



State of Washington
DEPARTMENT OF ENTERPRISE SERVICES
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<http://www.des.wa.gov>

The State of Washington Department of Enterprise Services

Under the Authority of
State of Washington, Chapter 39.26 RCW

in furtherance of NASPO ValuePoint Cooperative Purchasing Program



enter into this agreement

with

**ErgoFlex Systems, Inc. dba Xybix Systems
for
Public Safety Communication Support Equipment
Master Agreement Number 05715**

1.0 OVERVIEW

1.1 CONTRACT SCOPE

The purpose of this Contract is to enable authorized purchasers to purchase public safety communication equipment from one or more awarded contractors from one or more of the following product categories:

1. Batteries
2. Furniture, Dispatch Consoles
4. Gateway Devices
5. Microwave Radios
6. Monitoring & Alarm
7. Power Systems
8. Test Equipment
9. Towers

New contracts may be established with other vendors as new equipment and additional product categories or subcategories are identified. This strategy will accommodate new technology introduced into the marketplace and made available to public safety customers.

1.2 CONTRACT SCOPE AND MODIFICATIONS

The DES reserves the right to modify this Contract by mutual agreement between the DES and the Contractor, so long as such modification is substantially within the scope of the original Contract. Such modifications will be evidenced by issuance of a written authorized amendment by the Contract Administrator.

1.3 RECITALS

The Department of Enterprise Services, an agency in the state of Washington (acting as the Lead State for NASPO ValuePoint), issued a Request for Proposal (RFP) for the purpose of purchasing equipment and services for public safety communication equipment in accordance with its authority under Chapter 39.26 RCW.

ErgoFlex Systems, Inc. dba Xybix Systems submitted a timely response to the DES's solicitation (incorporated by reference).

The DES evaluated all properly submitted responses to the above-referenced RFP and has identified *ErgoFlex Systems, Inc. dba Xybix Systems* as one of the apparently successful Contractors.

The DES has determined that entering into a contract/master agreement with *ErgoFlex Systems, Inc. dba Xybix Systems* will meet Purchaser's needs and will be in Purchaser's best interest.

NOW THEREFORE, DES awards to *ErgoFlex Systems, Inc. dba Xybix Systems* this Contract/Master Agreement, the terms and conditions of which shall govern Contractor's furnishing to Purchasers the equipment and services identified herein. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

1.4 ESTIMATED USAGE

Based on past and/or projected future usage, it is estimated that purchases over the initial two (2) year term of the contract may approximate an aggregate total of \$250,000,000 for contract products and services. This estimate was provided solely for the purpose of assisting bidders in preparing their response. Orders will be placed by Purchasers (Purchasing Entities) only on an as needed basis.

The State of Washington/NASPO ValuePoint does not represent or guarantee any minimum level of purchase.

1.5 CONTRACT TERM

The initial term of this Contract is for approximately two (2) years from the effective date of the Contract through June 30, 2018 with the option to extend for additional term(s) or portions thereof. Extension for each additional term shall be offered at the sole discretion of the DES and are subject to written mutual agreement. The total Contract term, including the initial term and all subsequent extensions, shall not exceed five (5) years unless an emergency exists and/or special circumstances require a partial term extension. The DES reserves the right to extend with all or some of the Contractors, solely determined by the DES.

1.6 PURCHASERS/PURCHASING ENTITIES

Purchasers/Purchasing Entities include members of the NASPO ValuePoint Cooperative Purchasing Program, a unified, nationally-focused cooperative purchasing program that potentially can leverage the collective expertise, experience, and demand of 50 states and their political subdivisions, and help spur innovation and competition in the marketplace.

NASPO ValuePoint Cooperative Purchasing Program is a cooperative group-contracting consortium for state governments, serving their departments, institutions, institutions of higher education, agencies and political subdivisions (e.g., school districts, counties, cities, etc.). All 50 states, the District of Columbia, US Territories and other public entities may participate in the use of ValuePoint contracts.

2.0 CONTRACT ADMINISTRATION

2.1 DES CONTRACT ADMINISTRATOR

The DES shall appoint a single point of contact that will be the Contract Administrator for this contract and will provide oversight of the activities conducted hereunder. The contract Administrator will be the principal contact for Contractor concerning business activities under this Contract. The DES will notify Contractor, in writing, when there is a new Contract Administrator assigned to this Contract.

2.2 ADMINISTRATION OF CONTRACT

Contract Administrator will maintain Contract information, Products and Pricing, and Authorized Subcontractors/Dealers/Distributors and make available on the NASPO ValuePoint web site.

2.3 CONTRACTOR SUPERVISION AND COORDINATION

Contractor shall:

1. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements specified herein;
2. Identify the Contractor's representative, who will be the principal point of contact for the DES Contract Administrator concerning Contractor's performance under this Contract.
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's representative assigned to this Contract; and
4. Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination.
5. Be bound by all written communications given to or received from the Contractor's representative.

2.4 POST AWARD CONFERENCE

The Contractor may be required to attend a post award conference scheduled by the Procurement Coordinator to discuss contract performance requirements. The time and place of this conference will be scheduled following Contract award.

2.5 CONTRACTOR'S CONTRACT/MASTER AGREEMENT MANAGEMENT

Upon award of this Contract/Master Agreement, the Contractor shall:

1. Designate a single point of contract and alternate point of contract for the administration of this contract.
2. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.
3. Promote and market the use of this Contract/Master Agreement to all authorized Contract/Master Agreement Purchasers/Purchasing Entities.
4. Ensure that those who endeavor to utilize this Contract/Master Agreement are authorized Purchasers/Purchasing Entities under the terms and conditions of this contract.
5. At no additional charge, assist Purchasers/Purchasing Entities in the following manner to make the most cost effective, value based, Purchases including, but not limited to:
 - a) Visiting the Purchaser/Purchasing Entities site and providing them with materials/supplies/equipment recommendations.
 - b) Providing Purchaser/Purchasing Entities with a detailed list of contract products and services including current Contract/Master Agreement pricing.
6. Provide contract customers with product and service information and assistance with order development, placement, and tracking. Provide Help Desk services for initial troubleshooting and possible resolution of the problems or for the initiation of repair or replacement services.
7. The Contractor shall designate a customer service representative who will be responsible for addressing Purchaser/Purchasing Entities issues including, but not limited to:
 - a) Logging requests for service, ensuring equipment repairs are completed in a timely manner, dispatching service technicians, and processing warranty claim documentation.
 - b) Providing Purchaser/Purchasing Entities with regular and timely status updates in the event of an order or repair fulfillment delay.
8. Acting as the lead and liaison between the Contractor and Purchaser/Purchasing Entities in resolving warranty claims for contract items purchased.

