



**The State of Nevada**  
Department of Administration Purchasing Division

In conjunction with



**Request for Proposal**

**State of Nevada Solicitation Number 99SWC~S26**

**NASPO ValuePoint Master Agreement for  
INMATE KIOSKS & COMMUNICATIONS**

March 7, 2018

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## RFP Administrative Information

RFP Title:	Inmate Kiosks & Communications
RFP Project Description: (See Section 1.1)	The State of Nevada in conjunction with NASPO ValuePoint, is seeking Contractor(s) to provide Inmate Kiosks & Communication.
RFP Lead: (See Section 1.2)	Ronda Miller, Purchasing Officer II Nevada State Purchasing 515 E. Musser St., Ste 300 Carson City, NV 89701 775-684-0182 <a href="mailto:rlmiller@admin.nv.gov">rlmiller@admin.nv.gov</a>
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 STATE OF NEVADA DIVISION OF PURCHASING PRIOR TO THE CLOSING DATE AND TIME.  Submit electronically via Nevada EPro: (See Section 2.10)	Address for Courier: 515 E. Musser St., Ste 300 Carson City, NV 89701  Address for US Mail:  Same as Above  Electronic Submission <a href="https://nevadaepro.com/bs/">https://nevadaepro.com/bs/</a>
Pre-Proposal Conference:  Pre-Proposal Conference Location: (See Section 2.3)	N/A
Deadline To Receive Questions: (See Sections 1.3 and 2.1)	March 14, 2018
Question & Answers: (See Section 2.1)	All questions, including those about Terms and Conditions, must be submitted through <a href="https://nevadaepro.com/bs/">https://nevadaepro.com/bs/</a> Question must be submitted by the question deadline date
RFP Closing Date: (See Section 1.3)	April 17, 2018
RFP Closing Time: (See Section 1.3)	2:00 pm PST
Initial Term of Contract and Renewals: (See Attachment A, Section 3)	The initial term of the Contract will be two (2) years with the option, upon mutual written agreement, for three (3) additional renewal periods of one (1) year each. Upon mutual agreement, the contract may be extended or amended.
<b>TAKE NOTE OF THE 0.25% NASPO VALUEPOINT ADMINISTRATIVE FEE DETAILED IN SECTION 6 OF THE NASPO VALUEPOINT STANDARD TERMS AND CONDITIONS, WHICH MUST BE INCORPORATED INTO YOUR BASE PRICE. OTHER STATES MAY NEGOTIATE ADDITIONAL ADMINISTRATIVE FEES IN THEIR PARTICIPATING ADDENDA FOLLOWING AWARD OF A MASTER AGREEMENT.</b>	

# **REQUEST FOR PROPOSAL INMATE KIOSKS & COMMUNICATIONS**

**Solicitation # 99SWC~S26**

## **Section 1: NASPO ValuePoint Solicitation - General Information**

### **1.1. Purpose**

The **State of Nevada, Purchasing Division (Lead State)** is requesting proposals for Inmate Kiosks & Communication in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The purpose of this Request for Proposal (RFP) is to establish Master Agreements with qualified Offerors to provide **Inmate Kiosk & Communication Services** for all Participating States. The objective of this RFP is to obtain best value, and in some cases achieve more favorable pricing, than is obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities. The Master Agreement(s) resulting from this procurement may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the individual chief procurement official and compliance with local statutory and regulatory provisions. The initial term of the master agreement shall be two (2) years with renewal provisions as outlined in Section 3 of the NASPO ValuePoint Master Terms and conditions (Attachment A).

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

This RFP is designed to provide interested Offerors with sufficient information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are encouraged to expand upon the specifications to add service and value consistent with state requirements.

This will be a new Master Agreement for the State of Nevada and NASPO ValuePoint.

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

The State of Nevada Purchasing Division is the Lead State and issuing office for this document and all subsequent addenda relating to it. The reference number for the transaction is Solicitation **#99SWC~S26**. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

The Lead State Contract Administrator identified below is the Single Point of Contact during this procurement process. Offerors and interested persons shall direct to the Lead State Contract Administrator all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, requests for brand approval, changes, clarifications, and protests, the award process, and any other questions that may arise related to this solicitation and the resulting Master Agreement. The Lead State Contract Administrator designated by the State of

Nevada Purchasing Division is:

Ronda Miller, Purchasing Officer II  
State of Nevada Purchasing Division  
515 E. Musser Street, Rm 300  
Carson City, NV 89701  
[rlmiller@admin.nv.gov](mailto:rlmiller@admin.nv.gov)  
775-684-0182

### 1.3 Schedule of Events

Solicitation Release:	March 7, 2018
Pre-Proposal Conference:	N/A
Question Deadline:	March 14, 2018 @ 12:00pm PST
Closing Date and Time:	April 17, 2018 @ 2:00 pm PST
Anticipated Award Date:	June 2018

All times are Pacific Standard time unless indicated otherwise.

### 1.4. Definitions

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

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

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

**Proposer** has the same meaning as Offeror.

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

**Request for Proposal or "RFP"** means the entire solicitation document, including all parts, sections, exhibits, attachments, and Addenda.

### 1.5. NASPO ValuePoint Background Information

NASPO ValuePoint (formerly known as WSCA-NASPO) is a cooperative purchasing program of all 50 states, the District of Columbia and the territories of the United States. The Program is facilitated by the NASPO Cooperative Purchasing Organization LLC, a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO), doing business as NASPO ValuePoint. NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO ValuePoint facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school

districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. For more information consult the following websites [www.naspovaluepoint.org](http://www.naspovaluepoint.org) and [www.naspo.org](http://www.naspo.org).

