The Purchasing Entity shall identify data it deems as Non-Public Data to the Contractor. The level of protection and encryption for all Non-Public Data shall be identified in the SLA.

As it pertains to Directory data (and the definition of Customer Content), please See Exception and Clarifying Statement for Section 2c, immediately above. Additionally, Microsoft treats all Customer Content in its SaaS services equally, and does not monitor whether data is public or non-public (it is all assumed to be non-public and treated according, except in cases where the services are used by Purchasing Entities to display data on their public Website). The level of Encryption is controlled by Microsoft based upon its system design, and is not selectable by individual Purchasing Entities, and is not identified in Microsoft's SLA.

As such, Microsoft respectfully takes exception to this requirement as written, and requests that it be struck.

Please refer to the Microsoft Online Services Terms for Microsoft's contractual commitments pertaining to encryption.

Please refer to Microsoft's proposed contract language in its Exception and Clarifying Statements pertaining to RFP Section 5.6.6, above in this document. (Submitted: Jan 28, 2016 5:36:18 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 310****Unduly Restrictive**

Exhibit 1 to Attachment A, Section 2e

Also Exhibit 2 to Attachment A, Section 2e At no time shall any data or processes that either belong to or are intended for the use of a Purchasing Entity or its officers, agents or employees be copied, disclosed or

retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the Purchasing Entity. Clarifying Statement

As per Microsoft's previous Exceptions and Clarifying Statements above in this document, (1) metadata is owned and retained by Microsoft; (2) no form of Customer Data or metadata is used for any purpose other than operating and supporting the Online Services; and (3) disclosure of Customer Data to law enforcement is subject to law, but is protected by Microsoft according to the terms and conditions cited above in this document and in the Microsoft Online Services Terms. (Submitted: Jan 28, 2016 5:36:52 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 311**

Unduly Restrictive

Exhibit 1 to Attachment A, Section 3

Also Exhibit 1 to Attachment A, Section 3 Data Location: The Contractor shall provide its services to the Purchasing Entity and its end users solely from data centers in the U.S. Storage of Purchasing Entity data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store Purchasing Entity data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. The Contractor shall permit its personnel and contractors to access Purchasing Entity data remotely only as required to provide technical support. The Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited in a Participating Addendum. Please see the Exception and Clarifying Statements for RFP Section 5.6.6, above in this document, for information pertaining to Microsoft's contractual commitments to storing and processing Customer Content and other forms of Customer Data in the United States. To the extent that such commitments accurately describe Microsoft's commitments, Microsoft respectfully requests that this Section 3 be struck and that the aforementioned commitments apply in lieu thereof. (Submitted: Jan 28, 2016 5:37:33 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 312**

Unduly Restrictive

The next question is based on the following question following next per maximum word limit:

Exhibit 1 to Attachment A, Section 8 Background Checks:

Upon the request of the Purchasing Entity, the Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Master Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the Purchasing Entity's information among the Contractor's employees and agents. If any of the stated personnel providing services under a Participating Addendum is not acceptable to the Purchasing Entity in its sole opinion as a result of the background or criminal history investigation, the Purchasing Entity, in its sole option shall have the right to either (1) request immediate replacement of the person, or (2) immediately terminate the Participating Addendum and any related service agreement. (Submitted: Jan 28, 2016 5:40:09 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 313**

question:

Microsoft respectfully requests to replace the wording from the RFP with the following contractual commitment, which more accurately describes Microsoft's procedures pertaining to each of its personnel that are expected to have access to Customer Content:

Microsoft performs the following background checks on all US personnel who have potential to access Customer Data. Adherence to this policy is one of the control procedures addressed by the Microsoft Audit Report per the section of the Microsoft Online Services Terms titled "Microsoft Audits of Online Services." Such Background Checks will be performed in accordance with the Fair Credit Reporting Act and will consist of Social Security Number trace, seven (7) year felony and misdemeanor criminal records check of federal, state, or local records (as applicable) for job related crimes, Office of Foreign Assets Control List (OFAC) check, Bureau of Industry and Security List (BIS) check and Office of Defense Trade Controls Debarred Persons List (DDTC) check.

Additionally, for States with which Microsoft has entered into a Microsoft CJIS Information Agreement and provided an FBI CJIS Addendum Certification to the applicable CJIS Systems Agency (CSA, e.g. the California Department of Justice), for its CJIS Covered Services (which are most of the Microsoft Government Community Cloud

Services), Microsoft submits its personnel that have access to unencrypted Criminal Justice Information and other Customer Content (including both employees and subcontractors, where applicable) for FBI NCIC fingerprint background checks and adjudication by each such CSA (Submitted: Jan 28, 2016 5:41:24 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 314**

Unduly Restrictive

Language question is following per maximum word limit:

Access to Security Logs and Reports: The Contractor shall provide reports on a schedule specified in the SLA to the Purchasing Entity in a format as specified in the SLA agreed to by both the Contractor and the Purchasing Entity. Reports shall include latency statistics, user access, user access IP address, user access history and security logs for all public jurisdiction files related to this Master Agreement and applicable Participating Addendum. (Submitted: Jan 28, 2016 5:43:28 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 315**

question:

Microsoft provides standardized multitenant Online Services that reasonably cannot be customized for any one of its many thousands of customers. Additionally, Microsoft's SLA does not pertain to security logs and reports. For certain key Microsoft Online Services (at minimum, those referenced in the proposed alternative language, below), Purchasing Entities are provided with self-service access to a number of security-related reports through the Administrator Console. These reports may change from time to time, and Microsoft is committed to designing services which meet the demands of its customers. However, Microsoft does not provide access to other internally-kept logs to its customers, as this would be disruptive to operations. Microsoft does not provide such reports for all its services, but more will provide more information upon request as to the reporting capabilities of its services.

Microsoft respectfully requests to replace the RFP language with this section with the following alternative language:

For the Online Services included in the Data Processing Terms section of the Microsoft Online Services Terms, Event Logging. Microsoft logs, or enables Customer to log, access and use of information systems containing Customer Data, registering the access ID, time, authorization granted or denied, and relevant activity. Microsoft shall allow Purchasing Entities reasonable self-service access to security information, latency data, and other related SaaS security data that affect this Contract and the Purchasing Entity's Data, at no cost to the Purchasing Entity. The parties recognize that the type of self-service access and security data made available to Purchasing Entities may be subject to change. (Submitted: Jan 28, 2016 5:44:27 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 316**

Unduly Restrictive:

The next question is based on the following per the maximum word limit:

Exhibit 1 to Attachment A, Section 11

Also Exhibit 2 to Attachment A, Section 11 Data Center Audit: The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide an unredacted version of the audit report upon request to a Purchasing Entity. The Contractor may remove its proprietary information from the unredacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit. (Submitted: Jan 28, 2016 5:48:58 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 317**

question based on previous comment:

Microsoft respectfully requests that this entire section be struck and not apply. Neither Microsoft nor, we believe, any similarly situated provider of standardized cloud services at mass scale, can reasonably be expected to customize their procedures and processes for such notification for any individual customers.

That said, Microsoft strives to provide as much advance notice as possible of changes (both major and minor) to its services, and in most if not all cases will provide at least 12 months advance notice of any changes expected to have significant impact to its customers.

Finally, regarding updates and upgrades, Microsoft does not charge extra for new and updated features added to any given subscription-licensed "plan" for its Online Service. However, Microsoft may reasonably choose to create new license plans in order to monetize new features and functionality (Submitted: Jan 28, 2016 5:50:15 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 318**

Unduly Restrictive

The following two questions are based on the following:

Exhibit 1 to Attachment A, Section 13

Also, Exhibit 2 to Attachment A, Section 13

Also, Exhibit 3 to Attachment A, Section 13 Security: As requested by a Purchasing Entity, the Contractor shall disclose its non-proprietary system security plans (SSP) or security processes and technical limitations to the Purchasing Entity such that adequate protection and flexibility can be attained between the Purchasing Entity and the Contractor. For example: virus checking and port sniffing " the Purchasing Entity and the Contractor shall understand each other's roles and responsibilities. (Submitted: Jan 28, 2016 5:52:02 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 319**

RFP, p. 25, #6.3 " Financials - Your response to providing links as as a response to this section was "Links are acceptable" . Can we also provide links as responses to details requested on other sections of the RFP like SLA's, product offerings and other sections?

A lot of the requested information is available on our public website and where appropriate we would like to refer to these publicly available links as out response. (Submitted: Jan 28, 2016 5:52:24 PM MST)

**Answer**

- An exception is given to financials because it is mandatory requirement and evaluators will not be given that information.

For other criteria evaluators, who may print off a hard copy of a proposal, need to be able to read the information without visiting a website. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 320**

part 1:

Microsoft proposes the following alternative language, which is also found in the Microsoft Online Services Terms (OST) and applies exclusively to the Microsoft Services included in the Data Processing Terms, or DPT, Section of the OST. Those DPT-included services include Microsoft Office 365 Services, Dynamics CRM Online Services, Microsoft Azure Core Services, and Microsoft Intune Online Services (each, as defined in the DPT). Proposed language follows:

"Online Services Information Security Policy

"Each Online Service follows a written data security policy ("Information Security Policy") that complies with the control standards and frameworks shown in the table below.

Microsoft may add industry or government standards at any time. Microsoft will not eliminate a standard or framework in the table above, unless it is no longer used in the industry and it is replaced with a successor (if any). Azure Government Services meet a separate set of control standards and frameworks, as detailed on the Microsoft Azure Trust Center (Submitted: Jan 28, 2016 5:52:50 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 321**

part 2:

Subject to non-disclosure obligations, Microsoft will make each Information Security Policy available to Customer, along with other information reasonably requested by Customer regarding Microsoft security practices and policies.

Customer is solely responsible for reviewing each Information Security Policy and making an independent determination as to whether it meets Customer's requirements. (Submitted: Jan 28, 2016 5:53:16 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 322**

**Unduly Restrictive**

The following questions (labeled parts) are based on the following:

Exhibit 1 to Attachment A, Section 14

Also, Exhibit 2 to Attachment A, Section 14

Also, Exhibit 3 to Attachment A, Section 14 Non-disclosure and Separation of Duties: The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of Purchasing Entity data to that which is absolutely necessary to perform job duties. (Submitted: Jan 28, 2016 5:54:39 PM MST)

**PM MST)****Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 323**

Part 1:

Microsoft respectfully takes exception to this requirement, as written, and requests that its own language apply, to the extent that it more accurately describes Microsoft's commitments, which are applied uniformly for its standardized multitenant cloud services.

For this, Microsoft calls attention to the following statements (relevant to the subject matter of these RFP Sections) from the Data Processing Terms (DPT) section of the Microsoft Online Services Terms (OST), which apply solely to those Microsoft Online Services Products listed in the DPT, and which Microsoft is willing to use for these RFP Exhibit Sections, in lieu of the original RFP Language:

Security Ownership. Microsoft has appointed one or more security officers responsible for coordinating and monitoring the security rules and procedures. (Submitted: Jan 28, 2016 5:55:09 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 324**

part 2:

Security Roles and Responsibilities. Microsoft personnel with access to Customer Data are subject to confidentiality obligations.

Security Training. Microsoft informs its personnel about relevant security procedures and their respective roles. Microsoft also informs its personnel of possible consequences of breaching the security rules and procedures. Microsoft will only use anonymous data in training.

Physical Access to Facilities. Microsoft limits access to facilities where information systems that process Customer Data are located to identified authorized individuals.

Physical Access to Components. Microsoft maintains records of the incoming and outgoing media containing Customer Data, including the kind of media, the authorized sender/recipients, date and time, the number of media and the types of Customer Data they contain.

Operational Policy. Microsoft maintains security documents describing its security measures and the relevant procedures and responsibilities of its personnel who have access to Customer Data. (Submitted: Jan 28, 2016 5:55:37 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 325**

part 3:

Access Policy. Microsoft maintains a record of security privileges of individuals having access to Customer Data. Access Authorization

- Microsoft maintains and updates a record of personnel authorized to access Microsoft systems that contain Customer Data.

- Microsoft deactivates authentication credentials that have not been used for a period of time not to exceed six months.

- Microsoft identifies those personnel who may grant, alter or cancel authorized access to data and resources.

- Microsoft ensures that where more than one individual has access to systems containing Customer Data, the individuals have separate identifiers/log-ins.

**Least Privilege**

- Technical support personnel are only permitted to have access to Customer Data when needed.

- Microsoft restricts access to Customer Data to only those individuals who require such access to perform their job function.

**Integrity and Confidentiality**

- Microsoft instructs Microsoft personnel to disable administrative sessions when leaving premises Microsoft controls or when computers are otherwise left unattended.

- Microsoft stores passwords in a way that makes them unintelligible while they are in force.

Authentication (Submitted: Jan 28, 2016 5:56:18 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 326**

part 4:

Microsoft stores passwords in a way that makes them unintelligible while they are in force.

Authentication

- Microsoft uses industry standard practices to identify and authenticate users who attempt to access information systems.

- Where authentication mechanisms are based on passwords, Microsoft requires that the passwords are renewed regularly.

- Where authentication mechanisms are based on passwords, Microsoft requires the password to be at least eight characters long.

- Microsoft ensures that de-activated or expired identifiers are not granted to other individuals.

- Microsoft monitors, or enables Customer to monitor, repeated attempts to gain access to the information system using an invalid password.

- Microsoft maintains industry standard procedures to deactivate passwords that have been corrupted or inadvertently disclosed. (Submitted: Jan 28, 2016 5:57:04 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 327**

part 5:

Microsoft uses industry standard password protection practices, including practices designed to maintain the confidentiality and integrity of passwords when they are assigned and distributed, and during storage.

Network Design. Microsoft has controls to avoid individuals assuming access rights they have not been assigned to gain access to Customer Data they are not authorized to access. (Submitted: Jan 28, 2016 5:57:34 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 328**

Unduly Restrictive:

The following question is based on the following (per the max letter count):

Exhibit 1 to Attachment A, Section 15

Also, Exhibit 2 to Attachment A, Section 15

Also, Exhibit 3 to Attachment A, Section 15 Import and Export of Data: The Purchasing Entity shall have the ability to import or export data in piecemeal or in entirety at its discretion without interference from the Contractor at any time during the term of Contractor's contract with the Purchasing Entity. This includes the ability for the Purchasing Entity to import or export data to/from other Contractors. Contractor shall specify if Purchasing Entity is required to provide its own tools for this purpose, including the optional purchase of Contractor's tools if Contractor's applications are not able to provide this functionality directly. (Submitted: Jan 28, 2016 6:00:28 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 329**

question:

Microsoft respectfully takes exception to this clause, as written, for the following reasons:

(a) It does not take into account the diversity of Online Services that Microsoft has to offer, each of which uses Customer Data in different forms and for different purposes. For example, it is reasonable to expect that a Purchasing Entity's administrator be able to extract emails, calendar entries and attachments thereto. But for an Online Service whose function it is to remotely install software uploaded to it by administrators, it is also reasonable for the service provider to assume that the Administrator has, himself or herself, retained a copy of the software program, and therefore does not need to be able to extract it from the Online Service.

(b) It is also reasonable for a service provider to apply a time limit to the amount of time a Purchasing Entity has to extract its data (if applicable), following the expiration or termination of a subscription order for that service, even if the contract remains in effect for purposes of ordering other products. And

(c) It is unreasonable to expect a service provider to export data in whatever form a Purchasing Entity wants, including in a format for export to a different service provider's product.



For additional information about how data is extracted, please refer to our Exceptions and Clarifying Statements above for RFP Section 8.7, as well as for the Sections of these Exhibits titled "Termination and Suspension of Services." (Submitted: Jan 28, 2016 6:01:26 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 330**

Unduly Restrictive:

Exhibit 1 to Attachment A, Section 16

Also, Exhibit 2 to Attachment A, Section 16

Also, Exhibit 2 to Attachment A, Section 16 Responsibilities and Uptime Guarantee: The Contractor shall be responsible for the acquisition and operation of all hardware, software and network support related to the services being provided. The technical and professional activities required for establishing, managing and maintaining the environments are the responsibilities of the Contractor. The system shall be available 24/7/365 (with agreed-upon maintenance downtime), and provide service to customers as defined in the SLA.