2.6 CHANGES

Alterations to any of the terms, conditions, or requirements of this Contract/Master Agreement shall only be effective upon written issuance of a mutually agreed Contract/Master Agreement amendment by the Contract Administrator, unless otherwise authorized within the Contract/Master Agreement. However, changes to point of contact information or other administrative changes may be updated without the issuance of a mutually agreed contract amendment.

2.7 NASPO ValuePoint eMARKET CENTER

Contractor will cooperate with NASPO ValuePoint and SciQuest (and any authorized agent or successor entity to SciQuest) with uploading a hosted catalog or integrating a punchout site. (Reference NASPO ValuePoint Master Agreement Terms and Conditions, Section 36, for the details of this requirement.)

2.8 NASPO ValuePoint CONTRACT ADMINISTRATION FEE

The Contract is subject to a NASPO ValuePoint Administration Fee. Contractor has included this fee in Contract pricing and will not list it as a separate line item on its invoices to Purchasers/Purchasing Entities. The Contractor will collect the fees and distribute the fees to NASPO ValuePoint Cooperative Purchasing Organization (or its assignee), as outlined below.

The NASPO ValuePoint Administration Fee will be one-quarter of one percent (0.25% or 0.0025) on all purchases made under authority of the Contract. Purchases are defined as total invoice price less any applicable sales tax. No taxes will be assessed against this NASPO ValuePoint Administration Fee.

The NASPO ValuePoint Administrative Fee shall be paid within sixty (60) days after the end of the calendar quarter. It is the Contractor's responsibility to calculate and remit the administrative fee since NASPO ValuePoint does not issue an invoice for this fee. Contractor shall indicate the Contract/Master Agreement number 05715 and include with the remittance, a quarterly sales report by NASPO ValuePoint Contract participant. The administrative fee shall be paid to:

NASPO VALUEPOINT COOPERATIVE PURCHASING ORGANIZATION
PROGRAM MANAGER
201 EAST MAIN STREET, SUITE 1450
LEXINGTON, KY 40507

In addition to the NASPO ValuePoint Administration Fee as stated above, some states may require an additional fee be paid directly to the state on purchases made by purchasing entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Contract/Master Agreement. The Contractor may adjust the Contract/Master Agreement pricing accordingly for purchases made by Purchasers within the jurisdiction of the state. All such agreements may not affect the NASPO ValuePoint Administrative Fee or the prices paid by the purchasers outside the jurisdiction of the state requesting the additional fee.

2.9 NASPO ValuePoint CONTRACT/MASTER AGREEMENT SALES REPORTS

The Contractor shall submit summary sales data reports required by NASPO ValuePoint Master Agreement Terms and Conditions Section 27 directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under the Contract/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 30 day following the end of the calendar quarter (as specified in the reporting tool).

2.10 WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS)

Contractor shall be registered in the contractor registration system, Washington's Electronic Business Solution (WEBS) www.ga.wa.gov/webs, maintained by the Washington State Department of Enterprise Services. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate contractor profile in WEBS.

3.0 PRICING

3.1 PRICE PROTECTION

Contractor warrants that prices of materials, supplies, service and/or equipment with the same features and requirements set forth herein do not exceed those charged by the Contractor to any other customer purchasing the same under similar conditions and in like or similar quantities.

3.2 NO ADDITIONAL CHARGES

Unless otherwise specified herein, no additional charges by the Contractor will be allowed including, but not limited to: handling charges such as packing, wrapping, bags, containers, reels; or the processing fees associated with the use of credit cards. Notwithstanding the foregoing, in the event that market conditions, laws, regulations or other unforeseen factors dictate, at the Contract Administrator's sole discretion, additional charges may be allowed.

3.3 CONTRACT PRICING

During the term of the Contract/Master Agreement, Contractor must maintain the national published and/or web-posted product price list for all public safety communication equipment products and services identified in Appendix H Price Worksheets submitted with Contractor's response to RFP 05712. A copy must be made available to Purchasers upon request and at no additional charge. The price list in effect at the time of order placement shall be used when applying price discounts specified in Appendix H Price

Worksheets submitted with Contractor's response to RFP 05715. However, if the Contractor has provided a specific price quote to the Purchaser than the prices quoted must be held firm for a minimum period of sixty (60) days after the date of the quote.

3.4 VOLUME/PROMOTIONAL DISCOUNTS

Contract/Master Agreement prices and price discounts are the maximum or ceiling price Contractor can charge. The Contractor may also offer volume and/or promotional price discounts resulting in even lower prices to Purchasers/Purchasing Entities.

3.5 PRICE ADJUSTMENTS

Contractor may update or change its reference national published/posted product price list during the term of the Contract/Master Agreement as necessary to delete discontinued products/services, add newly introduced products/services, or to pass-through price changes applied to all customers purchasing from the price list. Contractor shall provide the Contract Administrator notification of price list changes. This notification shall be handled as an administrative change and shall not require the execution of a Contract amendment as called for in section 2.6 Changes. Percentage discounts identified in Appendix H Price Worksheets submitted with Contractor's response to RFP 05715 shall remain unchanged.