## **1.6. Participating States**

In addition to the Lead State conducting this solicitation, the following Participating States have requested to be named in this RFP as potential users of the resulting Master Agreement:

- California
- Nevada

Other entities may become Participating Entities after award of the Master Agreement. Some States may have included special or unique terms and conditions for their state that will govern their state Participating Addendum. These terms and conditions are being provided as a courtesy to proposers to indicate which additional terms and conditions may be incorporated into the state Participating Addendum after award of the Master Agreement. The Lead State will not address questions or concerns or negotiate *other States'* terms and conditions. The Participating States shall negotiate these terms and conditions directly with the supplier. State-specific terms and conditions are included in *Attachments J*.

## **1.7. Anticipated Usage**

This is a new Master Agreement for the Lead State and NASPO ValuePoint. Inmate Kiosk only year to date spend is \$102,222,650.19. No minimum or maximum level of sales volume is guaranteed or implied in awarded agreements made under this RFP.

# **Section 2: Solicitation Requirements, Information and Instructions to Offerors**

## **2.1 RFP Question and Answer Process**

All questions, including those about Terms and Conditions, must be submitted through <https://nevadaepro.com/bs/>. Question must be submitted by the question deadline date and time shown in Section 1.3 (Schedule of Events). Answers will be given via the <https://nevadaepro.com/bs/> site as soon as possible.

The Lead State may refuse to answer questions received after the Question/Answer deadline.

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

## **2.2 RFP Addenda**

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

The Lead State accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor the <https://nevadaepro.com/bs/> to obtain RFP addenda or other information relating to the RFP.

### **2.3 Pre-Proposal Conference**

Not applicable

### **2.4 Proposal Due Date**

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

### **2.5 Cancellation of Procurement**

This RFP may be 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 Participating States.

### **2.6 Governing Laws and Regulations**

This procurement is conducted by the Lead State Purchasing Division, in accordance with the Lead State Procurement Code. These are available at <http://purchasing.nv.gov/>.

This procurement shall be governed by the regulations and laws of the Lead State. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in Nevada. The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in section 35 of the NASPO ValuePoint Master Agreement Terms and Conditions in Attachment A.

### **2.7 Firm Offers**

Responses to this RFP, including proposed costs, will be considered firm for (180) days after the proposal due date.

### **2.8 Right to Accept All or Portion of Proposal**

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

### **2.9 Proposal Content and Format Requirements**

Proposals must be detailed and concise. Each Proposal must be labeled and organized in a manner that is congruent with the requirements and terminology used in this RFP and must include a point by point response, structured in form and reference to the RFP, addressing all requirements and the Scope of Work elements. Do not submit company literature, brochures and marketing materials.

## 2.10 Proposal Submission Instructions

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

## 2.11 Required Format

### 2.11.1 General Submission Requirements

Vendors shall submit their proposals by using Create Quote through the State electronic procurement website, <https://NevadaEPro.com>, in accordance with the instructions below.

- Refer to Instructions for Vendors Responding to a Bid in the Important Links section on the front page of NevadaEPro for instructions on how to submit a Quote using NevadaEPro.
- The Quote/Proposal shall contain a maximum of four (4) attachments which may include:
  - Technical Proposal
  - Confidential Technical (if applicable)
  - Cost Proposal (if applicable)
  - Confidential Financial (if applicable)
- Proposals shall have a technical response, which may be composed of two (2) parts in the event a vendor determines that a portion of their technical response qualifies as “confidential” per NRS 333.020 (5) (b).
- If complete responses cannot be provided without referencing confidential information, such confidential information shall be provided in accordance with **Section 2.11.3, Part IB – Confidential Technical Proposal**.
- Specific references made to the section, page, and paragraph where the confidential information can be located shall be identified on **Attachment H, Confidentiality and Certification** of Indemnification.
- Proposals that do not comply with the requirements may be deemed non-responsive and rejected at the State’s discretion.
- Although it is a public opening, only the names of the vendors submitting proposals shall be announced per NRS 333.335(6). Technical and cost details about proposals submitted shall not be disclosed.
- Assistance for handicapped, blind or hearing-impaired persons who wish to attend the RFP opening is available. If special arrangements are necessary, please notify the Purchasing Division designee as soon as possible and at least two (2) days in advance of the opening.

- For ease of evaluation, the technical and cost proposals shall be presented in a format that corresponds to and references sections outlined within this RFP and shall be presented in the same order. Written responses shall be in ***bold/italics*** and placed immediately following the applicable RFP question, statement and/or section.
- Proposals are to be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Expensive color displays, promotional materials, etc., are not necessary or desired. Emphasis shall be concentrated on conformance to the RFP instructions, responsiveness to the RFP requirements, and on completeness and clarity of content.
- For purposes of addressing questions concerning this RFP, the sole contact shall be the Purchasing Division as specified on Page 1 of this RFP. Upon issuance of this RFP, other employees and representatives of the agencies identified in the RFP shall not answer questions or otherwise discuss the contents of this RFP with any prospective vendors or their representatives. Failure to observe this restriction may result in disqualification of any subsequent proposal per NAC 333.155(3). This restriction does not preclude discussions between affected parties for the purpose of conducting business unrelated to this procurement.
- Any vendor who believes there are irregularities or lack of clarity in the RFP or proposal requirements or specifications are unnecessarily restrictive or limit competition shall notify the Lead State (Nevada), in writing, as soon as possible, so that corrective addenda may be furnished by the Lead State (Nevada) in a timely manner to all vendors.
- If a vendor changes any material RFP language, vendor's response may be deemed non-responsive per NRS 333.311.
- The vendor understands and acknowledges that the representations made in its proposal are material and important, and shall be relied on by the State in its evaluation of a proposal. Any misrepresentation by a vendor shall be treated as fraudulent concealment from the State of the true facts relating to the proposal.