With the following exception, Microsoft agrees to this language.

Microsoft respectfully takes exception to the parenthetical phrase pertaining to agreed-upon maintenance downtime, and asks that it be struck. As the provider of standardized multitenant services to many thousands of customers, Microsoft must reasonably be able to schedule downtime (which may apply to all Microsoft's customers simultaneously) without subjecting its scheduling to the approval of any single customer. (Submitted:

Jan 28, 2016 6:02:12 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 331**

Unduly Restrictive

The following questions labeled parts, are based on the following:

Exhibit 1 to Attachment A, Section 19

Also, Exhibit 2 to Attachment A, Section 18 Business Continuity and Disaster Recovery: The Contractor shall provide a business continuity and disaster recovery plan upon request and ensure that the Purchasing Entity's recovery time objective (RTO) of XXX hours/days is met. (XXX hour/days shall be provided to Contractor by the Purchasing Entity.) Contractor must work with the Purchasing Entity to perform an annual Disaster Recovery test and take action to correct any issues detected during the test in a time frame mutually agreed between the Contractor and the Purchasing Entity. (Submitted: Jan 28, 2016 6:03:22 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 332**

Part 1:

Microsoft does not guarantee an RTO. Please refer to Microsoft's Service Level Agreement (provided with Offeror's proposal) for the extent of Microsoft's guarantee of uptime performance, including service credits for failure to meet the requirements of the SLA.

Microsoft's Online Services Terms of Service.

Microsoft respectfully declines to agree to the language of this section, as written, but is willing to make the following contractual guarantees in lieu thereof, solely for the Microsoft Online Services identified as in scope for the Data Processing Terms (DPT) section of the Microsoft Online Services Terms (OST), which include Microsoft Office 365 Services, Microsoft Azure Core Services, Dynamics CRM Online Services, and Microsoft Intune Service:

Part 1: Data retention:

Customer Data will be processed and retained intact for the duration of Customer's subscription (including data retention period defined in the Online Services Terms document) as described in applicable Online Services documentation published by Microsoft. Processing will be, in accordance with Customer instructions provided in this enrollment and provided through end user and administrator actions and inactions during the use of the services (Submitted: Jan 28, 2016 6:03:56 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 333**

Part 2:

Part 2: Data Recovery Procedures:

- On an ongoing basis, but in no case less frequently than once a week (unless no Customer Data has been updated during that period), Microsoft maintains multiple copies of Customer Data from which Customer Data

can be recovered.

- Microsoft stores copies of Customer Data and data recovery procedures in a different place from where the primary computer equipment processing the Customer Data is located.
- Microsoft has specific procedures in place governing access to copies of Customer Data.
- Microsoft reviews data recovery procedures at least every six months.
- Microsoft logs data restoration efforts, including the person responsible, the description of the restored data and where applicable, the person responsible and which data (if any) had to be input manually in the data recovery process.
- In the event such Customer Data restoration activities are conducted and upon subsequent Customer request, Microsoft will make the forgoing information from such logs available to the State, provided that: i) information will be provided only where it can be extracted from system wide logging with commercially reasonable efforts; ii) Microsoft shall not be subject to an urgent timeframe for completion of the request (except as may be required by applicable law); and iii) any information in such logs which pertains to other Microsoft customers and their data, or would compromise the security of the Office 365 Services, will be withheld. For clarity, "data restoration efforts" does not include automated Customer Data recovery processes such as when one of Microsoft's datacenters is activated upon failure of another. (Submitted: Jan 28, 2016 6:04:47 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 334**

Unduly Restrictive:

Exhibit 1 to Attachment A, Section 20

Also, Exhibit 2 to Attachment A, Section 19 Compliance with Accessibility Standards: The Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973, or any other state laws or administrative regulations identified by the Participating Entity.

Microsoft supports governments' obligations to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. We encourage our customers to judiciously compare product accessibility performance.

The Voluntary Product Accessibility Templates ("VPATs") for the Microsoft technologies used in providing the online services can be found at Microsoft's VPAT page. Further information regarding Microsoft's commitment to accessibility can be found at [www.microsoft.com/enable](http://www.microsoft.com/enable).

However, Microsoft respectfully takes exception to this statement as written, to the extent that Microsoft asserts that it is its customers' obligation to comply with such accessibility provisions, although Microsoft is committed to aiding its customers' compliance. Additionally, Section 508 is written to apply to Federal government agencies which use software, not to the manufacturers thereof. In the event that a prospective Participating State has a specific statute that is written to apply to the manufacturer (rather than to each government agency), Microsoft will engage in discussion with the applicable Participating State to determine whether that State's needs may be met. (Submitted: Jan 28, 2016 6:05:55 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 335**

"Support at no additional cost" as required in the RFP section 5.5.11 is generally quite limited in the marketplace for the offerings that are requested within this RFP.

Furthermore, "no-cost support" is not necessarily always applicable to the entire breadth and depth of products/services requested within this RFP. Generally, enterprises and organizations opt for an "advanced" level of support to meet their required SLA's for such offerings.

Is the State willing to accept loaded costs inclusive of "advanced" support levels? Or, would the State prefer that the support-costs are listed as a required, separate line item? (Submitted: Jan 28, 2016 6:06:24 PM MST)

**Answer**

- The state has modified 5.5.11 to state that all "general support shall be provided at no additional costs..." The State prefer that the support-costs are listed as a required, separate line item. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 336**

Unduly Restrictive:

Exhibit 1 to Attachment A, Section 22 Encryption of Data at Rest: The Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data, unless the Purchasing Entity approves in writing for the storage of Personal Data on a Contractor portable device in order to accomplish work as defined in the statement of work Microsoft respectfully takes exception to this clause, as written, and requests to substitute the alternative language below:

“To whatever extent a form or use of encryption is required of Microsoft pursuant to any of the industry and Federal government standards committed by Microsoft in this Master Agreement and the Microsoft Online Services Terms, Microsoft will comply with such requirements.”

Explanation:

For the primary Online Services offeror intends to sell under the Master Agreement and which store or process Customer Data at rest (which are those Online Services Microsoft lists in the Data Processing Terms <DPT> of the Microsoft Online Services Terms <OST>) Microsoft is committed to comply with the industry standards (and, in the case of our Government Community Cloud services, the government services) that have been cited in Offeror’s proposed alternative contract language, above in this document (and in the OST). Not all forms of data need to be encrypted in order to meet those industry and government standards, but to the extent they do then that data will be encrypted, using whatever standards (whether FIPS 140-2 or other) that are set forth in those standards. To the extent the Encryption requirements of those standards change over time, so will Microsoft’s use of encryption technology. (Submitted: Jan 28, 2016 6:06:39 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror’s proposal. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 337**

Unduly Restrictive:

Exhibit 1 to Attachment A, Section 23

Also, Exhibit 2 to Attachment A, Section 22

Also, Exhibit 3 to Attachment A, Section 19 Subscription Terms: Contractor grants to a Purchasing Entity a license to: (i) access and use the Service for its business purposes; (ii) for SaaS <Exhibit 1> PaaS <Exhibit 2> IaaS <Exhibit 3>, use underlying software as embodied or used in the Service; and (iii) view, copy, upload and download (where applicable), and use Contractor’s documentation.

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

Microsoft respectfully takes exception to this Section, and asks that it be struck, to the extent that it is ambiguous and incomplete, and unreasonably conflicts with the reasonable subscription licensing terms Microsoft offers to Purchasing Entities through Offeror.

Microsoft’s license grant to Each Offeror/Contractor (which is passed through to Purchasing Entities) is based upon the quantity and duration of subscription licenses for which orders are placed. The terms of use of such licenses are included in the Microsoft Online Services Terms, which is incorporated into the contract.

As for documentation, that is limited to what Microsoft makes available to all its customers of the same services.

In most cases, that consists of webpages, not all of which may be formatted suitably for printing, although nothing in Microsoft’s terms of use of those websites prohibits end users or administrators from printing the documentation.

Finally, as it pertains to click-through terms, please see the Exception and Clarifying Statement for RFP Section 5.5.14, above in this document. (Submitted: Jan 28, 2016 6:07:34 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror’s proposal.

This information should be included in Microsoft’s redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 338**

Unduly Restrictive:

The following questions labeled Parts are based on the following:

Exhibit 2 to Attachment A, Section 8

Also, Exhibit 3 to Attachment A, Section 8 Background Checks:

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

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

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

immediately terminate the Participating Addendum and any related service agreement. (Submitted: Jan 28, 2016 6:12:25 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 339**

Part 1:

Microsoft respectfully requests to replace the wording from the RFP with the following contractual commitment, which more accurately describes Microsoft's procedures pertaining to each of its personnel that are expected to have access to Customer Content:

Microsoft performs the following background checks on all US personnel who have potential to access Customer Data. Adherence to this policy is one of the control procedures addressed by the Microsoft Audit Report per the section of the Microsoft Online Services Terms titled "Microsoft Audits of Online Services." Such Background Checks will be performed in accordance with the Fair Credit Reporting Act and will consist of Social Security Number trace, seven (7) year felony and misdemeanor criminal records check of federal, state, or local records (as applicable) for job related crimes, Office of Foreign Assets Control List (OFAC) check, Bureau of Industry and Security List (BIS) check and Office of Defense Trade Controls Debarred Persons List (DDTC) check.

(Submitted: Jan 28, 2016 6:13:06 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 340**

Part 2:

Additionally, for States with which Microsoft has entered into a Microsoft CJIS Information Agreement and provided an FBI CJIS Addendum Certification to the applicable CJIS Systems Agency (CSA, e.g. the California Department of Justice), for its CJIS Covered Services (which are most of the Microsoft Government Community Cloud Services), Microsoft submits its personnel that have access to unencrypted Criminal Justice Information and other Customer Content (including both employees and subcontractors, where applicable) for FBI NCIC fingerprint background checks and adjudication by each such CSA.

Exception and Clarifying Statement

Microsoft provides standardized multitenant Online Services that reasonably cannot be customized for any one of its many thousands of customers. Additionally, Microsoft's SLA does not pertain to security logs and reports. For certain key Microsoft Online Services (at minimum, those referenced in the proposed alternative language, below), Purchasing Entities are provided with self-service access to a number of security-related reports through the Administrator Console. These reports may change from time to time, and Microsoft is committed to designing services which meet the demands of its customers. However, Microsoft does not provide access to other internally-kept logs to its customers, as this would be disruptive to operations. Microsoft does not provide such reports for all its services, but more will provide more information upon request as to the reporting capabilities of its services. (Submitted: Jan 28, 2016 6:13:46 PM MST)

**Answer**

- Please describe this in your proposal. (Answered: Feb 1, 2016 4:19:32 PM MST)

**Question 341**

part 3:

Microsoft respectfully requests to replace the RFP language with this section with the following alternative language:

"For the Online Services included in the Data Processing Terms section of the Microsoft Online Services Terms, Event Logging. Microsoft logs, or enables Customer to log, access and use of information systems containing Customer Data, registering the access ID, time, authorization granted or denied, and relevant activity. Microsoft shall allow Purchasing Entities reasonable self-service access to security information, latency data, and other related SaaS security data that affect this Contract and the Purchasing Entity's Data, at no cost to the Purchasing Entity. The parties recognize that the type of self-service access and security data made available to Purchasing Entities may be subject to change (Submitted: Jan 28, 2016 6:14:34 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 342**

Unduly Restrictive:

The following questions (parts) are based on the following:

Exhibit 2 to Attachment A, Section 8 Background Checks:

- a. Upon the request of the Purchasing Entity, the Contractor shall conduct criminal background checks and not utilize any staff, including subcontractors, to fulfill the obligations of the Master Agreement who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the Purchasing Entity's information among the Contractor's employees and agents.
- b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA.
- c. If any of the stated personnel providing services under a Participating Addendum is not acceptable to the Purchasing Entity in its sole opinion as a result of the background or criminal history investigation, the Purchasing Entity, in its sole option shall have the right to either (1) request immediate replacement of the person, or (2) immediately terminate the Participating Addendum and any related service agreement. (Submitted: Jan 28, 2016

6:15:45 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 343**

Part 1:

Microsoft has observed that this clause differs from Section 8 in Exhibit 1 to Attachment A to the extent that paragraph b. was added. Microsoft agrees that the security for both PaaS and IaaS are shared responsibilities. However, specifically as it applies to background checks of Microsoft personnel operating Microsoft's PaaS and IaaS Services, there is no difference from the checks performed on our SaaS personnel.

Microsoft respectfully requests to replace the wording from the RFP with the following contractual commitment, which more accurately describes Microsoft's procedures pertaining to each of its personnel that are expected to have access to Customer Content:

Microsoft performs the following background checks on all US personnel who have potential to access Customer Data. Adherence to this policy is one of the control procedures addressed by the Microsoft Audit Report per the section of the Microsoft Online Services Terms titled "Microsoft Audits of Online Services." Such Background Checks will be performed in accordance with the Fair Credit Reporting Act and will consist of Social Security Number trace, seven (7) year felony and misdemeanor criminal records check of federal, state, or local records (as applicable) for job related crimes, Office of Foreign Assets Control List (OFAC) check, Bureau of Industry and Security List (BIS) check and Office of Defense Trade Controls Debarred Persons List (DDTC) check.

(Submitted: Jan 28, 2016 6:16:23 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 344**

Part 2:

Additionally, for States with which Microsoft has entered into a Microsoft CJIS Information Agreement and provided an FBI CJIS Addendum Certification to the applicable CJIS Systems Agency (CSA, e.g. the California Department of Justice), for its CJIS Covered Services (which are most of the Microsoft Government Community Cloud Services), Microsoft submits its personnel that have access to unencrypted Criminal Justice Information and other Customer Content (including both employees and subcontractors, where applicable) for FBI NCIC fingerprint background checks and adjudication by each such CSA. (Submitted: Jan 28, 2016 6:16:49 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 345**

Unduly Restrictive:

The following questions (parts) are based on the following:

Exhibit 2 to Attachment A, Section 9 Access to Security Logs and Reports:

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

b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA. (Submitted: Jan 28, 2016 6:18:03 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 346**

Part 1)

Microsoft has observed that this clause differs from Section 9 in Exhibit 1 to Attachment A to the extent that paragraph b. was added. Microsoft agrees that the security for both PaaS and IaaS are shared responsibilities. However, specifically as it applies to access to Microsoft's security logs and reports for Microsoft's PaaS and IaaS Services, there is no difference from the logs and reports for our SaaS products.

Microsoft provides standardized multitenant Online Services that reasonably cannot be customized for any one of its many thousands of customers. Additionally, Microsoft's SLA does not pertain to security logs and reports. For certain key Microsoft Online Services (at minimum, those referenced in the proposed alternative language, below), Purchasing Entities are provided with self-service access to a number of security-related reports through the Administrator Console. These reports may change from time to time, and Microsoft is committed to designing services which meet the demands of its customers. However, Microsoft does not provide access to other internally-kept logs to its customers, as this would be disruptive to operations. Microsoft does not provide such reports for all its services, but more will provide more information upon request as to the reporting capabilities of its services. (Submitted: Jan 28, 2016 6:18:33 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 347**

Part 2:

Microsoft respectfully requests to replace the RFP language with this section with the following alternative language:

For the Online Services included in the Data Processing Terms section of the Microsoft Online Services Terms, Event Logging. Microsoft logs, or enables Customer to log, access and use of information systems containing Customer Data, registering the access ID, time, authorization granted or denied, and relevant activity. Microsoft shall allow Purchasing Entities reasonable self-service access to security information, latency data, and other related SaaS security data that affect this Contract and the Purchasing Entity's Data, at no cost to the Purchasing Entity. The parties recognize that the type of self-service access and security data made available to Purchasing Entities may be subject to change. (Submitted: Jan 28, 2016 6:19:04 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 348**

Unduly Restrictive:

The following question is based on the following:

Exhibit 2 to Attachment A, Section 21 Encryption of Data at Rest: The Contractor shall ensure hard drive encryption

consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all Personal Data as identified in the SLA, unless the Contractor presents a justifiable position that is approved by the Purchasing Entity that Personal Data, is required to be stored on a Contractor portable device in order to accomplish work as defined in the scope of work. (Submitted: Jan 28, 2016 6:20:44 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 349**

Microsoft respectfully takes exception to this clause, as written, and requests to substitute the alternative language below:

“To whatever extent a form or use of encryption is required of Microsoft pursuant to any of the industry and Federal government standards committed by Microsoft in this Master Agreement and the Microsoft Online Services Terms, Microsoft will comply with such requirements.”