A decrease in the level of price discount shall not be considered during the initial term of the Contract/Master Agreement nor for any subsequent Contract/Master Agreement extensions. However, an increase in the level of price discount may be considered at any time during the initial term of the Contract/Master Agreement and during each subsequent Contract /Master Agreement extensions.

For services available through this Contract/Master Agreement, if pricing is listed at a per hour price (rather than as a percentage discount off list price) prices may be increased after initial term of the contract. A minimum of 60 calendar days advance written notice is required with accompanying sufficient documentation to justify the requested increase. Acceptance of the price increase will be at the discretion of the Contract Administrator and the adjusted price must not produce a higher profit margin than that established on the original contract pricing. Approved price increases must remain unchanged at least through the current extension term.

4.0 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

4.1 ESTABLISHED BUSINESS

Prior to commencing performance, or prior to that time if required by the DES, law or regulation, Contractor must be an established business firm with all required licenses, fees, bonding, facilities, equipment and trained personnel necessary to meet all requirements and perform the work as specified in the Solicitation. Contractor shall maintain compliance with these requirements throughout the life of this Contract/Master Agreement.

The DES reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract/Master Agreement as a material breach for noncompliance with any requirement of this paragraph.

4.2 USE OF SUBCONTRACTORS/DEALERS/DISTRIBUTORS

In accordance with RFP requirements, Contractor agrees to take complete responsibility for all actions of its subcontractors/dealers/distributors involved in the Contract /Master Agreement performance.

During Contract/Master Agreement performance, Contractor shall identify and make available to Purchasers upon request a list of subcontractors, dealers, and distributors who will supply products or perform services in fulfillment of Contract/Master Agreement requirements. Information shall include their name, the nature of services to be performed or products to be sold by product category/subcategory, address, telephone, facsimile, email, and federal tax identification number (TIN) (if the company is authorized to sell and invoice for products and services).

The Contract Administrator reserves the right to request the Contractor remove any subcontractor, dealer or distributor participating in the Contract. During the Contract Contractor may add or remove subcontractors, dealers or distributors participating in this Contract. All requests to add/delete subcontractor/dealer/distributor will be sent directly to the Contract Administrator for consideration. Upon Contract Administrator's approval, updated subcontractor/dealer/distributor list will be posted on the NASPO ValuePoint website.

Specific restrictions apply to contracting with current or former Washington state employees pursuant to Chapter 42.52 RCW and such restrictions may apply to contracting with current or former employees of other states.

4.3 ASSIGNMENT AND SUBCONTRACT/DEALER/DISTRIBUTOR INVOLVEMENT

Contractor shall not assign or otherwise transfer its obligations under this Contract/Master Agreement without the prior written consent of the Contract Administrator. Contractor shall provide a minimum of thirty (30) calendar days advance notification of intent to assign or otherwise transfer its obligations under this Contract/Master Agreement. Violation of this condition may be considered a material breach establishing grounds for Contract/Master Agreement termination.

The Contractor shall be responsible to ensure that all Contract/Master Agreement requirements are met whether performance is done by themselves or through designated and authorized subcontractors, dealers, or distributors also involved in the performance of this Contract/Master Agreement. In no event shall the involvement of a subcontractor, dealer, or distributor release or reduce the liability of Contractor to the Purchaser for any breach in the performance of the Contractor's duties.

If during the performance of the contract or a purchase order, any named individual specifically identified in the response to work on this engagement is not available, the Purchaser reserves the right to approve or reject any personnel substitutions.

4.4 CONTRACTOR AUTHORITY AND INFRINGEMENT

Contractor is authorized to sell under this Contract/Master Agreement, only those materials, supplies, services and/or equipment as stated herein and allowed for by the provisions of this Contract/Master Agreement. Contractor shall not represent to any Contract Purchaser/Purchasing Entity that they have the Contract/Master Agreement authority to sell any other materials, supplies, services and/or equipment. Further, Contractor may not intentionally infringe on other contracts established by Washington State or Participating Entities.

4.5 MATERIALS AND WORKMANSHIP

The Contractor shall be required to furnish all materials, supplies, equipment and/or services necessary to perform contractual requirements. Materials, supplies and workmanship used in the construction of equipment for this Contract/Master Agreement shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

4.6 MERCURY CONTENT AND PREFERENCE

Contractor shall provide mercury-free products when available. Should mercury-free products not exist, contractors shall provide products with the lowest mercury content available. Contractor shall disclose products that contain added mercury and provide an explanation that includes the amount or concentration of mercury, and justification as to why added mercury is necessary for the function or performance of the product.

The DES reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract/Master Agreement as a material breach for noncompliance with any requirement of this paragraph.

5.0 DELIVERY REQUIREMENTS

5.1 ORDER FULFILLMENT REQUIREMENTS

Authorized Purchasers/Purchasing Entities may place orders against this Contract/Master Agreement either in person, electronically, facsimile or by phone. Once an order is issued, the following shall apply:

1. For purposes of price verification and auditing, upon receipt of a purchase order the Contractor shall send the Purchaser an order confirmation notification that identifies applicable Contract prices to be applied to the order.
2. Upon the request of the Purchaser, the Contractor shall supply Purchaser documentation needed to verify Contract pricing compliance.
3. Product damaged prior to acceptance will either be replaced or repaired in an expedited manner at Contractor's expense. Alternatively, at the Purchaser's option, any possible damage to the product can be noted on the receiving report and the cost deducted from final payment.

The Contractor is responsible to verify delivery conditions/requirements with the Purchaser prior to the delivery.

5.2 SHIPPING AND RISK OF LOSS

Contractor shall ship all products purchased pursuant to this Contract, freight charges prepaid by the Contractor, F.O.B. Purchaser's specified destination with all transportation and handling charges included unless otherwise indicated in the Contractor's response to RFP 05715 appendix G Price worksheets.

The method of shipment shall be consistent with the nature of the products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the products ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Contractor from any obligation hereunder. After delivery, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

5.3 DELIVERY

Delivery of products must be made during Purchaser's normal work hours and within time frames mutually agreed in writing between the Purchaser and Contractor at the time of order placement.