### **2.11.2 PART I A – TECHNICAL PROPOSAL**

The Technical Proposal must not include cost and/or pricing information. Cost and/or pricing information contained in the technical proposal may cause the proposal to be rejected.

Using Create Quote in *NevadaEPro*, vendors shall provide one (1) PDF Technical Proposal on the Attachments tab that includes the following:

#### **Section I — Table of Contents**

An accurate and updated table of contents must be provided.

## **Section II – Vendor Information Sheet**

The vendor information sheet completed with an original signature by an individual authorized to bind the organization must be included in this section.

## **Section III – State Documents**

The State documents tab must include the following:

- The signature page from all amendments with an original signature by an individual authorized to bind the organization.
- ***Attachment H*** – Confidentiality and Certification of Indemnification of RFP with an original signature by an individual authorized to bind the organization.
- ***Attachment G*** – Vendor Certifications with an original signature by an individual authorized to bind the organization.
- Copies of any vendor licensing agreements and/or hardware and software maintenance agreements.
- Copies of applicable certifications and/or licenses.

## **Section IV - Section 3 – Scope of Work**

Vendors must place their written response(s) in bold/italics immediately following the applicable RFP question, statement and/or section.

## **Section V– Section 4 – Company Background and References**

Vendors must place their written response(s) in ***bold/italics*** immediately following the applicable RFP question, statement and/or section. This section must also include the requested information in Subcontractor Information, if applicable.

## **Section VI – Other Informational Material**

Vendors must include any other applicable reference material in this section clearly cross referenced with the proposal.

### **2.11.3 PART IB – CONFIDENTIAL TECHNICAL PROPOSAL**

- Vendors only need to submit Part IB if the proposal includes any confidential technical information (Refer to ***Attachment H, Confidentiality and Certification of Indemnification of RFP***).

- If needed, Vendors must provide one (1) PDF Confidential Technical Proposal file that includes the following Format and Content:

Vendors must have an appendix in the confidential technical information that cross reference back to the technical proposal, as applicable.

#### **2.11.4 PART II – COST PROPOSAL**

- Vendors shall submit pricing per *Attachment C ~ Cost*.
- The cost proposal shall not be marked “confidential”. Only information that is deemed proprietary per NRS 333.020 (5) (a) may be marked as “confidential”.

#### **2.11.5 PART III – CONFIDENTIAL FINANCIAL INFORMATION**

- If needed, Vendors must provide one (1) PDF Confidential Financial Information file that includes the following Format and Content:

Vendors must place the information required per Section 4 ~ Mandatory Minimum Administrative Proposal Requirements in this section.

### **2.12 Ownership or Disposition of Proposals and other Materials submitted**

Proposals submitted per proposal submission requirements become the property of the State, selection or rejection does not affect this right; proposals will be returned only at the State’s option and at the vendor’s request and expense.

### **2.13 Confidential or Proprietary Information**

- As a potential contractor of a public entity, vendors are advised that full disclosure is required by law.
- Vendors are required to submit written documentation in accordance with *Attachment H, Confidentiality and Certification of Indemnification* demonstrating the material within the proposal marked “confidential” conforms to NRS §333.333, which states “Only specific parts of the proposal may be labeled a “trade secret” as defined in NRS §600A.030(5)”. Not conforming to these requirements will cause your proposal to be deemed non-compliant and will not be accepted by the State of Nevada.
- Vendors acknowledge that material not marked as “confidential” will become public record upon contract award.
- It is the vendor’s responsibility to act in protection of the labeled information and agree to defend and indemnify the State of Nevada for honoring such designation.
- Failure to label any information that is released by the State shall constitute a complete waiver of any and all claims for damages caused by release of said information.

### **2.14 Offeror Exceptions to Terms and Conditions**

The Lead State discourages exceptions to contract terms and conditions in the RFP, attached

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

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

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

**2.15 Certification of Non-Debarment**

Disclosure of any significant prior or ongoing contract failures, contract breaches, civil or criminal litigation in which the vendor has been alleged to be liable or held liable in a matter involving a contract with the State of Nevada or any other governmental entity. Any pending claim or litigation occurring within the past six (6) years which may adversely affect the vendor’s ability to perform or fulfill its obligations if a contract is awarded as a result of this RFP must also be disclosed.

Does any of the above apply to your company?

Yes		No	
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If “Yes”, please provide the following information. Table can be duplicated for each issue being identified.

Question	Response	
Date of alleged contract failure or breach:		
Parties involved:		
Description of the contract failure, contract breach, or litigation, including the products or services involved:		
Amount in controversy:		
Resolution or current status of the dispute:		
If the matter has resulted in a	Court	Case Number

Question	Response	
court case:		
Status of the litigation:		

Each vendor must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigations pending which involves the vendor or in which the vendor has been judged guilty or liable. Failure to comply with the terms of this provision may disqualify any proposal. The State reserves the right to reject any proposal based upon the vendor’s prior history with the State or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures. Refer generally to NRS 333.335.