Explanation:

For the primary Online Services offeror intends to sell under the Master Agreement and which store or process Customer Data at rest (which are those Online Services Microsoft lists in the Data Processing Terms <DPT> of the Microsoft Online Services Terms <OST>) Microsoft is committed to comply with the industry standards (and, in the case of our Government Community Cloud services, the government services) that have been cited in Offeror's proposed alternative contract language, above in this document (and in the OST). Not all forms of data need to be encrypted in order to meet those industry and government standards, but to the extent they do then that data will be encrypted, using whatever standards (whether FIPS 140-2 or other) that are set forth in those standards. To the extent the Encryption requirements of those standards change over time, so will Microsoft's use of encryption technology.

Additionally, as service provider, Microsoft will not be able to consult with a Purchasing Entity or to control whether or not personal data is stored on any of its Online Services. Purchasing Entity is solely responsible for selecting what type of data it uses the Online Services for. (Submitted: Jan 28, 2016 6:21:29 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 350**

Unduly Restrictive:

The following question is based on the following:

Exhibit 3 to Attachment A, Section 9 Access to Security Logs and Reports:

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

b. The Contractor and the Purchasing Entity recognize that security responsibilities are shared. The Contractor is responsible for providing a secure infrastructure. The Purchasing Entity is responsible for its secure guest operating system, firewalls and other logs captured within the guest operating system. Specific shared responsibilities are identified within the SLA. (Submitted: Jan 28, 2016 6:23:34 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:33 PM MST)

**Question 351**

Part 1 of question:

Microsoft has observed that this clause differs from Section 9 in Exhibit 2 to Attachment A to the extent that it includes technical requirements pertaining to API calls. However, specifically as it applies to access to

Microsoft's security logs and reports for Microsoft's PaaS and IaaS Services, there is no difference from the logs and reports for our SaaS products. Additionally, Microsoft cannot make contractual statements pertaining to this level of functionality (e.g. API calls) with respect to its IaaS product line, overall, but upon request may provide technical information requested by Lead State or any Participating State or Purchasing Entity, although it should be noted that functionality evolves over time.

Microsoft provides standardized multitenant Online Services that reasonably cannot be customized for any one of its many thousands of customers. Additionally, Microsoft's SLA does not pertain to security logs and reports.

(Submitted: Jan 28, 2016 6:24:35 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 352**

Part 2 of question:

For certain key Microsoft Online Services (at minimum, those referenced in the proposed alternative language, below), Purchasing Entities are provided with self-service access to a number of security-related reports through the Administrator Console. These reports may change from time to time, and Microsoft is committed to designing services which meet the demands of its customers. However, Microsoft does not provide access to other internally-kept logs to its customers, as this would be disruptive to operations. Microsoft does not provide such reports for all its services, but more will provide more information upon request as to the reporting capabilities of its services.

Microsoft respectfully requests to replace the RFP language with this section with the following alternative language:

For the Online Services included in the Data Processing Terms section of the Microsoft Online Services Terms, Event Logging. Microsoft logs, or enables Customer to log, access and use of information systems containing Customer Data, registering the access ID, time, authorization granted or denied, and relevant activity. Microsoft shall allow Purchasing Entities reasonable self-service access to security information, latency data, and other related SaaS security data that affect this Contract and the Purchasing Entity's Data, at no cost to the Purchasing Entity. The parties recognize that the type of self-service access and security data made available to Purchasing Entities may be subject to change. (Submitted: Jan 28, 2016 6:25:16 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 353**

Unduly Restrictive:

The next question is based on the following:

Exhibit 3 to Attachment A, Section 11.11. Data Center Audit: The Contractor shall perform an independent audit of its data centers at least annually and at its own expense, and provide an unredacted version of the audit report upon request. The Contractor may remove its proprietary information from the unredacted version. For example, a Service Organization Control (SOC) 2 audit report would be sufficient. (Submitted: Jan 28, 2016 6:27:08 PM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 354**

Question:

Microsoft respectfully requests to substitute its own language, in lieu of the RFP language as written, to the extent that it more accurately describes Microsoft's standard processes and procedures. That language is also found in the Microsoft Online Services Terms (although with references to "Customer" rather than "Purchasing Entity"), and is thereby incorporated by reference, and is as follows:

Microsoft Audits of Online Services

For each Online Service, Microsoft will conduct audits of the security of the computers, computing environment and physical data centers that it uses in processing Customer Data (including personal data), as follows:

Where a standard or framework provides for audits, an audit of such control standard or framework will



be initiated at least annually for each Online Service.

Each audit will be performed according to the standards and rules of the regulatory or accreditation body for each applicable control standard or framework.

Each audit will be performed by qualified, independent, third party security auditors at Microsoft's selection and expense.

Each audit will result in the generation of an audit report (Microsoft Audit Report), which will be Microsoft's Confidential Information. The Microsoft Audit Report will clearly disclose any material findings by the auditor. Microsoft will promptly remediate issues raised in any Microsoft Audit Report to the satisfaction of the auditor.

If a Purchasing Entity requests, Microsoft will provide the Purchasing Entity with each Microsoft Audit Report so that Purchasing Entity can verify Microsoft's compliance with the security obligations under the Data Processing Terms (DPT) section of the Microsoft Online Services Terms. The Microsoft Audit Report will be subject to non-disclosure and distribution limitations of Microsoft and the auditor. (Submitted: Jan 28, 2016 6:27:42 PM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

#### Question 355

Unduly Restrictive:

Attachments C and D <See the attachments> Please see the Exception and Clarifying Statement for RFP Sections 5.5.9 and 5.6.1, in our previous questions.. (Submitted: Jan 28, 2016 6:28:54 PM MST)

#### Answer

- Please provide this information and any other information that an Offeror believes is necessary to meet this requirement in its proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

#### Question 356

Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions; 13. Indemnification (a); p 52  
The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising directly from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

Offeror requests to remove indirectly Offeror will indemnify for damages/claims that are directly caused by us and our subs, employees, etc but not those that are far removed that we should not be responsible for.

(Submitted: Jan 29, 2016 4:29:15 AM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

#### Question 357

ValuePoint Master Agreement Terms and Conditions; 16. Insurance (b)(2) CLOUD MINIMUM INSURANCE; p 53

(2) Contractor shall ensure the cloud providers carry the below CLOUD MINIMUM INSURANCE COVERAGE:

Offeror is a reseller of the cloud products, not the provider. As such, we don't control the data centers and don't carry this insurance. IS it acceptable that we will ensure the providers we contract with carry this insurance and request to have the language reflect that? (Submitted: Jan 29, 2016 4:31:30 AM MST)

#### Answer

- The awarded contractor should have this insurance. (Answered: Jan 29, 2016 1:48:32 PM MST)

#### Question 358

We offer a managed service offering designed to solve the problem of managing a collection of physical and virtual servers and systems some in-house, others run by third-party vendors and cloud service providers. This managed service is based on a platform that enables governance over an assemblage of varied internal and external IT service providers, and establishes service efficiencies by providing a single view of an

organization's IT spending, service performance, operational configurations, and security posture regardless of where their workload is hosted. While this type of service can be critical to the success of any organization moving workload to the cloud, it does not fit neatly in any of the NIST service models. Would the State consider the inclusion of such a service in our proposal response and, if so, how should it be represented? (Submitted: Jan 29, 2016 5:00:13 AM MST)

**Answer**

- An Offeror must present the solution as part of its response and the evaluation committee will decide whether it complies with the requirements and receives the minimum point threshold required by this RFP. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 359**

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

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

Contractor will ensure that, prior to being granted access to the Data, Contractor Staff who perform work under this Agreement have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all Data protection provisions of this Agreement; and possess all qualifications appropriate to the nature of the employees' duties and the sensitivity of the Data they will be handling. (Submitted: Jan 29, 2016 5:37:55 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 360**

PT Part 1:

Microsoft, as subcontractor to Offeror, will be the provider of the cloud services sold under the Master Agreement. As such, Microsoft personnel (including in some cases Microsoft's subcontractors) may from time to time access Customer Data, as necessary for the operation and maintenance of the service, and for purposes of providing support. The Microsoft Online Services Terms (OST) which are incorporated by reference, including robust protective terms which assure Purchasing Entities that their Customer Data will be protected, and that access will be restricted to only those personnel with need for such access, and only for the amount of time necessary. There are many more protective terms pertaining to data access in the OST (found at [www.microsoft.com/contracts](http://www.microsoft.com/contracts), and the latest copy of which will be included with the Proposal). We encourage NASPO to review these terms, including but not limited to the section titled "Security" beginning on page 11 thereof. (Submitted: Jan 29, 2016 5:39:25 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 361**

PT part 2:

Additionally, as set forth in the OST (see the section titled "Disclosure of Customer Data" on page 7), Microsoft may disclose Customer Data to law enforcement, but only when and if required by law. If law enforcement contacts Microsoft with a demand for Customer Data, Microsoft will attempt to redirect the law enforcement agency to request that data directly from Customer. If compelled to disclose Customer Data to law enforcement, Microsoft will promptly notify Customer and provide a copy of the demand unless legally prohibited from doing so.

Upon receipt of any other third party request for Customer Data, Microsoft will promptly notify Customer unless prohibited by law. Microsoft will reject the request unless required by law to comply. If the request is valid, Microsoft will attempt to redirect the third party to request the data directly from Customer.

Microsoft will not provide any third party: (a) direct, indirect, blanket or unfettered access to Customer Data; (b) platform encryption keys used to secure Customer Data or the ability to break such encryption; or (c) access to

Customer Data if Microsoft is aware that the data is to be used for purposes other than those stated in the third party's request. (Submitted: Jan 29, 2016 5:40:19 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 362**

PT part 3:

In support of the above, Microsoft may provide Customer's basic contact information to the third party. Additionally, Microsoft informs its personnel about relevant security procedures and their respective roles. Microsoft also informs its personnel of possible consequences of breaching the security rules and procedures. Microsoft will only use anonymous data in training. See "Human Resources Security" on page 11 of the current OST. And for those Microsoft Government Community Cloud Services for which Microsoft's CJIS assurances apply (see our Exception and Clarifying Statements to Appendix A Section 17, above in this document), personnel with access to unencrypted CJI (and other Customer Data Content) are provided training in accordance with FBI CJIS Policy. However, such training may not necessarily be annual, so to that extent neither Microsoft nor Contractor are able to accept this clause as written. We ask instead that the terms and conditions of the OST apply in lieu of this Section 22. (Submitted: Jan 29, 2016 5:40:46 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 363**

Unduly Restrictive:

This question will be in several parts as it is too large per the max content allowed. Part 1 is the referenced section. The next parts will be the RFP language and the final parts will be our questions. All will be titled PT in case they do not end up in order in this Q and A period. (Submitted: Jan 29, 2016 5:43:22 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 364**

PT Part 2:

Section 4) Security Incident or Data Breach Notification:

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

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

c. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any purchasing entity's content that is subject to applicable data breach notification law, the Contractor shall (1) as soon as possible or promptly without out reasonable delay notify the Purchasing Entity, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner. (Submitted: Jan 29, 2016 5:43:57 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

**Question 365**

PT part 3:

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

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

b. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate Purchasing Entity identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a Data Breach. (Submitted: Jan 29, 2016 5:45:07 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

#### Question 366

PT part 4:

The Contractor shall (1) cooperate with the Purchasing Entity as reasonably requested by the Purchasing Entity to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

c. Unless otherwise stipulated, if a data breach is a direct result of Contractor's breach of its contractual obligation to encrypt personal data or otherwise prevent its release as reasonably determined by the Purchasing Entity, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws "all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause. (Submitted: Jan 29, 2016 5:45:35 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

#### Question 367

PT part 5:

The proposed alternative language below is the same as that proposed above in this document for the related Section 4 and 5 in Exhibits 2 and 3 to Attachment A. Because of differences in the language, we have added a few additional explanatory notes.

Microsoft follows standardized procedures for reporting Security Incidents. Those procedures are described (and contractually committed) in the Microsoft Online Services Terms (OST). Microsoft, as provider of a standardized multitenant cloud service to thousands of customers and millions of users, cannot customize these processes for any individual customer. Microsoft therefore respectfully requests that the language this Section 4 be struck, and replaced with the applicable language from the OST, as well as the language below pertaining to reimbursement of reasonable remediation costs in the event of a Security Incident involving PII.

Following are Microsoft's contractual commitments pertaining to Security Incident Notification, from the OST (note that "Customer" represents "Purchasing Entity"): (Submitted: Jan 29, 2016 5:46:06 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:48:32 PM MST)

#### Question 368

PT part 6:

Compliance with Laws

Microsoft will comply with all laws and regulations applicable to its provision of the Online Services, including security breach notification law. However, Microsoft is not responsible for compliance with any laws or regulations applicable to Customer or Customer's industry that are not generally applicable to information technology service providers. Microsoft does not determine whether Customer Data includes information subject to any specific law or regulation. All Security Incidents are subject to the Security Incident Notification terms below.

(Submitted: Jan 29, 2016 5:46:30 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 369**

PT part 7

**Security Incident Notification**

If Microsoft becomes aware of any unlawful access to any Customer Data stored on Microsoft's equipment or in Microsoft's facilities, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Data (each a "Security Incident"), Microsoft will promptly (1) notify Customer of the Security Incident; (2) investigate the Security Incident and provide Customer with detailed information about the Security Incident; and (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.

Notification(s) of Security Incidents will be delivered to one or more of Customer's administrators by any means Microsoft selects, including via email. It is Customer's sole responsibility to ensure Customer's administrators maintain accurate contact information on each applicable Online Services portal. Microsoft's obligation to report or respond to a Security Incident under this section is not an acknowledgement by Microsoft of any fault or liability with respect to the Security Incident.