Failure to comply with agreed upon delivery times may subject Contractor to damages. The Purchaser may refuse shipment when delivered after normal working hours. The Contractor shall verify specific working hours of individual Purchasers and instruct carrier(s) to deliver accordingly. The acceptance by the Purchaser of late performance, with or without objection or reservation by the Purchaser, shall not waive the right to claim damage for such breach, nor preclude the DES or Purchaser from pursuing any other remedy provided herein, including termination, nor shall such acceptance of late performance constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

All deliveries are to be made to the applicable delivery location as indicated in the order document. When applicable, the Contractor shall take all necessary actions to safeguard items during inclement weather. In no case shall the Contractor initiate performance prior to receipt of written or verbal authorization from authorized Purchasers. Expenses incurred otherwise shall be borne solely by the Contractor.

5.4 SITE SECURITY

While on Purchaser's premises, Contractor, its agents, employees, subcontractors, dealers or distributors shall conform in all respects with physical, fire, or other security regulations.

5.5 INSPECTION, ACCEPTANCE AND REJECTION

The Purchaser's inspection of all materials, supplies and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered and

ready for acceptance. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements.

If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the Purchaser will promptly notify the Contractor. Without limiting any other rights, the Purchaser may require the Contractor to: (1) repair or replace, at Contractor's expense, any or all of the damaged goods; (2) refund the price of any or all of the damaged goods; or (3) accept the return of any or all of the damaged goods.

5.6 INSTALLATION

When applicable, installation shall be performed in a professional manner in accordance with industry standard best practices. The premises shall be left in a neat, clean, and undamaged condition. The Purchaser reserves the right to require Contractor to repair any damage caused during installation or provide full compensation as determined by the Purchaser.

5.7 TITLE TO PRODUCT

Upon Delivery or Acceptance, whichever is applicable, Contractor shall convey to purchaser good title to the goods free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

5.8 TREATMENT OF ASSETS

1. Title to all property furnished by the Purchaser shall remain with the Purchaser, as appropriate. Title to all property furnished by the Contractor, the cost for which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vests in the Purchaser upon delivery of such property by the Contractor and acceptance by the Purchaser. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Purchaser upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Purchaser in whole or in part, whichever first occurs.
2. Any property of the Purchaser furnished to the Contractor shall, unless otherwise provided herein or approved by the Purchaser, be used only for the performance of this Contract.
3. The Contractor shall be responsible for damages as a result of any loss or damage to property of the Purchaser which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances.
4. If any Purchaser property is lost, destroyed, or damaged, the Contractor shall immediately notify the Purchaser and shall take all reasonable steps to protect the property from further damage.
5. The Contractor shall surrender to the Purchaser all property of the Purchaser prior to settlement upon completion, termination, or cancellation of this Contract.
6. All reference to the Contractor under this clause shall also include Contractor's employees, agents, subcontractors, dealers or distributors.

5.9 LABELING

Individual shipping cartons shall be labeled with the name of the ordering agency, order number, Contract number, Contractor, state stock numbers, and where applicable, date of manufacture, batch number, storage requirements, conditions, and recommended shelf life. Contractors are encouraged to offer product packaging with recycled content.

6.0 PAYMENT

6.1 ADVANCE PAYMENT PROHIBITED

No advance payment shall be made for the products and services furnished by Contractor pursuant to this Contract.

Notwithstanding the above, maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter.

6.2 IDENTIFICATION

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract number and the applicable Purchaser's order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.

6.3 PAYMENT, INVOICING AND DISCOUNTS

Payment is the sole responsibility of, and will be made by, the Purchaser.

Contractor shall provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchase order.

Each invoice shall be identified by the associated NASPO ValuePoint Contract/Master Agreement number or the Participating Addendum number, and the Purchaser's Contract/Purchase Order number (as applicable), and shall be in U.S. dollars. Invoices shall be prominently annotated by the Contractor with all applicable prompt payment and/or volume or promotional discount(s). Hard copy credit memos are to be issued when the Purchaser has been overcharged.

Invoices for payment will accurately reflect all discounts due the Purchaser. Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in U.S. dollars and until all invoiced items are received and satisfactory performance of Contractor has been accepted by the Purchaser. If an adjustment in payment is necessary due to damage or dispute, any prompt payment discount period shall commence on the date final approval for payment is authorized.

If Purchaser fails to make timely payment(s), Contractor may invoice for 1% per month on the amount overdue or a minimum of \$1.00. (In Washington State reference Chapter 39.76 RCW.) Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with Contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor.

Payment for materials, supplies and/or equipment received and for services rendered shall be made by Purchaser and be redeemable in U.S. dollars. Unless otherwise specified, the Purchaser's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the Contractor.

6.4 TAXES, FEES AND LICENSES

Taxes:

Where required by statute or regulation, the Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. Unless otherwise indicated, Washington purchasers agree to pay State of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. Purchasers located in other states may be required to pay their own state and local taxes on the purchase as required by local state laws and regulations. No charge by the Contractor shall be made for federal excise taxes and the purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

Collection of Retail Sales and Use Taxes:

In general, contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state contractors must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in the State of Washington is significantly associated with contractor's ability to establish or maintain a market for its

products in Washington State. Examples of such activity include where the contractor either directly or by an agent or other representative:

1. Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;
2. Maintains an in-state inventory or stock of goods for sale;
3. Regularly solicits orders from purchasers located within the State of Washington via sales representatives entering the State of Washington;
4. Sends other staff into the State of Washington (e.g. product safety engineers, etc.) to interact with purchasers in an attempt to establish or maintain market(s); or
5. Other factors are identified applicable to Washington Purchasers are found in WAC 458-20.

Washington State Department of Revenue Registration for Out-of-State Contractors:

Out-of-state contractors meeting any of the above criteria must register and establish an account with the Washington State Department of Revenue. Refer to WAC 458-20-193, and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state contractors are not required to collect and remit "use tax," purchasers located in the State of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

Fees/Licenses:

After award of contract, and prior to commencing performance under the contract, the Contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this Contract.