The Offeror certifies that neither the Offeror nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Master Agreement) by any governmental department or agency. If the Offeror cannot certify this statement, attach a written explanation for review by the Lead State.

### **Section 3: Evaluation and Award**

#### **3.1 Right to Waive Minor Irregularities**

The Lead State in its sole discretion reserves the right to waive minor irregularities in the Proposal, which include but are not limited to corrections of deficiencies or clarification of ambiguities that in the judgment of the Lead State do not require a comprehensive proposal rewrite. The Lead State also reserves the right in its sole discretion to waive certain mandatory requirements provided that all of the otherwise responsive proposals fail to meet the same mandatory requirements and the failure to do so does not materially affect the procurement.

#### **3.2 Discussions with Offerors**

In the initial phase of the evaluation process, the Lead State will review all proposals timely received. Unacceptable proposals (non-responsive proposals not conforming to RFP requirements) will be eliminated from further consideration.

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

#### **3.3 Award of Master Agreement(s)**

Award shall be made to the Offeror(s) whose proposal is the most advantageous to the State of Nevada and NASPO ValuePoint, taking into consideration price and the other evaluation factors set forth in this Request for Proposal.

### 3.4 Evaluation Process

The information in this section does not need to be returned with the vendor's proposal.

Proposals shall be consistently evaluated and scored in accordance with NRS 333.335(3) based upon the following criteria:

Criteria Description	Weight
Demonstrated competence	25
Experience in performance of comparable engagements	20
Conformance with the terms of this RFP	10
Expertise and Availability of Key Personnel	20
Cost	25

Proposals shall be kept confidential until a contract is awarded.

The evaluation committee may also contact the references provided in response to the Section identified as Company Background and References; contact any vendor to clarify any response; contact any current users of a vendor's services; solicit information from any available source concerning any aspect of a proposal; and seek and review any other information deemed pertinent to the evaluation process. The evaluation committee shall not be obligated to accept the lowest priced proposal, but shall make an award in the best interests of the State of Nevada per NRS 333.335(5).

Each vendor must include in its proposal a complete disclosure of any alleged significant prior or ongoing contract failures, contract breaches, any civil or criminal litigation or investigations pending which involves the vendor or in which the vendor has been judged guilty or liable. Failure to comply with the terms of this provision may disqualify any proposal. The State reserves the right to reject any proposal based upon the vendor's prior history with the State or with any other party, which documents, without limitation, unsatisfactory performance, adversarial or contentious demeanor, significant failure(s) to meet contract milestones or other contractual failures. Refer generally to NRS 333.335.

Clarification discussions may, at the State's sole option, be conducted with vendors who submit proposals determined to be acceptable and competitive per NAC 333.165. Vendors shall be accorded fair and equal treatment with respect to any opportunity for discussion and/or written revisions of proposals. Such revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing vendors. Any modifications made to the original proposal during the best and final negotiations will be included as part of the contract.

### **3.5 Notice of Intent to Award**

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

### **3.6 Protest**

Any unsuccessful vendor may file an appeal in strict compliance with NRS 333.370 and Chapter 333 of the Nevada Administrative Code.

### **3.7 Post Award Formalization of the Master Agreement**

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

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

## **Section 4: Administrative and Technical Response Requirements**

### **4.1 Mandatory Minimum Administrative Proposal Requirements**

This section contains the minimum requirements that must be met in order to be considered for the evaluation phase. All of the items described in this section are non-negotiable. All Offerors must state willingness and demonstrate ability to satisfy these requirements in the proposal submitted for consideration.

Company background/history and why vendor is qualified to provide the services described in this RFP. Limit response to no more than five (5) pages.

Length of time vendor has been providing services described in this RFP to the public and/or private sector. Please provide a brief description.

Financial information and documentation to be included in *Section 2.11.5, Part III – Confidential Financial Information*.

- Dun and Bradstreet Number
- Federal Tax Identification Number

### **4.2 NASPO ValuePoint Master Agreement Statement of Compliance**

NASPO ValuePoint Master Agreement(s) resulting from this RFP will constitute the final

agreement except for negotiated terms and conditions specific to a Participating Entity's Participating Addendum.

The Master Agreement will include, but not be limited to, the NASPO ValuePoint Standard Terms and Conditions in *Attachment A* and Lead State specific terms and conditions required to execute a master agreement, the scope of work (*Attachment B*) and selected portions of the Offeror's Proposal.

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

#### **4.2.a Insurance**

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

#### **4.2.b NASPO ValuePoint Administrative Fee and Reporting Requirements**

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

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

#### **4.2.c NASPO ValuePoint eMarket Center**

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

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

#### **4.2.d Promotion of the NASPO ValuePoint Master Agreement**

The NASPO ValuePoint Master Agreement Terms and Conditions include program provisions governing participation in the cooperative, reporting and payment of administrative fees, and

marketing/education relating to the NASPO ValuePoint Cooperative Procurement Program. Technical and management evaluation factors may include evaluation of: the likely effectiveness of the Offeror's promotion of the Master Agreement; the Offeror's understanding of and approach to administration of and reporting under the Master Agreement; the risk that Offeror's contractual obligations to other procurement cooperatives' may impede achievement of the objectives of the ValuePoint cooperative procurement program, in which case awards could be Lead-State-Only awards. In this regard,