Customer must notify Microsoft promptly about any possible misuse of its accounts or authentication credentials or any security incident related to an Online Service. (Submitted: Jan 29, 2016 5:46:57 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 370**

PT part 8:

As an exception to the foregoing, notification of Security Incident will be delivered within 5 days after Microsoft determines that a Security Incident has occurred, provided that Purchasing Entity must comply with the following requirements:

For each Online Service Tenant or Azure subscription, as applicable, as a condition of receiving notifications within 5 days, as set forth in the preceding paragraph, the State must register the following information by sending email to [ols-notifications@microsoft.com](mailto:ols-notifications@microsoft.com), and must keep such information current at all times:

- 1) Purchasing Entity's Microsoft Online Direct Routing Domain (MODRD);
- 2) For one or more individual(s) to be contacted, each of whom must be registered as an administrator on the applicable Online Services, each of the following:
  - a. Name;
  - b. Title;
  - c. Email address registered as an administrator on the Online Services;
  - d. Email address not registered as a user on the Online Services;
- 3) Name of Purchasing Entity;
- 4) Enrollment number assigned by Microsoft to represent Purchasing Entity's Tenant or Azure Subscription, on Offeror's subcontract with Microsoft. (Submitted: Jan 29, 2016 5:47:31 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 371**

PT part 9:

Microsoft expects to change the above process by which the Purchasing Entity for each tenant or subscription will

be able to register their MODRD and other information for five-day Security Incident notification pursuant to these terms and conditions. In the event that a Purchasing Entity is notified by Microsoft, in the administrative console or otherwise, of revised instructions necessary to ensure five-day Security Incident notification, the Purchasing Entity must comply with such revised instructions. (Submitted: Jan 29, 2016 5:48:26 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 372**

PT part 10:

Additional language pertaining to reimbursements of costs:

To the extent that a Security Incident results from Microsoft's failure to comply with its obligations under this Master Agreement (and, where applicable, Participating Addenda), and subject to the limitations of liability set forth in Attachment A, Section 43 (Limitation of Liability), Microsoft will reimburse Purchasing Entities for reasonable out-of-pocket remediation costs incurred by such Purchasing Entities in connection with that Security Incident. Reasonable out-of-pocket remediation costs are costs that (a) are customary, reasonable and expected to be paid by entities similar to Purchasing Entity, based on the nature and scope of the Security Incident, and (b) do not arise from or relate to Purchasing Entity's violation of (i) laws applicable to Purchasing Entity or (ii) Purchasing Entity's obligations to third parties, and (c) in no event include costs arising related to compliance with laws applicable to Purchasing Entity or its industry or government function that are not generally applicable to information technology services providers. Purchasing Entity must document all such expenditures and, upon Microsoft's request, those expenditures must be validated by an independent, internationally-recognized third party industry expert chosen by both parties. For avoidance of doubt, the costs reimbursed by Microsoft under this paragraph will be characterized as direct damages subject to the limitation on liability set forth in this Section, and not as special damages excluded under the "EXCLUSION OF CERTAIN DAMAGES" in Attachment A, Section 43 (Limitation of Liability). (Submitted: Jan 29, 2016 5:48:50 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 373**

Unduly Restrictive:

The following question will be presented relating to section Exhibit 2 to Attachment A, Sections 4 and 5

The RFP language will be first listed and named PT Part 1,2, etc and then the questions will follow in sequential part numbers. (Submitted: Jan 29, 2016 5:58:52 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 374**

Part 1:

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

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

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

appropriate Purchasing Entity (Submitted: Jan 29, 2016 5:59:17 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 375**

Part 2:

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

- a. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate Purchasing Entity identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.
- b. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate Purchasing Entity identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a data breach. (Submitted: Jan 29, 2016 6:00:16 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 376**

Part 3:

The Contractor shall (1) cooperate with the Purchasing Entity as reasonably requested by the Purchasing Entity to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

- c. Unless otherwise stipulated, if a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws "all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause. (Submitted: Jan 29, 2016 6:00:38 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 377**

Part 4:

The proposed alternative language below is the same as that proposed above in this document for the related Section 4 and 5 in Exhibits 1 and 3 to Attachment A. Because of differences in the language, we have added a few additional explanatory notes.

Microsoft follows standardized procedures for reporting Security Incidents. Those procedures are described (and contractually committed) in the Microsoft Online Services Terms (OST). Microsoft, as provider of a standardized multitenant cloud service to thousands of customers and millions of users, cannot customize these processes for any individual customer. Microsoft therefore respectfully requests that the language this Section 4 be struck, and replaced with the applicable language from the OST, as well as the language below pertaining to reimbursement of reasonable remediation costs in the event of a Security Incident involving PII.

Microsoft does not keep track of the identities of individuals whose PII a Purchasing Entity may choose to store on our Online Services, so it must be the responsibility of the Purchasing Entity to keep track of the names and contact information for all such users, in order that the Purchasing Entity may notify those individuals of the breach after having received notification from Microsoft that a breach occurred. Microsoft does not notify individuals, but will

reimburse Purchasing Entities for their notification and credit monitoring costs (subject to its Limitation of Liability), in accordance with the alternative contract language proposed below **(Submitted: Jan 29, 2016 6:01:13 AM MST)**

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. **(Answered: Jan 29, 2016 1:52:44 PM MST)**

**Question 378**

Part 5:

Additionally, Microsoft is not able to agree to a 24 hour or less notification of a Security Incident. Once Microsoft has verified that Customer Data has been subject to a Security Incident, it will notify promptly thereof. For Microsoft Azure Core Services when delivered from Microsoft's Government Community Cloud, Microsoft is able to provide a 5-day notice of Security Incident, subject to the terms and conditions below.

Following are Microsoft's contractual commitments pertaining to Security Incident Notification, from the OST (note that "Customer" represents "Purchasing Entity"):

**Compliance with Laws**

Microsoft will comply with all laws and regulations applicable to its provision of the Online Services, including security breach notification law. However, Microsoft is not responsible for compliance with any laws or regulations applicable to Customer or Customer's industry that are not generally applicable to information technology service providers. Microsoft does not determine whether Customer Data includes information subject to any specific law or regulation. All Security Incidents are subject to the Security Incident Notification terms below.

**Security Incident Notification**

If Microsoft becomes aware of any unlawful access to any Customer Data stored on Microsoft's equipment or in Microsoft's facilities, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Data (each a "Security Incident"), Microsoft will promptly (1) notify Customer of the Security Incident; (2) investigate the Security Incident and provide Customer with detailed information about the Security Incident; and (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident. **(Submitted: Jan 29, 2016 6:01:42 AM MST)**

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. **(Answered: Jan 29, 2016 1:52:44 PM MST)**

**Question 379**

Part 6:

Notification(s) of Security Incidents will be delivered to one or more of Customer's administrators by any means Microsoft selects, including via email. It is Customer's sole responsibility to ensure Customer's administrators maintain accurate contact information on each applicable Online Services portal. Microsoft's obligation to report or respond to a Security Incident under this section is not an acknowledgement by Microsoft of any fault or liability with respect to the Security Incident.

Customer must notify Microsoft promptly about any possible misuse of its accounts or authentication credentials or any security incident related to an Online Service.

As an exception to the foregoing, notification of Security Incident will be delivered within 5 days after Microsoft determines that a Security Incident has occurred, provided that Purchasing Entity must comply with the following requirements:

For each Online Service Tenant or Azure subscription, as applicable, as a condition of receiving notifications within 5 days, as set forth in the preceding paragraph, the State must register the following information by sending email to [ols-notifications@microsoft.com](mailto:ols-notifications@microsoft.com), and must keep such information current at all times:

- 1) Purchasing Entity's Microsoft Online Direct Routing Domain (MODRD);
- 2) For one or more individual(s) to be contacted, each of whom must be registered as an administrator on the applicable Online Services, each of the following:
  - a. Name;
  - b. Title;
  - c. Email address registered as an administrator on the Online Services;
  - d. Email address not registered as a user on the Online Services;
- 3) Name of Purchasing Entity;
- 4) Enrollment number assigned by Microsoft to represent Purchasing Entity's Tenant or Azure Subscription, on Offeror's subcontract with Microsoft. **(Submitted: Jan 29, 2016 6:02:14 AM MST)**

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the



Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

#### Question 380

Part 7:

Microsoft expects to change the above process by which the Purchasing Entity for each tenant or subscription will be able to register their MODRD and other information for five-day Security Incident notification pursuant to these terms and conditions. In the event that a Purchasing Entity is notified by Microsoft, in the administrative console or otherwise, of revised instructions necessary to ensure five-day Security Incident notification, the Purchasing Entity must comply with such revised instructions. (Submitted: Jan 29, 2016 6:03:08 AM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

#### Question 381

part 8:

Additional language pertaining to reimbursements of costs:

To the extent that a Security Incident results from Microsoft's failure to comply with its obligations under this Master Agreement (and, where applicable, Participating Addenda), and subject to the limitations of liability set forth in Attachment A, Section 43 (Limitation of Liability), Microsoft will reimburse Purchasing Entities for reasonable out-of-pocket remediation costs incurred by such Purchasing Entities in connection with that Security Incident. Reasonable out-of-pocket remediation costs are costs that (a) are customary, reasonable and expected to be paid by entities similar to Purchasing Entity, based on the nature and scope of the Security Incident, and (b) do not arise from or relate to Purchasing Entity's violation of (i) laws applicable to Purchasing Entity or (ii) Purchasing Entity's obligations to third parties, and (c) in no event include costs arising related to compliance with laws applicable to Purchasing Entity or its industry or government function that are not generally applicable to information technology services providers. Purchasing Entity must document all such expenditures and, upon Microsoft's request, those expenditures must be validated by an independent, internationally-recognized third party industry expert chosen by both parties. For avoidance of doubt, the costs reimbursed by Microsoft under this paragraph will be characterized as direct damages subject to the limitation on liability set forth in this Section, and not as special damages excluded under the "EXCLUSION OF CERTAIN DAMAGES" in Attachment A, Section 43 (Limitation of Liability). (Submitted: Jan 29, 2016 6:03:37 AM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

#### Question 382

Unduly Restrictive:

This question will be structured in parts first noting language in the RFP followed by the question based on the following section of the RFP:

Exhibit 3 to Attachment A, Sections 4 and 5 (Submitted: Jan 29, 2016 6:06:11 AM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

#### Question 383

Part 1

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

a. Security Incident Reporting Requirements: The Contractor shall report a security incident to the Purchasing

Entity identified contact immediately as soon as possible or promptly without out reasonable delay, or as defined in the SLA.

b. Breach Reporting Requirements: If the Contractor has actual knowledge of a confirmed data breach that affects the security of any purchasing entity's content that is subject to applicable data breach notification law, the Contractor shall (1) as soon as possible or promptly without out reasonable delay notify the Purchasing Entity, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner. (Submitted: Jan 29, 2016 6:06:43 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 384**

Part 2:

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

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

b. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate Purchasing Entity identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it has confirmed that there is, or reasonably believes that there has been a data breach. The Contractor shall (1) cooperate with the Purchasing Entity as reasonably requested by the Purchasing Entity to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary. (Submitted: Jan 29, 2016 6:07:12 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 385**

Part 3:

c. Unless otherwise stipulated, if a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt Personal Data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by federal and state laws or as otherwise agreed to; (3) a credit monitoring service required by state (or federal) law or as otherwise agreed to; (4) a website or a toll-free number and call center for affected individuals required by federal and state laws "all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause (Submitted: Jan 29, 2016 6:08:57 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 386**

Part 4

The proposed alternative language below is the same as that proposed above in this document for the related Section 4 and 5 in Exhibits 1 and 2 to Attachment A. Because of differences in the language, we have added a few additional explanatory notes.

Microsoft follows standardized procedures for reporting Security Incidents. Those procedures are described (and contractually committed) in the Microsoft Online Services Terms (OST). Microsoft, as provider of a standardized multitenant cloud service to thousands of customers and millions of users, cannot customize these processes

for any individual customer. Microsoft therefore respectfully requests that the language this Section 4 be struck, and replaced with the applicable language from the OST, as well as the language below pertaining to reimbursement of reasonable remediation costs in the event of a Security Incident involving PII. Microsoft does not keep track of the identities of individuals whose PII a Purchasing Entity may choose to store on our Online Services, so it must be the responsibility of the Purchasing Entity to keep track of the names and contact information for all such users, in order that the Purchasing Entity may notify those individuals of the breach after having received notification from Microsoft that a breach occurred. Microsoft does not notify individuals, but will reimburse Purchasing Entities for their notification and credit monitoring costs (subject to its Limitation of Liability), in accordance with the alternative contract language proposed below. (Submitted: Jan 29, 2016 6:09:28 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 387**

part 5:

Additionally, Microsoft is not able to agree to a 24 hour or less notification of a Security Incident. Once Microsoft has verified that Customer Data has been subject to a Security Incident, it will notify promptly thereof. For Microsoft Azure Core Services when delivered from Microsoft's Government Community Cloud, Microsoft is able to provide a 5-day notice of Security Incident, subject to the terms and conditions below.

Following are Microsoft's contractual commitments pertaining to Security Incident Notification, from the OST (note that a Customer represents a Purchasing Entity): (Submitted: Jan 29, 2016 6:09:55 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 388**

part 6:

Compliance with Laws

Microsoft will comply with all laws and regulations applicable to its provision of the Online Services, including security breach notification law. However, Microsoft is not responsible for compliance with any laws or regulations applicable to Customer or Customer's industry that are not generally applicable to information technology service providers. Microsoft does not determine whether Customer Data includes information subject to any specific law or regulation. All Security Incidents are subject to the Security Incident Notification terms below.

Security Incident Notification

If Microsoft becomes aware of any unlawful access to any Customer Data stored on Microsoft's equipment or in Microsoft's facilities, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Data (each a Security Incident), Microsoft will promptly (1) notify Customer of the Security Incident; (2) investigate the Security Incident and provide Customer with detailed information about the Security Incident; and (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident. (Submitted: Jan 29, 2016 6:10:20 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 389**

part 7:

Notification(s) of Security Incidents will be delivered to one or more of Customer's administrators by any means Microsoft selects, including via email. It is Customer's sole responsibility to ensure Customer's administrators maintain accurate contact information on each applicable Online Services portal. Microsoft's obligation to report or respond to a Security Incident under this section is not an acknowledgement by Microsoft of any fault or liability with respect to the Security Incident.

Customer must notify Microsoft promptly about any possible misuse of its accounts or authentication credentials or any security incident related to an Online Service.

As an exception to the foregoing, notification of Security Incident will be delivered within 5 days after Microsoft determines that a Security Incident has occurred, provided that Purchasing Entity must comply with the following

requirements:

For each Online Service Tenant or Azure subscription, as applicable, as a condition of receiving notifications within 5 days, as set forth in the preceding paragraph, the State must register the following information by sending email to [ols-notifications@microsoft.com](mailto:ols-notifications@microsoft.com), and must keep such information current at all times: (Submitted: Jan 29, 2016 6:10:50 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 390**

Part 8:

1) Purchasing Entity's Microsoft Online Direct Routing Domain (MODRD);  
2) For one or more individual(s) to be contacted, each of whom must be registered as an administrator on the applicable Online Services, each of the following:

- a. Name;
  - b. Title;
  - c. Email address registered as an administrator on the Online Services;
  - d. Email address not registered as a user on the Online Services;
- 3) Name of Purchasing Entity;

4) Enrollment number assigned by Microsoft to represent Purchasing Entity's Tenant or Azure Subscription, on Offeror's subcontract with Microsoft.

Microsoft expects to change the above process by which the Purchasing Entity for each tenant or subscription will be able to register their MODRD and other information for five-day Security Incident notification pursuant to these terms and conditions. In the event that a Purchasing Entity is notified by Microsoft, in the administrative console or otherwise, of revised instructions necessary to ensure five-day Security Incident notification, the Purchasing Entity must comply with such revised instructions. (Submitted: Jan 29, 2016 6:11:39 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 391**

Part 9:

Additional language pertaining to reimbursements of costs:

To the extent that a Security Incident results from Microsoft's failure to comply with its obligations under this Master Agreement (and, where applicable, Participating Addenda), and subject to the limitations of liability set forth in Attachment A, Section 43 (Limitation of Liability), Microsoft will reimburse Purchasing Entities for reasonable out-of-pocket remediation costs incurred by such Purchasing Entities in connection with that Security Incident.