Customs/Brokerage Fees:

Contractor shall take all necessary actions, including, but not limited to, paying all customs, duties, brokerage, and/or import fees, to ensure that materials, supplies, and/or equipment purchased under the Contract are expedited through customs. Failure to do so may subject Contractor to liquidated damages as identified herein and/or to other remedies available by law or contract. Neither the DES nor the purchaser will incur additional costs related to Contractor's payment of such fees.

Taxes on Invoice:

Contractor shall calculate and enter the appropriate Washington State and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

6.5 OVERPAYMENTS TO CONTRACTOR

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

6.6 AUDITS

The DES Contract Administrator and/or the Purchaser reserves the right to audit, or have a designated third party audit, applicable records to ensure that the Purchaser has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing may be considered complete cause for contract termination.

7.0 QUALITY ASSURANCE

7.1 RIGHT OF INSPECTION

Contractor shall provide right of access to its facilities to DES, or any of DES's officers, or to any other authorized agent or official of the state of Washington or other Participating or Purchasing Entity, or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

7.2 CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its response or used to effect the sale to Purchaser.

7.3 PRODUCT WARRANTY

Warranty(ies): Unless otherwise specified, full parts and labor warranty period shall be for a minimum period of one (1) year after receipt of materials or equipment by the Purchaser. All materials or equipment provided shall be new and unused (or like new with no blemishes or defects), of the latest model or design and of recent manufacture. A copy of the equipment warranty shall be provided with the equipment at the time of equipment delivery.

In the event of conflict between Contract terms and conditions and Contractor's submitted warranty, the Contract terms and conditions shall prevail; except, to afford the Purchaser maximum benefits, the Purchaser may avail itself of the Contractor's warranty if deemed more beneficial to the Purchaser.

7.4 WARRANTIES

Contractor warrants that all materials, supplies, services and/or equipment provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any materials, supplies, service and/or equipment, and inspection incidental thereto, by the Purchaser shall not alter or affect the obligations of the Contractor or the rights of the Purchaser.

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

7.5 DATE WARRANTY

Contractor warrants that all products provided under this Contract: (i) do not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the products, or interact with date records of the products ("date warranty"). In the event a date warranty problem is reported to Contractor

by Purchaser and such problem remains unresolved after three (3) calendar days, at Purchaser's discretion, Contractor shall send, at Contractor's sole expense, at least one (1) qualified and knowledgeable representative to Purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Purchaser's premises. This date warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Contractor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

7.6 COST OF REMEDYING defects

All defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective materials or equipment will be charged against the Contractor.

7.7 TRAINING

Contractor shall provide Purchasers training as requested following equipment delivery on basic operations and at no additional cost. Specialized training is available at an additional charge as scheduled between Purchaser and Contractor as described in Appendix E Contract Management and Performance.

7.8 OPERATOR MANUAL

Instruction and maintenance manuals shall be furnished for all delivered Contract equipment. The most current manual must be provided at no cost upon customer request. Manuals shall contain, but not be limited to the following:

- A section describing the capability of the equipment.
- A section on equipment specifications.
- A section describing operating instructions.
- A section describing the use of the equipment.
- A section describing general maintenance instructions.
- A section describing software installation and user guides (if applicable).

8.0 INFORMATION AND COMMUNICATIONS

8.1 ADVERTISING

Contractor shall not publish or use any information concerning this Contract in any format or media for advertising or publicity without prior written consent from the DES Contract Administrator.

8.2 RETENTION OF RECORDS

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of seven (7) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review, or audit by the DES, personnel duly authorized by the DES, personnel duly authorized by the Purchaser, the Washington State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the seven (7) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

8.3 NON-ENDORSEMENT AND PUBLICITY

Neither the DES nor the Purchasers are endorsing the Contractor's products or services, nor suggesting that they are the best or only solution to their needs. Contractor agrees to make no reference to the state of Washington, DES, and Purchaser in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the DES and/or the impacted Participating Entity.

9.0 GENERAL PROVISIONS

9.1 NASPO ValuePoint MASTER AGREEMENT Terms and conditions

NASPO ValuePoint Master Agreement Terms and Conditions shall supplement the terms and conditions of this Contract. To the extent there is any inconsistent or conflicting term between the two, the conflict or inconsistency shall be resolved in a manner most favorable to a Purchaser or Purchasing Entity.

9.2 GOVERNING LAW/VENUE

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

9.3 SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

9.4 SURVIVORSHIP

All transactions executed for products and services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices and price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Contractor's Commitments, Warranties and Representations; Protection of Confidential and Personal Information; Order of Precedence, Incorporated Documents, Conflict and Conformity; Non-Endorsement and Publicity; Retention of Records; Proprietary or Confidential Information; Disputes and Remedies; and Limitation of Liability shall survive the termination of this Contract.

9.5 INDEPENDENT STATUS OF CONTRACTOR

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW, or Title 51 RCW.

9.6 GIFTS AND GRATUITIES

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: RCW 39.26, RCW 42.52.150, RCW 42.52.160, and RCW 42.52.170 under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business or contract activities.

Under RCW 39.26 and the Ethics in Public Service Law, Chapter 42.52 RCW state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

9.7 PERSONAL LIABILITY

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Washington when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

9.8 NONDISCRIMINATION

During the performance of this Contract, the Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to, Title VII of the Civil Rights Act,

42 U.S.C. section 12101 et. seq.; the Americans with Disabilities Act (ADA); and, Chapter 49.60 RCW, Discrimination – Human Rights Commission.

9.9 OSHA AND WISHA REQUIREMENTS

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Administration (OSHA) and, if manufactured or stored in the State of Washington, the Washington Industrial Safety and Health Act (WISHA) and the standards and regulations issued there under, and certifies that all items furnished and purchased will conform to and comply with said laws, standards and regulations. Contractor further agrees to indemnify and hold harmless DES and Purchaser from all damages assessed against Purchaser as a result of Contractor's failure to comply with those laws, standards and regulations, and for the failure of the items furnished under the Contract to so comply.