- a. Briefly describe how you intend to promote the use of the Master Agreement.
- b. Knowing that state procurement officials (CPO) must permit use of the Master Agreement in their state, how will you integrate the CPO's permission into your plan for promoting the agreement?
- c. Public entities are sensitive to "scope" issues, that is, whether performance is within the intended scope of the solicitation as awarded. In the context of your method of promoting agreements of this nature, how would you clarify any questions regarding the scope the agreement with respect to any potential order?
- d. Through its Cooperative Development Coordinators and Education & Outreach team, NASPO ValuePoint assists Lead States by engaging contractor's in strategies aimed at promoting master agreements. What opportunities and/or challenges do you see in working with NASPO ValuePoint staff in this way?
- e. Does your company participate in any other public procurement cooperatives? If yes, explain any restrictions or requirements that other cooperatives place on your company for participating with NASPO ValuePoint.

#### **4.2.e Usage Fee and Reporting Plan**

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

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

- a. Offerors shall identify the person responsible for providing the mandatory usage reports.
- b. Offerors shall identify the method and frequency in which usage data will be collected from authorized distributors.
- c. Offerors shall identify the method in which usage fees will be distributed to NASPO ValuePoint and applicable Participating States.
- d. Offerors shall identify the method in which up-to-date information will be provided to NASPO ValuePoint and the Lead State Contract Administrator.

### 4.3 Lead State Terms and Conditions

The Lead State reserves the right to negotiate additional terms and conditions in its Participating Addendum. Offerors shall submit a statement that they understand they may be required to negotiate these additional terms and conditions when executing a Participating Addendum.

### 4.4 Participating State Terms and Conditions

For informational purposes only, some Participating State specific Terms and Conditions are provided in Attachments to this solicitation and will be negotiated with other Participating States after award of the Master Agreement. Each State reserves the right to negotiate additional terms and conditions in its Participating Addendums. Offeror shall submit a statement that they understand they may be required to negotiate these additional terms and conditions when executing a Participating Addendum.

### 4.5 Technical Requirements

This section contains technical requirements pertaining to the Inmate Kiosks & Communications. Other sections of this RFP contain additional requirements that must be met in order to be considered responsive. Offeror must identify in their Proposal how their company meets (or exceeds) all requirements listed in Section 4 of this RFP solicitation.

#### 4.5.1 Offeror Profile

Provide the following information specific to your company:

- a. Your company's full legal name
- b. Primary business address
- c. Describe your company ownership structure
- d. Employee size (number of employees)
- e. Website
- f. Sales contact information
- g. Your client retention rate during the past 3 years
- h. A brief history of your company and the year it was founded
- i. Describe your company's growth during the past three years.

#### 4.5.1a Subcontractor Information

Does this proposal include the use of subcontractors?

Yes		No	
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If “Yes”, vendor must:

Identify specific subcontractors and the specific requirements of this RFP for which each proposed subcontractor will perform services.

If any tasks are to be completed by subcontractor(s), vendors must:

- Describe the relevant contractual arrangements;
- Describe how the work of any subcontractor(s) will be supervised, channels of communication will be maintained and compliance with contract terms assured; and
- Describe your previous experience with subcontractor(s).
- Vendors must describe the methodology, processes and tools utilized for:
- Selecting and qualifying appropriate subcontractors for the project/contract;
- Ensuring subcontractor compliance with the overall performance objectives for the project;
- Ensuring that subcontractor deliverables meet the quality objectives of the project/contract; and
- Providing proof of payment to any subcontractor(s) used for this project/contract, if requested by the State. Proposal should include a plan by which, at the State’s request, the State will be notified of such payments.

Provide the same information for any proposed subcontractors as requested in Section 4.5.1, Offeror Information.

Business references as specified in Section 4.5.1b, Business References must be provided for any proposed subcontractors.

Vendor shall not allow any subcontractor to commence work until all insurance required of the subcontractor is provided to the vendor.

Vendor must notify the using agency of the intended use of any subcontractors not identified within their original proposal and provide the information originally requested in the RFP in Section 4.5.1a, Subcontractor Information. The vendor must receive agency approval prior to subcontractor commencing work.

No part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United States or by means, methods, or communications that, in whole or in part, take place offshore of the United States.

#### **4.5.1b Business References**

Vendors should provide a minimum of three (3) business references from similar projects

performed for private, state and/or large local government clients within the last three (3) years.

Vendors must provide the following information for every business reference provided by the vendor and/or subcontractor:

The “Company Name” must be the name of the proposing vendor or the vendor’s proposed subcontractor.

<b>Reference #:</b>	
<b>Company Name:</b>	
<i>Identify role company will have for this RFP project (Check appropriate role below):</i>	
	<b>VENDOR</b>
	<b>SUBCONTRACTOR</b>
Project Name:	
<b>Primary Contact Information</b>	
Name:	
Street Address:	
City, State, Zip:	
Phone, including area code:	
Facsimile, including area code:	
Email address:	
<b>Alternate Contact Information</b>	
Name:	
Street Address:	
City, State, Zip:	
Phone, including area code:	
Facsimile, including area code:	
Email address:	
<b>Project Information</b>	
Brief description of the project/contract and description of services performed, including technical environment (i.e., software applications, data communications, etc.) if applicable:	
Original Project/Contract Start Date:	
Original Project/Contract End Date:	
Original Project/Contract Value:	
Final Project/Contract Date:	
Was project/contract completed in time originally allotted, and if not, why not?	
Was project/contract completed	

within or under the original budget/ cost proposal, and if not, why not?	
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Vendors must also submit **Attachment E, Reference Questionnaire** to the business references that are identified in Section 4.1.5b.