Reasonable out-of-pocket remediation costs are costs that (a) are customary, reasonable and expected to be paid by entities similar to Purchasing Entity, based on the nature and scope of the Security Incident, and (b) do not arise from or relate to Purchasing Entity's violation of (i) laws applicable to Purchasing Entity or (ii) Purchasing Entity's obligations to third parties, and (c) in no event include costs arising related to compliance with laws applicable to Purchasing Entity or its industry or government function that are not generally applicable to information technology services providers. Purchasing Entity must document all such expenditures and, upon Microsoft's request, those expenditures must be validated by an independent, internationally-recognized third party industry expert chosen by both parties. For avoidance of doubt, the costs reimbursed by Microsoft under this paragraph will be characterized as direct damages subject to the limitation on liability set forth in this Section, and not as special damages excluded under the "EXCLUSION OF CERTAIN DAMAGES" in Attachment A, Section 43 (Limitation of Liability). (Submitted: Jan 29, 2016 6:12:16 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

This information should be included in Microsoft's redline version of the Terms and Conditions. The State cannot modify the Master Agreement Terms and Conditions for every Offeror as proposed. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 392**

We are a privately held company and do not publicly release our annual financial statements. Because D&B has not reviewed them, it has not measured us consistently with publicly held companies. D&B has assigned us

the score of 1R3, which seems to be based simply on the number of employees (10+). However, our financial condition is quite sound. What documentation or information can we provide to establish that our financial condition is at least equivalent to companies receiving a 4A2 score? (Submitted: Jan 29, 2016 6:32:22 AM MST)

**Answer**

- Offerors must, if they do not have a D&B rating, provide adequate information to demonstrate that it is capable of receiving that rating. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 393**

Section 8.22 (E) SUPPORTING INFRASTRUCTURE

8.22.1 Describe what infrastructure is required by the Purchasing Entity to support your Services or deployment models.

8.22.2 If required, who will be responsible for installation of new infrastructure and who will incur those costs? Can we assume that any Purchasing Entity would have infrastructure supporting sufficient and secure access to the internet and the Oracle Public Cloud? Can we also assume that any such costs associated with these requirements would be the responsibility of the Purchasing Entity? (Submitted: Jan 29, 2016 7:24:58 AM MST)

**Answer**

- Yes and Yes. (Answered: Jan 29, 2016 1:52:44 PM MST)

**Question 394**

5.2.3 and 5.2.9, pp 20-21 Govt statements: 1) "A statement indicating the Offeror's understanding that they may be required to negotiate additional terms and conditions, including additional administrative fees, with Participating Entities when executing a Participating Addendum."

2) "A statement acknowledging that a 0.25% NASPO ValuePoint Administrative Fee will apply to total sales for the Master Agreement(s) awarded from the RFP."

Question: We understand 5.2.3 and 5.2.9 individually, but please provide some sense of how much the administrative fee for Participating Entities may be; this may include offering a range of lowest to highest fees across (Submitted: Jan 29, 2016 7:43:28 AM MST)

**Answer**

- For the State of Utah the usual administrative fee is 1%. However, Utah cannot comment on what other states may charge as an administrative fee. (Answered: Feb 1, 2016 4:29:33 PM MST)

**Question 395**

5.5.8, 5.5.10, 6.7.1, 9.1; pp 22, 26, and 34. Govt statements:

1. Complete Level 1 CSA STAR Registry Self-Assessment
2. State that auditing capabilities/reports are consistent w/SAS 70 and SSAE 16 6/2011
3. Specify 3rd-party attestations, reports, and certs relating to data security and integrity your company has received; describe how you use latest technologies
4. Pricing catalogs should include the price structures of the cloud solutions models and deployment models that it intends to provide including the types of data it is able to hold under each model. Pricing must be all-inclusive of infrastructure and software costs and management of infrastructure, network, OS, and software.

Question: Please clarify whether these requirements apply to the bidding vendor or to their CSPs. (Submitted: Jan 29, 2016 7:45:14 AM MST)

**Answer**

- IF the bidding vendor is relying on the CSP for questions 1-3 then it needs to describe that in its proposal. For question number 4 the bidding vendor must provide the cost structure that it will charge for the solutions it offers. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 396**

RFP 7; p 27; Govt Statement: "The State has identified a number of roles that are necessary based on the requirements of Attachment D; these titles are not meant to be restrictive, but are used to identify key roles."

Question: RFP refers to roles (plural), but in 7.1 identifies only one role. Please confirm that the only key-personnel role is the contract manager. If this is not the case, please indicate what other roles the State of Utah considers key. (Submitted: Jan 29, 2016 7:46:22 AM MST)

**Answer**

- Section 7 has been modified to include only the contract manager role. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 397**

RFP 8.1.1, p. 28; Govt statement: "if you choose to submit separate offerings for a SaaS service and a PaaS service, submit one response for each service through Offer. Keep responses brief and to the point of how the service meets the requirement, within the indicated page limit."

Questions:

a. Please clarify what the Government means when it instructs the Offeror to submit service "through Offer"

b. States "within the indicated page limit" ; we do not find page limit statements; did we miss something? (Submitted: Jan 29, 2016 7:47:35 AM MST)

**Answer**

- The language "through Offer" and "within the indicated page limit" has been deleted from 8.1.1.  
(Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 398**

RFP 8.1.3, p. 28; Govt Statement: "Offeror must identify for each service category(ies) the areas that each service category."

Question: It appears that a verb is missing at the end of the sentence; please indicate what the Offeror must identify about each service category. (Submitted: Jan 29, 2016 7:48:34 AM MST)

**Answer**

- 8.1.3 has been modified to state: Offeror must identify for each service model the subcategories that it offers for each service model. For example if an Offeror provides a SaaS offering then it should be divided into education SaaS offerings, e-procurement SaaS offerings, information SaaS offering, etc. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 399**

RFP 8.4.2; p. 29; Govt statement: "You must have one lead representative for each entity that executes a Participating Addendum. Contact information shall be kept current."

Question: Please confirm that this statement means that each participating state has a single POC and not that each state has a dedicated FTE. In other words, a given Offeror representative could be the single POC for more than one state. (Submitted: Jan 29, 2016 7:49:38 AM MST)

**Answer**

- Correct. A given Offeror representative could be the single POC for more than one state. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 400**

RFP 8.8.1.c ; p. 30; Govt statement: "Specify how you would respond to the following situations; include any contingency plan or policy: c.Experiences a business failure."

Question: Please clarify what the Government means by a business failure: the CSP failing, a hardware OEM failing, the Offeror failing? (Submitted: Jan 29, 2016 7:50:41 AM MST)

**Answer**

- The section has been modified to state: Offeror experiences a system failure. (Answered: Feb 1, 2016 4:29:33 PM MST)

**Question 401**

General: May individual states require bonding and if so at what levels? (Submitted: Jan 29, 2016 7:51:22 AM MST)

**Answer**

- Individual states may require bonds depending on the project, but this is a purchasing entity decision. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 402**

General: May state participants hold back portions of the invoice payment? (Submitted: Jan 29, 2016 7:51:53 AM MST)

**Answer**

- Only as described in the terms and conditions or SLA. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 403**

General: For contracts in place on the current WSCA Cloud contract, will those continue through to their stated Period-of-Performance end date, or will all existing WSCA Cloud contracts need to be re-competed immediately after award of the new contract? (Submitted: Jan 29, 2016 7:52:48 AM MST)

**Answer**

- Those will continue through to their stated Period-of-Performance end date (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 404**

RFP Section 5.2.5 prohibits employment of "any company or person other than a bona fide employee working solely for the Offeror or a company regularly employed as its marketing agent, to respond to the RFP." What about cases where authorized resellers or value added resellers of a service provider wish to submit proposals as prime contractors, for the purpose of providing cloud services for which the cloud service provider sells via an "indirect through reseller" sales model "is this allowed? (Submitted: Jan 29, 2016 8:14:59 AM MST)

**Answer**

- This has been answered above. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 405**

RFP Section 5.5.12 refers to SLA requirements in RFP Section 8.13. But Section 8.13 appears to apply to the STAR Registry Self-Assessment, not SLA. Is this a typo, and if so then what section was intended? If not, please explain the relationship to SLA. (Submitted: Jan 29, 2016 8:16:01 AM MST)

**Answer**

- The reference to 8.13 should be 8.12. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 406**

RFP Section 9.1 requires that Offerors bid a minimum discount off of their published government price catalog. Will alternative models be considered in cases where no such published price list exists? For example, in the case of an Offeror which is a systems integrator or reseller of cloud services provided by another company that does not publicly publish such a price catalog. (Submitted: Jan 29, 2016 8:16:33 AM MST)

**Answer**

- The State needs to know what price the minimum discount price is being applied to. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 407**

Attachment A contains the defined terms "Disabling Code," "Fulfilment Partner," and that do not appear to be used anywhere in that Attachment or the other RFP documents. Please advise if, and how, NASPO intends to use these terms in the Master Agreement. (Submitted: Jan 29, 2016 8:17:13 AM MST)

**Answer**

- This question has been answered above. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 408**

Section 9 of Attachment A ("Right to Publish") appears to prohibit any sort of mention of the Agreement without advance permission. Will a Contractor need to seek permission in each case where it wants to alert a prospective Purchasing Entity in a Participating State of the existence of the Master Agreement, in order that the Contractor may encourage the prospective Purchasing Entity to utilize the Master Agreement for its needs? (Submitted: Jan 29, 2016 8:17:50 AM MST)

**Answer**

- No. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 409**

RFP Section 7.2 requires incorporation of all Attachments. If an exception is not taken to Attachment E would an offeror be bound by those state specific terms and conditions when they attempt to negotiate a Participating Addendum with that respective State? Must exceptions to Attachment E's state specific terms and conditions be taken at this phase? Or will additional time be granted for Offerors to prepare exceptions to the Participating Addenda in Attachment E? (Submitted: Jan 29, 2016 8:18:24 AM MST)

**Answer**

- Offerors do not need to take exceptions to each document in Attachment E. Negotiations with participating entities will take place during the participating addendum stage. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 410**

In each of the Exhibits 1 and 2 to Attachment A, please explain what is meant by the section titled "Web Services" which says "the Contractor shall use Web services exclusively to interface with the Purchasing Entity's data in near real time." (Submitted: Jan 29, 2016 8:18:54 AM MST)

**Answer**

- This question has been answered above. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 411**

Can we embed documents within the RFP response? (Submitted: Jan 29, 2016 8:46:59 AM MST)

**Answer**

- No. They should be attachments. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 412**

Can you please specify if both the IT documents, CAIQ and CSM would need to be filled or one is optional, based on the services we provide (Submitted: Jan 29, 2016 8:47:48 AM MST)

**Answer**

- Both forms should be filled out based on the services provided. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 413**

Can you please provide the definition of "an instance" from section 5.6.13 in the document - Cloud Solutions - Request for Proposals - CH16012 (Submitted: Jan 29, 2016 8:48:12 AM MST)

**Answer**

- The definition is flexible based on the services offered by an offeror. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 414**

Are we to attach functional specifications of the proposed solution (E.g. Our SaaS offering)  
If so is there a specific section that we could use for this response? (Submitted: Jan 29, 2016 8:48:42 AM MST)

**Answer**

- That would be beneficial for review and evaluation of proposals. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 415**

If any questions are not applicable for SAAS environment mentioned in the security alliance questionnaire, whether those questions and control measures will be allowed as exception for compliance? (Submitted: Jan 29, 2016 8:49:11 AM MST)

**Answer**

- If questions do not apply then Offerors should describe why the questions do not apply. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 416**

Are we allowed to negotiate indemnification and limitation of liability in participating addendum document, we want to limit our liability upto 12 months of fees paid (Submitted: Jan 29, 2016 8:49:31 AM MST)

**Answer**

- Yes. Offerors must identify which terms and conditions they want to negotiate. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 417**

Are we allowed to negotiate indemnification and limitation of liability in state specific terms and conditions , we want to limit our liability upto 12 months of fees paid (Submitted: Jan 29, 2016 8:50:08 AM MST)

**Answer**

- Yes. Offerors must identify which terms and conditions they want to negotiate. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 418**

In which document should the offeror enlist its products and the related cost, the cost schedule template merely contains space for depicting discount percentage. (Submitted: Jan 29, 2016 8:50:35 AM MST)

**Answer**

- As part of the cost proposal. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 419**

Is there any "cost structure" which we need to adhere fixed cost or time and material cost, differential cost for different states, or based on small tier, medium tier or large tier? (Submitted: Jan 29, 2016 8:51:07 AM MST)

**Answer**

- No. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 420**

In which document should we mention the payment milestones if any for e.g. annual advance  
Also, The prices which we will quote, would it need to be exclusive of tax or inclusive of any taxes (Submitted: Jan 29, 2016 8:51:53 AM MST)

**Answer**

- Most purchasing entities are tax exempt.  
All items discussing cost should be part of the cost proposal. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 421**

Are we allowed to submit other product specific documents like SOW, SLA or are we supposed to review any specific SOW template (Submitted: Jan 29, 2016 8:52:16 AM MST)

**Answer**

- Offerors are allowed to submit specific documents. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 422**

What is the process to negotiate the terms and conditions of participating addendum, at what stage the negotiation to this document can be done? (Submitted: Jan 29, 2016 8:52:40 AM MST)

**Answer**

- Once a Master Agreement has been signed then the awarded contractor can negotiate a participating addendum. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 423**

What is the process to negotiate the terms and conditions of attachment A - master agreement, at what stage the negotiation to this document can be done. (Submitted: Jan 29, 2016 8:53:03 AM MST)

**Answer**



- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. The Lead State will not consider proposed modifications and/or additions to the Master Agreement Terms and Conditions after the deadline for proposals.  
If an Offeror is awarded a contract then the lead state will initiate the negotiations for the Master Agreement.  
(Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 424**

In the Attachment E, there is a template of participating addendum of state of Hawaii, need to understand whether this is a common template for all the states. (Submitted: Jan 29, 2016 8:53:26 AM MST)

**Answer**

- A participating addendum template will be created once contracts have been awarded. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 425**

Attachment E consists of various state specific terms and conditions. While submitting RFP do we need to call out our proposed changes for all the state specific terms and conditions or the selected offeror can negotiate state specific terms even after award stage (Submitted: Jan 29, 2016 8:53:51 AM MST)

**Answer**

- No. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 426**

In Exhibit H there is a column of "deployment models", need clarity about the same. (Submitted: Jan 29, 2016 8:54:17 AM MST)

**Answer**

- Offerors should list which deployment models in Attachment D is Offeror able to provide. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 427**

Need to know the order of precedence of contractual documents pertaining to

• Attachment A - master agreement

• Exhibits to master agreement

• State specific terms and conditions/General provisions "information technology which are there in Attachment E.

• Participating Addendum Template provided in Attachment E

• The scope of work document which provider would submit

• Any other documents-please specify (Submitted: Jan 29, 2016 8:54:49 AM MST)

**Answer**

- (1) A Participating Entity's Participating Addendum (PA);
- (2) NASPO ValuePoint Master Agreement Terms & Conditions, including the applicable Exhibits to the Master Agreement;
- (3) The Solicitation;
- (4) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State; and
- (5) A Service Level Agreement issued against the Participating Addendum. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 428**

For the terms and conditions of "indemnification" and limitation of liability, which document will be construed as supreme over all documents. (Submitted: Jan 29, 2016 8:55:18 AM MST)

**Answer**

- The participating addendum will control all other documents, as some states may have additional requirements then what it listed in the Master Agreement. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 429**

For the terms and conditions for "termination and term" which document will be construed as supreme over all documents? (Submitted: Jan 29, 2016 8:55:44 AM MST)

**Answer**

- The participating addendum will control all other documents, as some states may have additional requirements then what it listed in the Master Agreement. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 430**

In attachment E, there is a document about supplier diversity program, could you please provide some details on the same (Submitted: Jan 29, 2016 8:56:06 AM MST)

**Answer**

- Attachment E contains state specific terms and conditions and will be negotiated/discussed in the participating addendum stage. (Answered: Jan 29, 2016 9:20:21 AM MST)

**Question 431**

With respect to encryption for data at rest, we provide the same for a selected set of modules, and for some we do not. Can we use the technical response in the proposal to specify this as an exception? (Submitted: Jan 29, 2016 8:56:30 AM MST)

**Answer**

- Yes. (Answered: Jan 29, 2016 9:20:21 AM MST)

**Question 432**

In Attachment F: Usage Report Summary "Sample :: What is expected to be updated in Tab 2 of the specification mentions about total dollars spent per each customer, is it the dollar amount purchases made by each state using Procurement Solution? and in Summary by state sheet? (Submitted: Jan 29, 2016 8:56:51 AM MST)

**Answer**

- This is a sample usage report, for reference only.