9.10 ANTITRUST

The DES maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, the Contractor hereby assigns to the State of Washington any and/or Purchasing Entity all of the Contractor's claims for such price fixing or overcharges which arise under federal or state antitrust laws, relating to the materials, supplies, services and/or equipment purchased under this Contract.

9.11 WAIVER

Failure or delay of the DES or Purchaser to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy provided in the Contract or by law; or the DES's or Purchaser's acceptance of or payment for materials, supplies, services and/or equipment, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the DES or Purchaser to insist upon the strict performance of the entire agreement by the Contractor. In the event of any claim for breach of Contract against the Contractor, no provision of this Contract shall be construed, expressly or by implication, as a waiver by the DES or Purchaser of any existing or future right and/or remedy available by law.

10.0 DISPUTES AND REMEDIES

10.1 PROBLEM RESOLUTION AND DISPUTES

Problems arising out of the performance of this Contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

In the event a bona fide dispute concerning a question of fact arises between DES or the Purchaser and Contractor and it cannot be resolved between the parties through the normal escalation processes, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three business days. The initiating party shall have three business days to review the response. If after this review a resolution cannot be reached, both parties shall have three business days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three business days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member. Within three business days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three business days.

The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible.

Unless irreparable harm will result, neither party shall commence litigation against the other before the dispute resolution panel has issued its decision on the matter in dispute.

DES, the Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by Purchaser for materials, supplies, services and/or equipment being provided by Contractor, Contractor shall continue providing materials, supplies, services and/or equipment pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

10.2 ADMINISTRATIVE SUSPENSION

When it is in the best interest of the state of Washington, the DES may at any time, and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days per event by written notice from the Contract Administrator to the Contractor's representative. Contractor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the Contractor can be demanded and required to resume performance within the 30 day suspension period by the Contract Administrator providing the Contractor's representative with written notice of such demand.

10.3 FORCE MAJEURE

The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.

Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

Rights Reserved: The DES reserves the right to authorize an amendment to this Contract, terminate the Contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the Purchaser/Purchasing Entity.

10.4 ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

10.5 NON-EXCLUSIVE REMEDIES

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

10.6 LIMITATION OF LIABILITY

The parties agree that neither Contractor, DES nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

Neither the Contractor, nor the DES, nor the Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the Contractor, the DES or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the DES or the Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, the DES or the Purchaser, or their respective subcontractors.

If delays are caused by a subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

10.7 FEDERAL FUNDING

In the event that a federally funded acquisition results from this procurement, the Contractor may be required to provide additional information (free of charge) at the request of the DES or Purchaser. Further, the Contractor may be subject to those federal requirements specific to the commodity.

10.8 FEDERAL RESTRICTIONS ON LOBBYING

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

10.9 FEDERAL DEBARMENT AND SUSPENSION

The Contractor certifies, that neither it nor its "principals" (as defined in 49 CFR. 29.105 (p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

11.0 CONTRACT TERMINATION

The following sections (11.1 – 11.9) may also apply to an executed Participating Addendum. The Participating State/Entity may exercise the following actions regarding the management and administration of its Participating Addendum between themselves and the Contractor and/or those specified in NASPO ValuePoint Master Agreement Terms and Conditions.

11.1 MATERIAL BREACH

A Contractor may be terminated for cause by the DES, at the sole discretion of the Contract administrator, for failing to perform a contractual requirement or for a material breach of any term or condition. Material breach of a term or condition of the Contract may include but is not limited to:

1. Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Contract;
2. Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the Contract;
3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
4. Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder;
5. Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder;
6. A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Contract.

11.2 OPPORTUNITY TO CURE

In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the DES may issue a written cure notice. The Contractor may have a period of time in which to cure. The DES is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of the DES. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages, or otherwise affects any other remedies available against Contractor under the Contract or by law.

If the breach remains after Contractor has been provided the opportunity to cure, the DES may do any one or more of the following:

1. Exercise any remedy provided by law;
2. Terminate this Contract and any related contracts or portions thereof;
3. Procure replacements and impose damages as set forth elsewhere in this Contract;
4. Impose actual or liquidated damages;
5. Suspend or bar Contractor from receiving future solicitations or other opportunities;
6. Require Contractor to reimburse the state for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Contract.

11.3 TERMINATION FOR CAUSE

In the event the Contract Administrator, in its sole discretion, determines that the Contractor has failed to comply with the conditions of this Contract in a timely manner or is in material breach, the Contract Administrator has the right to suspend or terminate this Contract, in part or in whole. The Contract Administrator shall notify the Contractor in writing of the need to take corrective action. If corrective action is not taken within thirty (30) calendar days or as otherwise specified by the Contract Administrator, or if such corrective action is deemed by the Contract Administrator to be insufficient, the Contract may be terminated. The Contract Administrator reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Contract Administrator to terminate the Contract.

In the event of termination, the DES shall have the right to procure for all Purchasers any replacement materials, supplies, services and/or equipment that are the subject of this Contract on the open market. In addition, the Contractor shall be liable for damages as authorized by law including, but not limited to, any

price difference between the original Contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

If it is determined that: (1) the Contractor was not in material breach; or (2) failure to perform was outside of Contractor's or its subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience". The rights and remedies of the DES and/or the Purchaser provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

11.4 TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, DES, at the sole discretion of the Contract Administrator, may terminate this Contract, in whole or in part by giving thirty (30) calendar days written notice beginning on the second day after mailing to the Contractor. If this Contract is so terminated, Purchaser shall be liable only for payment required under this Contract for properly authorized services rendered, or materials, supplies and/or equipment ordered prior to the effective date of Contract termination. Neither DES nor Purchaser shall have any other obligation whatsoever to Contractor for such termination. This Termination for Convenience clause may be invoked by DES when it is in the best interest of the State of Washington and/or NASPO ValuePoint.