The company identified as the business references must submit the Reference Questionnaire directly to the State of Nevada Purchasing Division.

It is the vendor's responsibility to ensure that completed forms are received by the State of Nevada Purchasing Division on or before the deadline as specified in **Section 1.3, Schedule of Events** for inclusion in the evaluation process. Reference Questionnaires not received, or not complete, may adversely affect the vendor's score in the evaluation process.

The Lead State reserves the right to contact and verify any and all references listed regarding the quality and degree of satisfaction for such performance.

#### **4.5.1c Vendor Staff Resumes**

A resume must be completed for the vendor's key personnel responsible for administering the contract resulting from this RFP per **Attachment F, Proposed Staff Resume**.

##### **A. Key Personnel**

Key personnel will be incorporated into the contract. The vendor's proposed key personnel establish a standard of quality for replacements, as determined by the Lead State in its sole discretion. The vendor shall replace key personnel when needed with personnel having equivalent education, knowledge, skills and ability. Replacement of key personnel may be accomplished in the following manner:

- A representative of the contractor authorized to bind the company will notify the Lead State in writing of the change in key personnel.
- The Lead State may accept the change of the key personnel by notifying the contractor in writing.
- The signed acceptance will be considered to be an update to the key personnel and will not require a contract amendment. A copy of the acceptance must be kept in the official contract file.
- Replacements to key personnel are bound by all terms and conditions of the contract and any subsequent issue resolutions and other project documentation agreed to by the previous personnel.
- If key personnel are replaced, someone with comparable skill and experience level must replace them.

- At any time that the contractor provides notice of the permanent removal or resignation of any of the management, supervisory or other key professional personnel and prior to the permanent assignment of replacement staff to the contract, the contractor shall provide a resume and references for a minimum of two (2) individuals qualified for and proposed to replace any vacancies in key personnel, supervisory or management position.
- Upon request, the proposed individuals will be made available within five (5) calendar days of such notice for an in-person interview with Lead State staff at no cost to the Lead State.
- The Lead State will have the right to accept, reject or request additional candidates within five (5) calendar days of receipt of resumes or interviews with the proposed individuals, whichever comes later.
- A written transition plan must be provided to the Lead State prior to approval of any change in key personnel.
- The State reserves the right to have any contract or management staff replaced at the sole discretion and as deemed necessary by the State.

#### **4.5.2 Customer Service**

- a. What are your hours of operation and when are key account people available to us?
- b. Describe how problem identification and resolution will be handled.
- c. How will you service our account? Describe the system you will use to manage our account.
- d. How do you respond to customer complaints and service issues?
- e. How do you assess customer satisfaction?
- f. What are your quality assurance measures and how are they handled in your organization.

#### **4.5.3 Scope of Work**

- a. Offerors shall demonstrate in their Proposal how they meet or exceed the requirements of each section of the ***Scope of Work ~ Attachment B***. Offerors shall show each requirement and its response in their Proposal.
- b. No part of the resulting contract from this solicitation may be performed offshore of the United States by persons located offshore of the United States or by means, methods, or communications that, in whole or in part, take place offshore of the United States.

#### 4.5.4 Customer Service

- g. What are your hours of operation and when are key account people available to us?
- h. Describe how problem identification and resolution will be handled.
- i. How do you respond to customer complaints and service issues?
- j. How do you assess customer satisfaction?
- k. What are your quality assurance measures and how are they handled in your organization?

### Section 5: Price and Cost Proposal

The Cost Proposals will be evaluated independent of the technical evaluation. Cost proposals must be submitted to the Lead State as a separate document in the Offerors' Proposals. **Do not embed cost proposal in the technical proposal response.**

Offeror shall provide detailed costs for all costs associated with the responsibilities and related services, per *Attachment C ~ Cost*.

Cost for the NASPO ValuePoint Master Agreements shall be based on the following:

The Lead State is exempt from federal excise taxes and no payment will be made for any taxes levied on the Offeror's or any subcontractor's employee's wages. The Lead State will pay for any applicable Lead State or local sales or use taxes on the products provided or the services rendered. If required by Lead State, taxes shall be included as a separate line item on a Offeror's invoice. The tax rules with respect to other Participating Entities may vary and are expected to be addressed in the Participating Addenda.

#### 5.1 Price and Rate Guarantee Period

All prices and rates offered shall be guaranteed for the initial term of the Master Agreement. Any request for price or rate adjustment following the initial Master Agreement term is detailed in Section 11 of the NASPO ValuePoint Master Agreement Terms and Conditions.



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

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

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

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

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

### **2. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

## **NASPO ValuePoint Program Provisions**

### **3. Term of the Master Agreement**

a. The initial term of this Master Agreement is for two (2) years. Agreement may be extended beyond the original contract period for three (3) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market

conditions, and Contractor performance.