The final usage report will be provided to the awarded vendors. (Answered: Jan 29, 2016 9:20:21 AM MST)

**Question 433**

(Attachment A, Section 23. Operations Management) What, if any certifications might be required by solicitation? (Submitted: Jan 29, 2016 8:58:17 AM MST)

**Answer**

- The last sentence has been deleted in the section. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 434**

In order to improve marketing efforts and greater competition in the marketplace, would the State be willing to allow a contract holder to add agents to this contract? These agents would quote and accept orders on the contract holder's behalf. (Submitted: Jan 29, 2016 8:58:25 AM MST)

**Answer**

- Sales agents are acceptable. (Answered: Jan 29, 2016 9:20:21 AM MST)

**Question 435**

If agents are allowed on this contract, what is the process for adding them to the RFP response? What information would the State need in order to authorize these agents? (Submitted: Jan 29, 2016 8:58:56 AM MST)

**Answer**

- If an Offeror intends to use sales agents then it should identify that in Section 8.20. Offerors do not need to name each sales agent. However, some states may require if a sales agent is entering on to certain property of the state that the sales agent receives a background check. (Answered: Jan 29, 2016 9:20:21 AM MST)

**Question 436**

If additional products that fit into the scope of this RFP become available post-award, will this contract allow for the addition of these products to the contract? (Submitted: Jan 29, 2016 8:59:12 AM MST)

**Answer**

- Yes. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 437**

If additional manufacturers become a part of the contract holder's portfolio that fit into the scope of this RFP, would the State allow for these manufacturers to be added post-award? (Submitted: Jan 29, 2016 8:59:40 AM MST)

**Answer**

- Yes Section 2.8 allows for this. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 438**

Do managed services fit into the scope of this RFP? If so, what category of services should they be placed under in the response? Managed Services is defined as the proactive management of an IT (Information Technology) asset or object, by a third party typically known as a MSP, on behalf of a customer. (Submitted: Jan 29, 2016 8:59:58 AM MST)

**Answer**

- Offeror must demonstrate how their offerings fit into the service models described in Attachment D. (Answered: Feb 1, 2016 4:29:33 PM MST)

**Question 439**

Do implementation services fit into the scope of this RFP? If so, what category of services should they be placed under in the response? (Submitted: Jan 29, 2016 9:00:11 AM MST)

**Answer**

- An offeror's offering should fit into categories listed in Attachment D. (Answered: Feb 1, 2016 4:29:33 PM MST)

**Question 440**

If the state receives multiple bid responses for the separate cloud categories within the scope of this RFP, how

will the state plan to award each category? (Submitted: Jan 29, 2016 9:00:29 AM MST)

**Answer**

- Every vendor that meets the minimum point threshold and provides a responsive cost proposal form may be awarded a contract. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 441**

(Attachment A, Section 31. Warranty)

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

This appears to be an incomplete sentence—can you please clarify? (Submitted: Jan 29, 2016 9:00:37 AM MST)

**Answer**

- Contractor is representing any representation made its proposal as true and accurate. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 442**

If one company provides multiple bid responses for different cloud categories would the state be willing to provide multiple contracts to the company? (Submitted: Jan 29, 2016 9:00:46 AM MST)

**Answer**

- Yes. (Answered: Feb 1, 2016 4:29:33 PM MST)

**Question 443**

Approximately how many awards are the state planning on making as a result of this RFP? (Submitted: Jan 29, 2016 9:01:02 AM MST)

**Answer**

- Every vendor that meets the minimum point threshold and provides a responsive cost proposal form may be awarded a contract. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 444**

Please describe the State's anticipated award model and evaluation procedures for this RFP. (Submitted: Jan 29, 2016 9:01:18 AM MST)

**Answer**

- This is identified in Section 4 of the RFP document. (Answered: Jan 29, 2016 4:28:56 PM MST)

**Question 445**

In regards to 5.6.6 and attachment A data location: Most modern data security standards (including FedRAMP and DoD Cloud SRG) have moved away from the concept of data location as providing value. Can this requirement either be clarified as to its rational or removed? (Submitted: Jan 29, 2016 9:01:36 AM MST)

**Answer**

- If an Offeror cannot meet this mandatory minimum requirement it will not be rejected, but it will restrict the type of award the Offeror can receive. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 446**

In regards to 5.6.13: This question implies a 100% requirement for scale up/down; Is it, instead, possible to provide an SLA or other similar documentation to help account for Acts of God and other factors which may not have been reasonably foreseen? (Submitted: Jan 29, 2016 9:02:13 AM MST)

**Answer**

- An Offeror's proposal and SLA should details these instances. (Answered: Feb 1, 2016 4:29:33 PM MST)

**Question 447**

Please provide a list of master eDiscovery requirements. (Submitted: Jan 29, 2016 9:02:24 AM MST)

**Answer**

- These may vary from State to State. This will be negotiated during the participating addendum stage. (Answered: Feb 1, 2016 4:29:33 PM MST)

**Question 448**

In regards to Section 8, Attachment A: Does NASPO require that a full staff list and background check results be shared as a prerequisite for placing data in the contractor's facility? Is NASPO amenable to alternate strategies used by other government entities? (Submitted: Jan 29, 2016 9:02:38 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 449**

In regards to Change Control and advance notice: Many cloud providers are in a virtually constant refresh cycle of hardware and software. How will NASPO allow for constant refresh in cases where the offeror has robust

management and rollback capabilities? (Submitted: Jan 29, 2016 9:02:51 AM MST)

**Answer**

- Please include these details in your proposal. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 450**

In regards to access to security logs and reports(A-9): Certain of the report elements (e.g. latency, IP address) may or may not be able to be accurately reported on by the cloud provider without correlation to systems like on premise firewalls (ie. NAT-ed IP addresses; last mile latency, etc). Is it possible, instead, to provide what is reported on and give purchasers the ability to determine goodness of fit? (Submitted: Jan 29, 2016 9:03:03 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Feb 1, 2016 3:40:06 PM MST)

**Question 451**

Question on 8.6.2

List all government or standards organization security certifications you currently hold that apply specifically to the hosted environment described in your firm's RFP response, as well as those in process at time of response. Specifically include HIPAA, FERPA, CJIS Security Policy, PCI Data Security Standards (DSS), IRS Publication 1075, FISMA, NIST 800-53, NIST SP 800-171, and FIPS 200 if they apply.

There is presently no Vendor Certification for CJIS, each Law Enforcement Agency must define how the Cloud Solution will be used with respect to CJ data and execute an Information Exchange Agreement with the Vendor. If a Cloud Vendor can define how they ensure compliance with CJIS in the absence of any certification program, will that ensure that points will not be deducted? (Submitted: Jan 29, 2016 9:03:21 AM MST)

**Answer**

- Yes. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 452**

Score Sheet - The instructions in the excel file are as follows: "DRAFT: This document is intended to be a draft and should not be returned to the Division of Purchasing. Please return this document to the evaluation committee chairperson."

Our understanding is that we do not have to submit the score sheet with our proposal. But, could you clarify the instruction above? Do we have to score ourselves, and return (submit) the score sheet to the evaluation committee chairperson, or is that an instruction for the Division of Purchasing evaluators? If yes, could you please provide us with the contact information for submission? (Submitted: Jan 29, 2016 9:09:58 AM MST)

**Answer**

- Correct. The score sheet is for your reference. The score sheet will be used by the evaluation committee. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 453**

(RFP Section 3.13 CONFIDENTIAL OR PROPRIETARY INFORMATION)

(2) commercial information or non-individual financial information obtained from a person if:

(c) the person submitting the information has provided the governmental entity with the information specified in UCA § 63G-2-309;

\* \* \* \* \*

(6) records

Is there something missing here or perhaps mislabeled? (Submitted: Jan 29, 2016 9:12:48 AM MST)

**Answer**

- Subsection (3) through (5) have been removed as they are not relevant. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 454**

RFP Section 5.5.11. Please specify what technical support is required at no additional cost. (Submitted: Jan 29, 2016 9:15:16 AM MST)

**Answer**

- General technical support. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 455**

Please clarify that both the CAIQ and the CCM need to be completed with the submission? (Submitted: Jan 29, 2016 9:17:24 AM MST)

**Answer**

- Yes both forms should be completed. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 456**

How is pricing graded? Is it compared within a vertical or a pricing structure (a platform price compared to priced solely by users)?

Can you better explain the risk levels for the data? What is defined as low risk data, medium risk data and high

risk data? Is any data that is covered by each state's Freedom of Information Act considered low risk?

Can we add and subtract sub-contractors throughout the length of the contract or are we bound by the list we submit with the proposal?

How does the scale pricing work? Obviously, each respondent provides a different product and therefore will have completely different pricing. (Submitted: Jan 29, 2016 9:28:37 AM MST)

**Answer**

- 1. Price is evaluated by an offeror providing a minimum discount for each category listed.
- 2. The levels of risk have been defined by FIPS PUB 199. And each state will decide that during the participating addendum stage.
- 3. Yes. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 457**

In regards to item 5.5.8 Does the RFP require us to submit the CAIQ to the CSA and maintain a STAR registry entry with that program or only complete the assessment and provide it as part of the RFP and upon request?

(Submitted: Jan 29, 2016 9:39:06 AM MST)

**Answer**

- The RFP only requires that Offerors complete the assessment. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 458**

Page 31, Section 5.5.14 indicates that end users will not be bound by additional terms and conditions, unless agreed to in the Master Agreement Terms and Conditions or in a Participating Addendum. Some cloud manufacturers will require end users to complete a document to enroll in cloud services. It is our understanding that this step (as applicable) would be permissible to properly establish the cloud solution for the end user, can you confirm? (Submitted: Jan 29, 2016 9:59:05 AM MST)

**Answer**

- All terms and conditions that will be applicable to purchasing entities must be discussed in the Master Agreement or participating addendum. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 459**

If a vendor is awarded a Master Contract, can the vendor subsequently determine the frequency/schedule for submitting amendments to their rate card(s) for both cloud services and value add consulting/advisory services, and include that information in the price submission? Are there limitations to the frequency or timing of rate card amendments? (Submitted: Jan 29, 2016 10:26:18 AM MST)

**Answer**

- An offeror only needs to submit as part of its proposal a minimum discount off of its price schedule/rate. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 460**

Value add services such as consulting or advisory services may have a scaled price structure determined by experience/seniority or specific skill set requested by the purchasing entity "may we assume the rate card can contain a price scale for such services rather than a single blended price? Prices for such services are predicated by prevailing cost of living/salary changes, usually updated annually" does the state have an expectation as to the length of time consulting/advisory service pricing should be valid? (Submitted: Jan 29, 2016 10:27:20 AM MST)

**Answer**

- Offerors should provide a minimum discount for the value added services. SO that purchasing entities know that they are getting a discount from the scaled price structure. (Answered: Feb 1, 2016 3:40:06 PM MST)

**Question 461**

Does the state require all consulting/advisory services to be delivered by US based personnel, or may offshore resources be offered as well? (Submitted: Jan 29, 2016 10:27:51 AM MST)

**Answer**

- This requirement will be specified with each purchasing entity and will be dependent on the type of data that the purchasing entity is providing to the awarded contractor. (Answered: Feb 1, 2016 3:40:06 PM MST)

**Question 462**

In regards to 5.6.6 and attachment A data location: We current have revenue coming from 41 States for a product that does not have data location. We also have a number of free products that do not have data location where the only limitation is a contract vehicle. May we ask that this requirement be changed to "Please fully disclose the Data Location methods and model for your product?" That would allow various State to have the proper information when making a decision and in most States seek approval from their State Security Risk and Compliance team on whether or not this is an appropriate purchase and use. Nearly every State we have encountered has a process for reviewing and approving Non-Data Located products. (Submitted: Jan 29, 2016 10:32:01 AM MST)

**Answer**

- 5.6.6 has been modified to the following: Offerors must fully disclose the Data Location methods and model for

its solutions. Offeror must also describe whether it can isolate data, if required, to servers and data centers residing entirely in the United States of America or its territories. (Answered: Feb 1, 2016 2:43:08 PM MST)

#### Question 463

General: Is the State willing to extend the Q&A period so that we may follow up on any answers that we receive in response to our questions? (Submitted: Jan 29, 2016 10:32:15 AM MST)

#### Answer

- No. The question and answer period cannot be for an indefinite period of time. (Answered: Feb 1, 2016 2:43:08 PM MST)

#### Question 464

Page (1), Bid Comments; Section 2.1, Purpose: Annual Certification Process; Section 2.8, Contract Award: The mandatory minimum requirements and technical specifications in the RFP are broad. Ongoing requirements should be memorialized in the agreement between the parties. If a vendor is not in compliance with the requirements of the agreement, the vendor is in breach and the customer may terminate the agreement. Would the State consider an alternative requirement that the agreed minimum requirements must be met for the duration of the agreement, rather than the self-certification process? (Submitted: Jan 29, 2016 10:32:54 AM MST)

#### Answer

- The self assessment form will be a one page document that awarded contractors still can perform under the contract. (Answered: Feb 1, 2016 2:43:08 PM MST)

#### Question 465

State of Utah Request for Proposal Page; General Provisions Section 2, Submitting A Proposal; Section 3.1, Question and Answer Period; Section 3.4, Exceptions to RFP and NASPO ValuePoint Master Agreement Terms and Conditions; Section 3.12, Submission of a Proposal; Section 5.8, Recertification of Mandatory Minimums and Technical Specifications: If a vendor believes that certain requirements or terms of the RFP are unduly restrictive but would rather submit a response than a protest, may the vendor submit exceptions where applicable to the RFP requirements and decline to make certifications required in the request for proposal page, in the acknowledgements in section 2 of the General Provisions, in section 3.12, and in section 5.8? This vendor does not wish to be considered non-responsive, but would like the opportunity to respond even if it must take exception to certain requirements or terms in the RFP that were not raised in the Q&A. Please note that section 3.4 indicates or implies that exceptions and/or additions to RFP provisions may be made in the proposal. (Submitted: Jan 29, 2016 10:33:22 AM MST)

#### Answer

- Section 3.4 refers to the Master Terms and Conditions.

If an Offeror does not believe a mandatory minimum requirement or technical criteria is applicable to its solution/service then it needs to describe in detail why the requirement or criteria is not applicable. (Answered: Feb 1, 2016 2:43:08 PM MST)

#### Question 466

General Provisions Section 1, Governing Laws: The compliance warranty required in this section is very broad. This vendor is not prepared to provide such a broad warranty but is willing to consider an alternative compliance with laws provision in the negotiated agreement. May the vendor propose alternative language for the State's consideration in the proposal response? (Submitted: Jan 29, 2016 10:33:50 AM MST)

#### Answer

- Please refer to Section 3.4 in taking exceptions and/or additions to the Master Agreement Terms and Conditions. (Answered: Feb 1, 2016 2:43:08 PM MST)

#### Question 467

General Provisions, Sections 12, Audit and 13, Inspection : The provisions in these sections are broad and appear more appropriate for manufacturing or production rather than performance of cloud services. May the vendor propose alternative language for the State's consideration in the proposal response? (Submitted: Jan 29, 2016 10:35:28 AM MST)

#### Answer

- Please refer to Section 3.4 in taking exceptions and/or additions to the Master Agreement Terms and Conditions. (Answered: Feb 1, 2016 2:43:08 PM MST)

#### Question 468

General Provisions, Section 15, Rejecting a Proposal: This provision indicates that the State may reject a proposal if the State determines that the proposal does not meet the mandatory minimum requirements in the RFP. However, in Section 4.3.1, the RFP provides that the State will reject the proposal. If the vendor is not able to meet every aspect of every mandatory minimum requirements, may the vendor submit a response that addresses the requirement and explains the extent to which, or the circumstances in which, the vendor can comply? (Submitted: Jan 29, 2016 10:36:17 AM MST)

#### Answer

- Yes. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 469**

General Provisions, Section 16, Technology Modifications; Section 2.8, Contract Award : What does the State consider to be a modification in the technology? Is the State willing or able to work with a vendor who may automatically upgrade its cloud offerings? This vendor would not want to be in breach of contract if its commercial cloud offering were upgraded without approval of the State. The vendor may not be able to continue to provide an outdated offering if the service as a whole will be improved. (Submitted: Jan 29, 2016 10:36:53 AM MST)

**Answer**

- Vendors are encouraged to upgrade their offerings through the term of the contract. (Answered: Feb 1, 2016 3:40:06 PM MST)

**Question 470**

General Provisions, Section 17, Publicizing Awards: Is the State able to provide notice and an opportunity to respond to the vendor in the event that its confidential business information is requested to be disclosed?