11.5 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the DES and/or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, the DES may terminate this Contract, in whole or in part, by thirty (30) calendar days written notice to Contractor.

11.6 TERMINATION FOR NON-ALLOCATION OF FUNDS

If funds are not allocated to Purchaser(s) to continue this Contract in any future period, DES may terminate this Contract by thirty (30) calendar days written notice to Contractor or work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for materials, supplies, services and/or equipment including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. DES and/or Purchaser agrees to notify Contractor in writing of such non-allocation at the earliest possible time.

No penalty shall accrue to the Purchaser in the event this section shall be exercised. This section shall not be construed to permit DES to terminate this Contract in order to acquire similar materials, supplies, services and/or equipment from a third party.

11.7 TERMINATION FOR CONFLICT OF INTEREST

DES may terminate this Contract by written notice to Contractor if it is determined, after due notice and examination, that any party to this Contract has violated Chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, the DES and /or Purchaser shall be entitled to pursue the same remedies against Contractor as it could pursue in the event that the Contractor breaches this Contract.

11.8 TERMINATION BY MUTUAL AGREEMENT

The DES and the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement.

11.9 TERMINATION PROCEDURE

In addition to the procedures set forth below, if the DES terminates this Contract, Contractor shall follow any procedures the Contract Administrator specifies in the termination notice.

Upon termination of this Contract and in addition to any other rights provided in this Contract, Contract Administrator may require the Contractor to deliver to the Purchaser any property specifically produced or

acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Purchaser shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service(s) Accepted by the Purchaser, and the amount agreed upon by the Contractor and the Purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are Accepted by the Purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case the DES and the Purchaser shall determine the extent of the liability of the Purchaser. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Contract. The Purchaser may withhold from any amounts due the Contractor such sum as the Contract Administrator and Purchaser determine to be necessary to protect the Purchaser against potential loss or liability.

The rights and remedies of the DES and/or the Purchaser provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

After receipt of a termination notice, and except as otherwise expressly directed in writing by the Contract Administrator, the Contractor shall:

1. Stop all work, order fulfillment, shipments, and deliveries under the Contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the Contract except as is necessary to complete or fulfill such portion of the Contract that is not terminated;
3. Complete or fulfill such portion of the Contract that is not terminated in compliance with all contractual requirements;
4. Assign to the Purchaser, in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Purchaser has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator and/or the Purchaser to the extent Contract Administrator and/or the Purchaser may require, which approval or ratification shall be final for all the purposes of this clause;
6. Transfer title to the Purchaser and deliver in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser any property which, if the Contract had been completed, would have been required to be furnished to the Purchaser;
7. Take such action as may be necessary, or as the Contract Administrator and/or the Purchaser may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the DES and/or the Purchaser has or may acquire an interest.

12.0 CONTRACT EXECUTION

12.1 PARTIES

This Contract/Master Agreement is entered into by and between the state of Washington, acting by and through the Department of Enterprise Services (DES), Master Contracts & Consulting (MCC), an agency of Washington State government ("DES" or "State") located at 1500 Jefferson Street SE, Olympia WA 98501, and *ErgoFlex Systems, Inc. dba Xybix Systems*, a Colorado corporation licensed to conduct business in

the state of Washington ("Contractor"), located at *8207 Southpark Circle Littleton, CO 80120* for the purpose of providing products and services for the public safety communication equipment.

12.2 ENTIRE AGREEMENT

This Contract/Master Agreement document and all subsequently issued amendments comprise the entire agreement between the DES and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract/Master Agreement.

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or specifications of this Contract will be effective without the written consent of both parties.

12.3 ORDER OF PRECEDENCE, INCORPORATED DOCUMENTS, CONFLICT AND CONFORMITY

Incorporated Documents:

Each of the documents listed below is, by this reference, incorporated into this Contract/Master Agreement as though fully set forth herein.

1. The DES's Solicitation document #05715 with all attachments and exhibits, and all amendments thereto
2. Approved portions of Contractor's response to the Solicitation #05715;
3. A Participating Entity's Participating Addendum ("PA");
4. The terms and conditions contained on Purchaser's Order Documents, if used; and
5. All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to affect the sale of the Product and /or Service to the Purchaser.

Order of Precedence:

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal statutes and regulations.
2. A Participating Entity's Participating Addendum ("PA"), including amendments.
3. Mutually agreed written amendments to this Contract.
4. This Contract/Master Agreement Number 05715, including NASPO ValuePoint Master Agreement Terms and Conditions.
5. The Purchaser's Statement of Work, Work Order, or Order Documents.
6. The DES's Solicitation document with all attachments and exhibits, and all amendments thereto.
7. Approved portions of Contractor's response to the Solicitation, as revised (if applicable) by mutual agreement.
8. Any other provision, term, or materials incorporated into the Contract/Master Agreement by reference.

Conflict: To the extent possible, the terms of this Contract/Master Agreement shall be read consistently.

Conformity: If any provision of this Contract/Master Agreement violates any Federal or State of Washington statute or rule of law, it is considered modified to conform to that statute or rule of law. The Participating Entity's Participating Addendum shall be considered modified to conform to that state's statute or rule of law.

12.4 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, (postage prepaid),, via facsimile or by electronic mail, to the parties at the addresses, fax numbers, or e-mail addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Contractor at:

ErgoFlex Systems, Inc. dba Xybix Systems
a Colorado corporation

Attn:

Kenneth Carson
8207 Southpark Circle
Littleton, CO 80120

Phone: (303) 683-5656
Fax: (303) 683-5454
E-mail: kenc@xybix.com

To DES at:

State of Washington
Department of Enterprise Services

Attn:

Neva Peckham
Mail: Post Office Box 41411
Olympia, Washington 98504-1411

Street: 1500 Jefferson Street SE
Olympia, WA 98501
Phone: (360) 407-9411
Fax: (360) 586-2426
E-mail: neva.peckham@des.wa.gov

Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or DES, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and DES further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

12.5 LIENS, CLAIMS AND ENCUMBRANCES

All materials, equipment, supplies and/or services shall be free of all liens, claims, or encumbrances of any kind, and if the DES or the Purchaser requests, a formal release of same shall be delivered to the respective requestor.