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

#### **4. Amendments**

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

#### **5. Participants and Scope**

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

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

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to [PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org) to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting

states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

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

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

g. **Resale.** “Resale” means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor’s proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

## **6. Administrative Fees**

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

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

## 7. NASPO ValuePoint Summary and Detailed Usage Reports

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

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

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

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

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

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

## **8. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review**

- a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.
- b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.
- c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.
- d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.
- e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.
- g. Contractor agrees, within 30 days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

## **9. NASPO ValuePoint eMarket Center**

- a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing

business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

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

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

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

## **10. Right to Publish**

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

## **11. Price and Rate Guarantee Period**

All prices and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the renewal effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

## **12. Individual Customers**

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

# Administration of Orders

## 13. Ordering

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

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

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

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

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

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

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

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

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

i. Notwithstanding the expiration, cancellation or termination of this Master Agreement,

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

#### **14. Shipping and Delivery**

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

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

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

#### **15. Laws and Regulations**

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

#### **16. Standard of Performance and Acceptance**

The Standard of Performance applies to all product(s) purchased under this Master Agreement, including any additional, replacement, or substitute product(s), as well as any product(s) which are modified by or with the written approval of the vendor and acceptance by the Purchasing Entity.

The Acceptance Testing period shall be seven (7) calendar days, or any other time period identified in the solicitation or the Participating Addendum, beginning with the day after the product is installed certification is received that the product is ready for Acceptance Testing.

If the product does not meet the Standard of Performance during the initial period of Acceptance Testing, the Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the Standard of Performance is met.

Upon rejection, the vendor will have three (3) calendar days to cure any Standard of Performance issue(s).

If, after the cure period, the product still has not met the Standard of Performance, the Purchasing Entity may, at its option:

- Declare the vendor to be in breach and terminate the order;
- Demand a replacement product from the vendor at no additional cost to Participating Entity; or
- Continue the cure period for an additional time period agreed upon by the Participating Entity and the vendor.

Vendor shall pay all costs related to the preparation and shipping of returned products.

No product shall be accepted and no charges shall be paid until the Standard of Performance is met.

The warranty period will begin upon the Purchasing Entity's approval.

## **17. Payment**

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

## **18. Warranty**

Warranty provisions as specified in *Attachment B, Scope of Work*.

## **19. Title of Product**

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

## **20. License of Pre-Existing Intellectual Property**

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered

under this Master Agreement, but not created under it (“Pre-existing Intellectual Property”). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

## General Provisions

### 21. Insurance

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

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

#### **INSURANCE REQUIREMENTS:**

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, his agents, representatives, employees or subcontractors and Contractor is free to purchase additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below. An excess liability policy or umbrella liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.

#### **1. Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- |   |             |
|---|-------------|
| • General Aggregate                         | \$2,000,000 |
| • Products – Completed Operations Aggregate | \$1,000,000 |
| • Personal and Advertising Injury           | \$1,000,000 |
| • Each Occurrence                           | \$1,000,000 |

a. The policy shall be endorsed to include the following additional insured language:

"The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor".

## 2. Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL)	\$1,000,000
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- a. The policy shall be endorsed to include the following additional insured language: "The State of Nevada shall be named as an additional insured with respect to liability arising out of the activities performed by, or on behalf of the Contractor, including automobiles owned, leased, hired or borrowed by the Contractor"

## 3. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$100,000
Disease – Each Employee	\$100,000
Disease – Policy Limit	\$500,000

- a. Policy shall contain a waiver of subrogation against the State of Nevada.
- b. This requirement shall not apply when a contractor or subcontractor is exempt under N.R.S., **AND** when such contractor or subcontractor executes the appropriate sole proprietor waiver form.

## 4. Technology E&O/Professional Liability

The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim	\$1,000,000
Annual Aggregate	\$2,000,000

- a. In the event that the professional liability insurance required by this Contract is written on a claims-made basis, Contractor warrants that any retroactive date under the policy shall precede the effective date of this Contract; and that either continuous coverage will be maintained or an extended discovery period will be exercised for a period of two (2) years beginning at the time work under this Contract is completed.

## 5. Network Security (Cyber) and Privacy Liability:

Per Occurrence	\$1,000,000
Annual Aggregate	\$2,000,000

This errors and omissions insurance shall include coverage for third party claims and losses including with respect to network risks (such as data breaches, transmission of

virus/malicious code; unauthorized access or criminal use of third party, ID/data theft) and invasion of privacy regardless of the type of media involved in the loss of private information (such as computers, paper files and records, or voice recorded tapes), covering collection, use, access, etc. of personally identifiable information., direct liability, as well as contractual liability for violation of privacy policy, civil suits and sublimit for regulatory defense/indemnity for payment of fines and penalties.

- a. The retroactive coverage date shall be no later than the effective date of this contract.
- b. Contractor shall maintain an extended reporting period for not less than two (2) years after termination of this contract.

**6. Fidelity Bond or Crime Insurance (contracts involving financial accounts or data)**

Bond or Policy Limit \$500,000

- a. The bond or policy shall include coverage for all directors, officers, agents and employees of the Contractor.
- b. The bond or policy shall include coverage for third party fidelity and name the State of Nevada as loss payee.
- c. The bond or policy shall include coverage for extended theft and mysterious disappearance.
- d. The bond or policy shall not contain a condition requiring an arrest and conviction.
- e. Policies shall be endorsed to provide coverage for computer crime/fraud.

B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:

1. On insurance policies where the State of Nevada is named as an additional insured, the State of Nevada shall be an additional insured to the full limits of liability purchased by the Contractor even if those limits of liability are in excess of those required by this Contract.
2. The Contractor's insurance coverage shall be primary insurance and non-contributory with respect to all other available sources.