(Submitted: Jan 29, 2016 10:37:29 AM MST)

**Answer**

- If an Offeror provides a Claim of Business Confidentiality claim is provided in the RFP then the State will not release confidential information in the event of a public records request. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 471**

General Provisions, Section 19, Awarded Contract(s): Please clarify what the scope of work will entail or if it is already included in this RFP. Is this the same of the Scope of Services in Attachment D? (Submitted: Jan 29, 2016 10:38:18 AM MST)

**Answer**

- The scope of services will be similar to Attachment D, but will be modified to reflect an Offeror's proposal. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 472**

General Provisions, Section 19, Awarded Contract(s): Will the State consider negotiating the RFP during contract negotiations so that the final agreement does not have any conflicting provisions and forms one complete, coherent document or set of documents? (Submitted: Jan 29, 2016 10:39:03 AM MST)

**Answer**

- Yes. The State intends to negotiate the contracts so that no conflicts are present in the final agreement. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 473**

General Provisions, Section 19, Awarded Contract(s): Are the State of Utah Standard Terms and Conditions included in the RFP? If not, could the State provide a copy? (Submitted: Jan 29, 2016 10:39:35 AM MST)

**Answer**

- The State of Utah's Terms and Conditions are included in Attachment E. But will be negotiated during the participating addendum stage. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 474**

Section 2.3, Definitions, Participating Addendum; Section 2.7.3, Participating Addenda: Other than changing the scope of the Master Agreement, may the parties to the Participating Addendum negotiate legal terms and conditions that are different from the terms in the Master Agreement but not necessarily required by the law of the applicable state? (Submitted: Jan 29, 2016 10:40:23 AM MST)

**Answer**

- Yes. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 475**

Section 2.3, Definitions, Participating Addendum: Will participants be required to use a particular template for negotiation of the Participating Addendum? (Submitted: Jan 29, 2016 10:41:02 AM MST)

**Answer**

- Yes. After contract have been awarded NASPO ValuePoint will create a participating addendum template which can be negotiated during the participating addendum stage. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 476**

Section 2.7.2, Master Agreement: Why does the State need the RFP and the Exhibits, Attachments, and the winning proposal to be part of the final master agreement? The relevant and binding terms of the agreement should consist of the final negotiated agreement and should not need to include terms that have been superseded by final negotiations. Further, very rarely are proposals submitted in a contractual format as they are usually materials intended to showcase the features of the products and services and provide information to the buyer. (Submitted: Jan 29, 2016 10:41:25 AM MST)

**Answer**

- 2.7.2 has been modified as follows: The Master Agreement(s) awarded from this RFP will consist of the negotiated Master Agreement Terms and Conditions, the relevant Scope of Services, the Offeror's Cost Proposal form, and the winning Offeror's Proposal as revised (if permitted) and accepted by the Lead State. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 477**

Section 2.7.2, Master Agreement: Is the State willing to consider a proposal that takes exception to the requirement to include the RFP and proposal in the agreement? (Submitted: Jan 29, 2016 10:41:47 AM MST)

**Answer**

- Yes, it will consider it, but the evaluation committee will score it as well. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 478**

Section 2.7.2, Master Agreement: Is the State willing to consider a proposal that takes exception to the proposal being last in the order of precedence? (Submitted: Jan 29, 2016 10:42:37 AM MST)

**Answer**

- Exceptions must be in accordance with Section 3.4. (Answered: Feb 1, 2016 3:40:06 PM MST)

**Question 479**

Section 2.14.1, NASPO ValuePoint eMarket Center; Section 5.5.3: Will SciQuest require the successful vendor to sign or agree to any terms applicable to the online website? (Submitted: Jan 29, 2016 10:43:21 AM MST)

**Answer**

- No. (Answered: Feb 1, 2016 4:29:33 PM MST)

**Question 480**

Section 3.8, Firm Offers and Section 5.2.8: This vendor is willing to hold pricing firm for 180 days, but does not intend to submit a contract that may be accepted without further negotiation. Is the State willing to consider such a proposal? (Submitted: Jan 29, 2016 10:47:17 AM MST)

**Answer**

- 3.8 has been removed from the RFP document, since Offerors will be providing minimum discounts. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 481**

Section 3.12.7, Section Title: Confidential, Protected or Proprietary Information: With regard to the release from obligation or liability in the last sentence of this section, is the State willing to provide notice to the vendor of any observed noncompliance as well as of any request for release of the vendor's confidential business information? (Submitted: Jan 29, 2016 10:48:09 AM MST)

**Answer**

- If a request comes to the state of utah for any information that the offeror has labeled as confidential then the state will deny the request. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 482**

Section 3.14, References and Experience: Please provide a copy of the type of release that the Offeror could be required to sign. (Submitted: Jan 29, 2016 10:48:46 AM MST)

**Answer**

- 3.14 has been deleted from the RFP. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 483**

Section 3.14, References and Experience: Please confirm also that by submitting a proposal, the Offeror is not required to waive any rights of confidentiality, contractually or otherwise. (Submitted: Jan 29, 2016 10:49:28 AM MST)

**Answer**

- 3.14 has been deleted from the RFP. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 484**

Section 4.1.1, Initial Review of Proposals; Section 4.3.1, Evaluation Process: Section 4.1.1 indicates that proposals not meeting the Mandatory Submission Requirements may be found non-responsive, but implies that discretion is given to the State to make such decision. Further, Section 4.3.1 indicates that it is the failure to provide a response to the mandatory requirement where indicated that will result in disqualification. Therefore, if the Offeror provides a response to the requirement, but does not indicate 100% compliance with the requirement in such response, how will the State determine whether the Offeror will pass or fail on that requirement? (Submitted: Jan 29, 2016 10:56:19 AM MST)

**Answer**

- By providing a response the Offeror will pass, but an Offeror's response may determine what, if any, contract award it may get if it meets the technical minimum point threshold. (Answered: Feb 1, 2016 2:43:08 PM MST)



**Question 485**

Section 5, Mandatory Minimum Requirements: Please explain further the statement that the items described in section 5 are non-negotiable. (Submitted: Jan 29, 2016 10:56:52 AM MST)

**Answer**

- An Offeror must provide a response to each requirement. If an Offeror believes that a requirement is not applicable to its offering then it must describe that in its response to each subsection in Section 5. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 486**

How does the scale pricing work? Obviously, each respondent provides a different product and therefore will have completely different pricing. Some software offerings are based on a per seat; some on a "pay as you go" metered, some on a volume unit--could be a government budget, geography, etc.--How is the evaluation measured equally when different metrics can be used for cost? Something like that. Just for consideration.

(Submitted: Jan 29, 2016 10:57:20 AM MST)

**Answer**

- Offerors are required to provide a minimum discount for each of its offerings regardless of its pricing structure. This will help participating/purchasing entities make a best value determination in selecting an awarded contractor. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 487**

Section 5, Mandatory Minimum Requirements: Will the State consider proposals that describe the extent to which they can comply with each requirement and then take exception to the extent they cannot comply? (Submitted: Jan 29, 2016 10:57:20 AM MST)

**Answer**

- Yes. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 488**

Section 5.2.2: Is the State willing to consider a vendor who is not able to indicate acceptance of and willingness to comply with all the requirements of the RFP and exhibits if the vendor addresses and explains the extent to which the vendor can comply? This is implied in section 5.2, Executive Summary, which instructs Offerors to include any requirements that cannot be met. (Submitted: Jan 29, 2016 10:58:21 AM MST)

**Answer**

- Yes. The State is willing to consider a response, but this does not guarantee a contract award. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 489**

Sections 5.5.6 and 5.6.8: Is the State willing to consider allowing the vendor to use/access its data for purposes of services analysis and audit purposes? (Submitted: Jan 29, 2016 10:59:07 AM MST)

**Answer**

- Each participating addendum will address specific regarding this requirements. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 490**

Section 5.6.11: Is the State willing to consider a proposal in which the Offeror agrees to perform services as described in the final negotiated agreement between the parties? (Submitted: Jan 29, 2016 10:59:41 AM MST)

**Answer**

- Yes. The state will accept this proposal, but it is subject to evaluation by the evaluation committee and still must meet the minimum point thresholds established in the RFP. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 491**

Based off the categories in Attachment G, where/how should we provide pricing for Managed Services offerings? (Submitted: Jan 29, 2016 11:01:00 AM MST)

**Answer**

- All offering must meet the requirements and technical criteria of this RFP. It must meet NIST standards, so offerings must be SaaS, Paas, or IaaS. (Answered: Feb 1, 2016 3:40:06 PM MST)

**Question 492**

Section 8.2.2: What does the State consider to be a subcontractor? Are subcontractors hired specifically for purposes of performing this agreement? (Submitted: Jan 29, 2016 11:06:58 AM MST)

**Answer**

- Subcontractor means any organization, whether designated as a subcontractor, fulfillment partner, reseller, etc., that will assist an Offeror to provide an Offering if awarded a Master Agreement. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 493**

Section 8.2.2: Does the Offeror need to describe (as subcontractors) third parties involved generally in assisting the Offeror with its cloud services operations? (Submitted: Jan 29, 2016 11:07:33 AM MST)

**Answer**

- Yes. It would be helpful for the evaluation committee to know this information. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 494**

If an Offeror wishes to propose its commercial terms as an exception to an RFP requirement which is not specifically in the Master Ts and Cs, should it submit those commercial terms as an exception in its proposal, and not as a question via BidSync? If an Offeror only proposes and submits its commercial terms as an exception to the Master Ts and Cs when it submits its final proposal will that Offeror's exceptions be allowed or considered responsive since it was not addressed in the Q&A period per section 3.1 of the RFP? (Submitted: Jan 29, 2016 11:23:52 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 495**

Is the State willing to extend the due date of the RFP to accommodate for detailed response? Our company has an extensive offering for services listed in the NIST model and value add services. We'd like to ensure we capture the proper response from all our resources that need to be engaged. We can ensure this with a 2 week extension to the close date of the RFP. Thank you. (Submitted: Jan 29, 2016 11:24:46 AM MST)

**Answer**

- No. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 496**

Unduly restrictive -

1. RFP Section 5.2.5 prohibits employment of "any company or person other than a bona fide employee working solely for the Offeror or a company regularly employed as its marketing agent, to respond to the RFP." What about cases where authorized resellers or value added resellers of a service provider wish to submit proposals as prime contractors, for the purpose of providing cloud services for which the cloud service provider sells via an "indirect through reseller" sales model "is this allowed? (Submitted: Jan 29, 2016 11:26:14 AM MST)

**Answer**

- 5.2.5 has now been removed from the final version of the RFP. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 497**

Unduly restrictive -

2. RFP Section 5.5.12 refers to SLA requirements in RFP Section 8.13. But Section 8.13 appears to apply to the STAR Registry Self-Assessment, not SLA. Is this a typo, and if so then what section was intended? If not, please explain the relationship to SLA. (Submitted: Jan 29, 2016 11:26:30 AM MST)

**Answer**

- The reference should be to 8.12. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 498**

Unduly restrictive -

3. RFP Section 9.1 requires that Offerors bid a minimum discount off of their published government price catalog. Will alternative models be considered in cases where no such published price list exists? For example, in the case of an Offeror which is a systems integrator or reseller of cloud services provided by another company that does not publicly publish such a price catalog. (Submitted: Jan 29, 2016 11:26:43 AM MST)

**Answer**

- Offerors must identify how purchasing entities will know what prices the minimum discounts will be applied. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 499**

Unduly restrictive -

4. Attachment A contains the defined terms "Disabling Code," "Fulfillment Partner," and that do not appear to be used anywhere in that Attachment or the other RFP documents. Please advise if, and how, NASPO intends to use these terms in the Master Agreement. (Submitted: Jan 29, 2016 11:27:02 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal.

Fulfillment partner has been added to the definition of a subcontractor. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 500**

Unduly restrictive -

5. Section 9 of Attachment A (â€œRight to Publishâ€ ) appears to prohibit any sort of mention of the Agreement without advance permission. Will a Contractor need to seek permission in each case where it wants to alert a prospective Purchasing Entity in a Participating State of the existence of the Master Agreement, in order that the Contractor may encourage the prospective Purchasing Entity to utilize the Master Agreement for its needs?

(Submitted: Jan 29, 2016 11:27:15 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offerorâ€™s proposal. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 501**

Unduly restrictive -

6. RFP Section 7.2 requires incorporation of all Attachments. If an exception is not taken to Attachment E would an offeror be bound by those state specific terms and conditions when they attempt to negotiate a Participating Addendum with that respective State? Must exceptions to Attachment Eâ€™s state specific terms and conditions be taken at this phase? Or will additional time be granted for Offerors to prepare exceptions to the Participating Addenda in Attachment E? (Submitted: Jan 29, 2016 11:27:29 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offerorâ€™s proposal. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 502**

Unduly restrictive -

7. In each of the Exhibits 1 and 2 to Attachment A, please explain what is meant by the section titled â€œWeb Servicesâ€ which says â€œthe Contractor shall use Web services exclusively to interface with the Purchasing Entityâ€™s data in near real time.â€ (Submitted: Jan 29, 2016 11:27:46 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offerorâ€™s proposal. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 503**

General Provisions, Section 18, Performance and Cost Analysis : Please clarify how the price and service elements may be negotiated during the term of the contract. Will there be an amendment process? (Submitted: Jan 29, 2016 11:30:37 AM MST)

**Answer**

- There is an amendment process in which both parties must agree to changes by mutual written agreement. (Answered: Feb 1, 2016 3:40:06 PM MST)

**Question 504**

Section 2.3, Definitions, Eligible Users: How will the vendor know which users the Participating Entity/State has determined to be eligible so that orders are not taken from ineligible entities in that Entity/State? May we ask the Participating Entity/State for a list or for clarification on who is eligible? (Submitted: Jan 29, 2016 11:31:20 AM MST)

**Answer**

- The participating addendum will address which the eligible users for each state. (Answered: Feb 1, 2016 2:43:08 PM MST)

**Question 505**

Section 2.5, Participating States: Will the state terms in Attachment E be excluded from the final master agreement (from the RFP if it is required to be included), since they are not part of the terms of the master?