C. **NOTICE OF CANCELLATION:** Contractor shall for each insurance policy required by the insurance provisions of this Contract shall not be suspended, voided or canceled except after providing thirty (30) days prior written notice been given to the State, except when cancellation is for non-payment of premium, then ten (10) days prior notice may be given. Such notice shall be sent directly to **Nevada State Purchasing Division Attn: Ronda Miller, 515 E. Musser Street Ste 300, Carson City NV 89701**. Should contractor fail to provide State timely notice, contractor will be considered in breach and subject to cure provisions set forth within this contract.

D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with insurers duly licensed or authorized to do business in the state of Nevada and with an "A.M. Best" rating of not less than A- VII. The State in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.

- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State with certificates of insurance (ACORD form or equivalent approved by the State) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and any required endorsements are to be received and approved by the State before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract or to provide evidence of renewal is a material breach of contract.

All certificates required by this Contract shall be sent directly to **Nevada State Purchasing Division Attn: Ronda Miller, 515 E. Musser Street Ste 300, Carson City NV 89701**. The State project/contract number and project description shall be noted on the certificate of insurance. The State reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATES RISK MANAGEMENT DIVISION.**

- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as additional insureds under its policies **or** Contractor shall furnish to the State separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the insurance requirements in this Contract shall be made by the Attorney General's Office or the Risk Manager, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.

## **22. Records Administration and Audit**

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

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

c. The rights and obligations herein exist in addition to any quality assurance obligation in the

Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

### **23. Confidentiality, Non-Disclosure, and Injunctive Relief**

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

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

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition

to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

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

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section 23. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

## **24. Public Information**

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

## **25. Assignment/Subcontracts**

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

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

## **26. Changes in Contractor Representation**

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

## **27. Independent Contractor**

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

## **28. Cancellation**

Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may

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

## **29. Force Majeure**

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

## **30. Defaults and Remedies**

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

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

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

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

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and

- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

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

### **31. Waiver of Breach**

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

### **32. Debarment**

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

### **33. Indemnification**

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

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

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

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

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

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

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

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

### **34. No Waiver of Sovereign Immunity**

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

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

### **35. Governing Law and Venue**

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

Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

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

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

### **36. Assignment of Antitrust Rights**

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

### **37. Contract Provisions for Orders Utilizing Federal Funds**

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

### **38. Leasing or Alternative Financing Methods**

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

## eMarket Center Appendix

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

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

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

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

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

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

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

d. Revising Pricing and Product Offerings: Any revisions to product/service offerings (new products, altered SKUs, new pricing etc.) must be pre-approved by the Lead State and shall be subject to any other applicable restrictions with respect to the frequency or amount of such revisions. However, no cooperative contract enabled in the eMarket Center may include price changes on a more frequent basis than once per quarter. The following conditions apply with respect to hosted catalogs:

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

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

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

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

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

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

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

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

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

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

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

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

and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by JAGGAER for the suppliers and are upgraded every year. NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC and the Contractor shall be required to support the migration effort. All line items, goods or services provided under the resulting statewide contract must be associated to a UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity.

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

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

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

**(August 2017)**

## Attachment B: Scope of Work



RFP Attachment B  
SOW final.docx

*To open the document, double click on the icon.*

*If you are unable to access the above inserted file  
once you have doubled clicked on the icon,  
please contact Nevada State Purchasing at  
[svrpurch@admin.nv.gov](mailto:svrpurch@admin.nv.gov) for an emailed copy*

## Attachment C: Cost



RFP 99SWC-S26  
Cost.xlsx

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## Attachment D: Vendor Sheet



Attachment D Vendor  
Sheet.docx

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## Attachment E: Reference Questionnaire



Reference  
Questionnaire - 09-27

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## Attachment F: Staff Resume



Proposed Staff  
Resume - 04-05-17.doc

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## Attachment G: Vendor Certification



ATTACHMENT G  
Vendor Certification.doc

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## Attachment H: Confidentiality and Certification of Indemnification



ATTACHMENT H –  
Confidentiality & Certif

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## Attachment I: Reporting

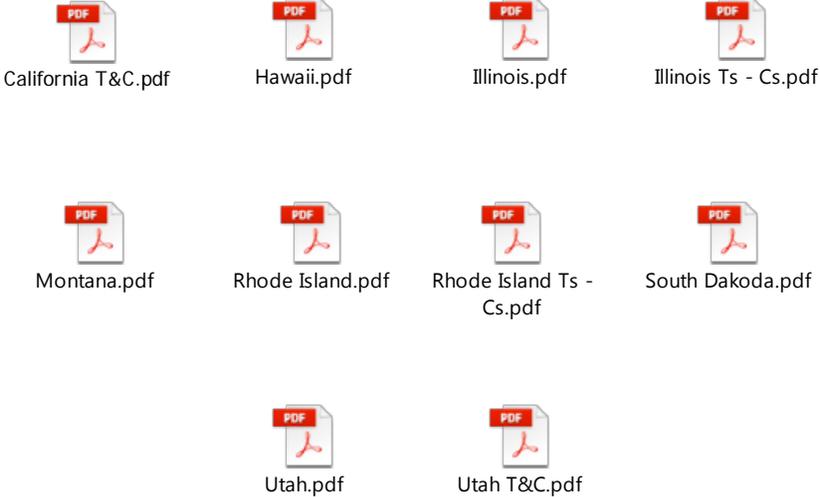


NASPO ValuePoint  
Detailed Sales Reporti

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# Attachment J: Additional Participating States Terms & Conditions



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