(Submitted: Jan 29, 2016 11:32:38 AM MST)

**Answer**

- Yes. Attachment E is for reference purposes only. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 506**

Section 2.7.2, Master Agreement: Would the State be willing to consider attaching the RFP and proposal as information exhibits to the final agreement for historical purposes but capture all final binding terms and requirements in the master agreement itself? (Submitted: Jan 29, 2016 11:33:19 AM MST)

**Answer**

- That is the intent. The final agreement will consist of the final negotiated terms. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 507**

Section 3.4, Exceptions to RFP and NASPO ValuePoint Master Agreement Terms and Conditions: This vendor does refer to URLs in its agreement terms and will likely need to provide them in the exceptions to the RFP, although the vendor does not wish its proposal to be rejected as nonresponsive. May we reference a URL so long

as we include the text of the referenced page(s) for information purposes? (Submitted: Jan 29, 2016 11:34:14 AM MST)

**Answer**

- Yes. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 508**

Can service resources be in foreign countries as long as they are accessing data in domestic (US) data

**Answer**

- In some cases yes. However, some states may have requirements that prohibit this practice. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 509**

Section 5.5.15: Is the State willing to consider having the Purchasing Entity sign the Offeror's Business Associate Agreement? (Submitted: Jan 29, 2016 11:35:08 AM MST)

**Answer**

- This issue would need to be discussed in the participating addendum stage and the SOW stage. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 510**

Section 5, Mandatory Minimum Requirements: This vendor would be pleased to explain how its service compares to the minimum requirements set forth in Section 5, Mandatory Minimum Requirements; however, given that this vendor intends to propose already-existing, commercially available services, it is not possible to certify conformance with all of these requirements in the manner required in the RFP. For example, in many solicitations for commercial software products, the customer provides a table of requirements for the vendor to indicate where their product meets the requirement, could meet the requirement with customization, or is not able to meet the requirement. The vendor is then given an opportunity to explain briefly for evaluation purposes. Would the State consider allowing vendors to take a similar approach to the minimum requirements for the cloud services, by allowing them to indicate if the service meets the requirement with no conditions; could meet under certain conditions; or would not meet? (Submitted: Jan 29, 2016 11:35:58 AM MST)

**Answer**

- Yes. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 511**

Section 5.5.4: This vendor does not certify with regard to accessibility. Would the State consider a response that identifies how the vendor makes the service available for people with disabilities? (Submitted: Jan 29, 2016 11:36:40 AM MST)

**Answer**

- Yes. The term "certify" has been removed from the RFP. Offerors are now required to describe how its offerings meet the requirements. (Answered: Feb 1, 2016 3:40:06 PM MST)

**Question 512**

Can the cloud provider provide options for guaranteed domestic (US) only data residency as well as services that may replicate the data to foreign countries under this contract? If the service provide is restricted to domestic only services, then there is often a cost premium associated with those services and may limit the complimentary on-and off platfor applications and ecosystem that can be utilized. (Submitted: Jan 29, 2016 11:39:29 AM MST)

**Answer**

- Offerors should discuss this in their proposals, but should not that certain data needs to reside in the US. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 513**

Can a respondent be included as a subcontractor for another respondent and a direct respondent ? (Submitted: Jan 29, 2016 11:41:07 AM MST)

**Answer**

- Yes. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 514**

Is there a standard set of payment terms associated with this NASPO agreement, or will specific terms be negotiated between the vendor and each participating state? (Submitted: Jan 29, 2016 11:43:04 AM MST)

**Answer**

- Payment terms can be discussed in the Master Agreement Terms and Conditions, as an exception/addition. But they may be negotiated in the participating addendum stage. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 515**

Can you please advise where in the response vendors should include our payment terms? (Submitted: Jan 29, 2016 11:44:07 AM MST)

**Answer**

- Payment terms can be discussed in the Master Agreement Terms and Conditions, as an exception/addition.  
(Answered: Feb 1, 2016 1:27:53 PM MST)

#### Question 516

Per RFP page 53, Clause 16. Insurance. (1) Commercial General Liability. We will meet these requirements with a combination of primary and umbrella liability limits. Please advise if this is acceptable. (2) Cloud Minimum Insurance Coverage. Insurance with limits associated with Low, Moderate or High risk. Our company has limits of \$3,000,000 Each Claim / Policy Aggregate for Tech E&O/Cyber. Please clarify what we are required to provide. (2) (d) (1) Our General Liability policy has a blanket Additional Insured endorsement that would automatically include those entities requiring to be additional insureds when required by written contract. The endorsement will not specifically name any Additional Insureds. Please clarify if this is acceptable. (2) (d) (2) We are not able to commit to terms obligating our insurer in reference to their non-renewal, cancellation, revocation terms, to include prior notice(s). Please clarify as this language appears overly restrictive. (Submitted: Jan 29, 2016 11:45:27 AM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Feb 1, 2016 1:27:53 PM MST)

#### Question 517

1. What are there definite projects or milestones that you are looking to achieve?

Examples:

- 1) Cloud single sign on
- 2) Disaster Recovery
- 3) Big data and analytics
- 4) Cloud migration
- 5) 365 mailbox migration (Submitted: Jan 29, 2016 11:48:18 AM MST)

#### Answer

- Offerors' proposals should address each of these issues. (Answered: Feb 1, 2016 1:27:53 PM MST)

#### Question 518

Do any of the participating states already have a cloud environment either test or production? (Submitted: Jan 29, 2016 11:48:33 AM MST)

#### Answer

- Yes some states have cloud environments, but this information was not gathered as part of this RFP. (Answered: Feb 1, 2016 1:27:53 PM MST)

#### Question 519

Is continuous development and Dev Ops apart of this initiative? (Submitted: Jan 29, 2016 11:48:53 AM MST)

#### Answer

- Please refer to the RFP. (Answered: Feb 1, 2016 1:27:53 PM MST)

#### Question 520

How are you looking to handle the multiple tenancy environment?

- a) Are they looking to give each state their own tenancy? (Submitted: Jan 29, 2016 11:49:11 AM MST)

#### Answer

- Each purchasing entity will be its own user. (Answered: Feb 1, 2016 1:27:53 PM MST)

#### Question 521

Is there any reason that one state would ever need access to another states subscriptions? (Submitted: Jan 29, 2016 11:49:24 AM MST)

#### Answer

- No, unless the State's have come to some agreement. (Answered: Feb 1, 2016 1:27:53 PM MST)

#### Question 522

What kind of presales cloud assessment is required per state? IE: planning, data collection, workshops? Is there going to be a standardized process per location? (Submitted: Jan 29, 2016 11:49:43 AM MST)

#### Answer

- This will be determined by the participating entities and purchasing entities. (Answered: Feb 1, 2016 3:40:06 PM MST)

#### Question 523

What level of involvement would you prefer the solution provider to have, if they are a reseller? (Submitted: Jan 29, 2016 11:50:10 AM MST)

#### Answer

- Any offeror must be involved with the purchase and implementation of any solution provided under this RFP.  
(Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 524**

Section 1, Administrative Information: Will the price to be paid by each Participating Entity for products be the same regardless of whether the entity's fees are? (Submitted: Jan 29, 2016 11:50:48 AM MST)

**Answer**

- Yes. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 525**

Attachment F: Is the State willing to allow reporting based on invoicing total rather than the purchase total? We do not bill in advance for government customers generally. (Submitted: Jan 29, 2016 11:51:16 AM MST)

**Answer**

- Reference to Attachment F has been removed from the final RFP document. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 526**

Attachment F: What is the estimated net revenue on the usage report defined as? (Submitted: Jan 29, 2016 11:51:42 AM MST)

**Answer**

- Reference to Attachment F has been removed from the final RFP document. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 527**

What does the term Web Services mean as referenced in Attachment A - Exhibit 1 - 21? (Submitted: Jan 29, 2016 11:52:04 AM MST)

**Answer**

- This question has been answered up above. (Answered: Feb 1, 2016 3:40:06 PM MST)

**Question 528**

Attachment F: What do the "from" and "to" dates represent "reporting period dates"? (Submitted: Jan 29, 2016 11:52:09 AM MST)

**Answer**

- Reference to Attachment F has been removed from the final RFP document. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 529**

As part of this solution are you looking to use cloud identity services? If so is there a single sign on component? How many users? How many applications? (Submitted: Jan 29, 2016 11:52:10 AM MST)

**Answer**

- Each purchasing entity's preference are different. As such, the evaluation committee will review all responsive proposals to determine if they meet the minimum point threshold. (Answered: Feb 1, 2016 3:40:06 PM MST)

**Question 530**

Is there preference to use a combination of commoditized services like email and instant messaging? As well as infrastructure as a service for the remaining workloads? Or do you have preference towards platform with high developer involvement? (Submitted: Jan 29, 2016 11:52:30 AM MST)

**Answer**

- Each purchasing entity's preference are different. As such, the evaluation committee will review all responsive proposals to determine if they meet the minimum point threshold. (Answered: Feb 1, 2016 3:40:06 PM MST)

**Question 531**

Attachment F: We may not always know the "ship" date for this type of product "may we be allowed to provide this if available?" (Submitted: Jan 29, 2016 11:52:41 AM MST)

**Answer**

- Reference to Attachment F has been removed from the final RFP document. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 532**

Are you currently leveraging Hadoop or any big data platforms? If not are you looking at making this is scope for part of the project? (Submitted: Jan 29, 2016 11:53:05 AM MST)

**Answer**

- The awarded contracts will allow Participating Entities to choose cloud solutions that meet the following descriptions:

• Commercially available cloud computing services

• Meets the National Institute for Standards and Technology (NIST) definition of Cloud Computing

• Open to all deployment models (private, public, community or hybrid), vendors specify deployment models

(Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 533**

Attachment F: Is the End User Account the customer name? (Submitted: Jan 29, 2016 11:53:08 AM MST)

**Answer**

- Reference to Attachment F has been removed from the final RFP document. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 534**

Are the FedRAMP and NIST compliance requirements extended to both the solution provider as well as the cloud platform?

a) Is the solution provider required to meet the same level of encryption and data protection standards as the cloud platform its self? (Submitted: Jan 29, 2016 11:53:23 AM MST)

**Answer**

- The solution provider should provide how its cloud platform meets these requirements. (Answered: Feb 1, 2016 3:40:06 PM MST)

**Question 535**

Participating Entity Data is used in the Master Terms but it is not defined. Can this be defined in the Master Terms? To be specific to the various types of data, we would like to recommend the following data definitions be included in the Master Terms

**Customer Data** Customer Data is all data (including text, audio, video or image files) that is provided to Cisco in connection with your use of our products or services. Customer Data does not include Administrative Data, Payment Data, Support Data or Telemetry Data, as defined below.

**Administrative Data** Administrative Data is information about customer representatives provided during sign-up, purchase or contracting, or management of products or services. This may include name, address, phone number, IP address and email address, whether collected at the time of the initial agreement or later during management of the products or services.

**Payment Data** Payment Data is the information that you provide when making a purchase or entering into a licensing agreement for products or services. This may include name, billing address, payment instrument number, the security code associated with your payment instrument and other financial data. (Submitted: Jan 29, 2016 11:53:38 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 536**

Is each state going to have their own security requirements in addition to the FedRAM & NIST requirements? (Submitted: Jan 29, 2016 11:53:38 AM MST)

**Answer**

- Some State may have their own security requirements that will be discussed in each state's participating addendum. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 537**

Do you need managed services to support this solution? If so Is that managed support required to meet FedRAMP and NIST compliance? (Submitted: Jan 29, 2016 11:53:59 AM MST)

**Answer**

- If an Offeror does not believe that its services need to meet a requirement identified in the RFP then it needs to address that in its proposal, so that its proposal can be evaluated fairly. (Answered: Feb 1, 2016 1:27:53 PM MST)

**Question 538**

Participating Entity Data is used in the Master Terms but it is not defined. Can this be defined in the Master Terms? To be specific to the various types of data, we would like to recommend the following data definitions be included in the Master Terms.

**Support Data** Support Data is the information we collect when you submit a request for support services or other troubleshooting, it may include information about hardware, software, and other details related to the support incident, Examples of details include authentication information, information about the condition of the product, system and registry data about software installations and hardware configurations, and error-tracking files. Support Data does not include log, configuration or firmware files, or core dumps, taken from a product and provided to us to help us troubleshoot an issue in connection with a support request.

**Telemetry Data** Telemetry Data is samples of email, web and network traffic, including but not limited to data on email message and web request attributes and information on how different types of email messages and web requests were handled by or routed through Cisco products. Email message metadata and web requests included in Telemetry Data are anonymized or otherwise obfuscated to remove any personally identifiable information prior to disclosure to any unrelated third party. (Submitted: Jan 29, 2016 11:55:14 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Feb 1, 2016 1:27:53 PM MST)

#### Question 539

In the Master Terms Exhibit 1, under Data Protection, a requirement that all Personal Data and Non-Public Data shall be encrypted at rest and in transit with controlled access. Since the type of data and its level of risk is not known until a Purchasing Entity decides on what they are looking to move to the cloud, we recommend that any requirement to encrypt data at rest be limited to the SOW, Task Order, and/or SLA that is negotiated at the time that End User Customer requirements are known. We feel that this requirement is not valid in a Master Agreement terms and as such should be applied at time of End User Agency requirements. Therefore, please change the requirement to only ask for encryption at rest and in transit, if applicable at the time of the SOW/SLA. (Submitted: Jan 29, 2016 11:55:38 AM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Feb 1, 2016 1:27:53 PM MST)

#### Question 540

Can State and Contractor agree, in the SLA, what Non-Public Data shall be encrypted at rest, instead of an agreement that all Non-Public Data is encrypted at rest? (Submitted: Jan 29, 2016 11:55:56 AM MST)

#### Answer

- Yes. This exception should take place during the participating addendum stage. (Answered: Feb 1, 2016 1:27:53 PM MST)

#### Question 541

May contractor use Data or processes of Purchasing Entity data for purposes of forensic analysis of data security and/or breach? (Submitted: Jan 29, 2016 11:56:18 AM MST)

#### Answer

- Offeror must take this exception/addition in (Answered: Feb 1, 2016 1:27:53 PM MST)

#### Question 542

Section 19 Business Continuity and Disaster Recovery: Can this apply on a product by product basis. Not all products have disaster recovery. (Submitted: Jan 29, 2016 11:56:26 AM MST)

#### Answer

- Yes. (Answered: Feb 1, 2016 1:27:53 PM MST)

#### Question 543

May Data Destruction requirements be negotiated in the applicable SLA, depending on the applicable cloud service offering? (Submitted: Jan 29, 2016 11:56:35 AM MST)

#### Answer

- Yes, the exact requirement may be negotiated in an SLA; however, an Offeror must list its data disposal procedures and policies and destruction confirmation process in response to Section 8.11.. (Answered: Jan 29, 2016 1:48:32 PM MST)

#### Question 544

May Contractor comply with a validated cryptography standard instead of compliance with FIPS 140-2? (Submitted: Jan 29, 2016 11:56:53 AM MST)

#### Answer

- If an Offeror is intending to do so then it must identify that in its proposal. And then the evaluation committee will evaluate the proposal accordingly. (Answered: Feb 1, 2016 1:27:53 PM MST)

#### Question 545

Can State refine the Data Breach definition to exclude any breach that has not been validated as an actual breach? (Submitted: Jan 29, 2016 11:57:46 AM MST)

#### Answer

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the Offeror's proposal. (Answered: Jan 29, 2016 1:48:32 PM MST)

#### Question 546

Section 5.5.12: Is the state willing to accept an SLA of 99.5% instead of 99.9? (Submitted: Jan 29, 2016 11:58:09 AM MST)

#### Answer

- Yes. (Answered: Feb 1, 2016 1:27:53 PM MST)

#### Question 547

MAster Agreement, 20.h. Resale. Subject to any explicit permission in a Participating Addendum, Purchasing



Entities may not resell goods, software, or Services obtained under this Master Agreement. This limitation does not prohibit: payments by employees of a Purchasing Entity as explicitly permitted under this agreement; sales of goods to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities under cooperative agreements and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

Question: will the state please clarify what the following language means: "...and fees associated with inventory transactions with other governmental or nonprofit entities under cooperative agreements and consistent with a Purchasing Entity's laws and regulations...."

For example, to what type of fees is the state referring? What inventory? What transactions? (Submitted: Jan 29, 2016 11:59:21 AM MST)

**Answer**

- Any exception and/or addition regarding the Master Agreement Terms and Conditions must be made in the