12.6 AUTHORITY TO BIND

The signatories to this Contract/Master Agreement represent that they have the authority to bind their respective organizations to this Contract/Master Agreement.

12.7 COUNTERPARTS

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.

SIGNATURES

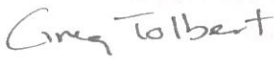
In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

This Contract is effective upon last signature.

This is a Partial award for: Contract 05715

Approved (Lead State)

State of Washington
Department of Enterprise Services
1500 Jefferson Street SE
Olympia, WA 98501



Signature Date

Greg Tolbert

Print or Type Name

**Department of Enterprise Services,
Legal Services Manager**

Title

Approved

ErgoFlex Systems, Inc. dba Xybix Systems
a Colorado corporation
8207 Southpark Circle
Littleton, CO 80120



Signature Date

Kenneth R Carron

Print or Type Name

Executive Vice President

Title

STANDARD DEFINITIONS

APPENDIX B - STANDARD DEFINITIONS

This section contains definitions of terms commonly used in Solicitations conducted by the State of Washington, Master Contracts & Consulting. Additional definitions may also be found in Chapter 39.26 RCW and WAC 200-300-015, and all terms contained herein will be read consistently with those definitions. Additional and supplemental definitions also appear in Appendix C NASPO ValuePoint Master Agreement Terms and Conditions, Section 2 Definitions.

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| Acceptance | The materials, supplies, services, and/or equipment have passed appropriate Inspection. In the event that there is a formal Acceptance Testing period required in the Solicitation document then acceptance is formalized in writing. If there is no Acceptance Testing, acceptance may occur when the Products are delivered and inspected. |
| Acceptance Testing | The process for ascertaining that the materials, supplies, services, and/or equipment meets the standards set forth in the Solicitation, prior to Acceptance by the Purchaser. |
| Agency | Includes State of Washington institutions, the offices of the elective state officers, the Supreme Court, the court of appeals, the administrative and other departments of state government, and the offices of all appointive officers of the state. In addition, colleges, community colleges, and universities who choose to participate in State Contract(s) are included. "Agency" does not include the legislature. |
| All or Nothing | <p>The result of a competitive Solicitation that requires that a Contract be executed with a single Bidder for delivery of goods and/or services. In the event that suppliers are unable to deliver the entirety of the goods and/or services required, no Contract is executed. No partial fulfillment opportunities are available as a result of the Solicitation. A method of award resulting from a competitive Solicitation by which the DES will award the resulting Contract to a single Bidder.</p> <p>Also, a designation the Bidder may use in its Bid or Response to indicate its offer is contingent upon full award and it will not accept a partial award.</p> |
| Amendment | A change to a legal document. For the purposes of a Solicitation document, an amendment shall be a unilateral change issued by the DES, at its sole discretion. |
| Authorized Representative | An individual designated by the Bidder or Contractor to act on its behalf and with the authority to legally bind the Bidder or Contractor concerning the terms and conditions set forth in Solicitation and Contract documents. |
| Bidder | A Vendor who submits a Proposal in reply to a Solicitation. |
| Business Days | Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington. |

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| Calendar Days | Consecutive days of the year including weekends and holidays, each of which commence at 12:00:01 a.m. and end at Midnight, Pacific Time. When “days” are not specified, Calendar Days shall prevail. |
| Contract | Means the State of Washington Master Agreement Number 05715, set forth as a Model Contract in Appendix Q, as finally executed. |
| Contract Administrator | The person designated to manage the resultant Contract for the DES. The primary contact for the DES with Purchasers and Contractor on a specific Contract. |
| Contractor | Individual, company, corporation, firm, or combination thereof with which the DES develops a Contract for the procurement of materials, supplies, services, and/or equipment. It shall also include any Subcontractor retained by Contractor as permitted under the terms of the Contract. |
| DES | The Department of Enterprise Services and agency within the Washington authorized to develop and administer contracts for goods and services on behalf of state agencies, colleges and universities, non-profit organizations and local governments. |
| Equal | An offer of materials, supplies, services and/or equipment that meets or exceeds the quality, performance and use of the specifications identified in a Solicitation. |
| Help Desk | Shall mean a service provided by Vendor for the support of Vendor’s Products. Purchaser shall report warranty or maintenance problems to Vendor’s Help Desk for initial troubleshooting and possible resolution of the problems or for the initiation of repair or replacement services. |
| Inspection | An examination of delivered material, supplies, services, and/or equipment prior to Acceptance aimed at forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for Acceptance. Inspection may include a high level visual examination or a more thorough detailed examination as is customary to the type of purchase, as set forth in the solicitation document and/or as agreed between the parties. Inspection shall be acknowledged by an authorized signature of the Purchaser. |
| Lead Time/After Receipt Of Order (ARO) | The period of time between when the Contractor receives the order and the Purchaser receives the materials, supplies, equipment, or services order. |
| Master Agreement | Means the underlying agreement executed by and between the NASPO ValuePoint contract administrator, normally the Lead State, acting in furtherance of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended. |
| NASPO ValuePoint | The NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group |

contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State

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| Order Document | A written communication, submitted by a Purchaser to the Contractor, which details the specific transactional elements required by the Purchaser within the scope of the Contract such as delivery date, size, color, capacity, etc. An Order Document may include, but is not limited to field orders, purchase orders, work order or other writings as may be designated by the parties hereto. No additional or alternate terms and conditions on such written communication shall apply unless authorized by the Contract and expressly agreed between the Purchaser and the Contractor. |
| Procurement Coordinator | The individual authorized by the DES who is responsible for conducting a specific Solicitation. |
| Product | Materials, supplies, services, and/or equipment provided under the terms and conditions of this Contract. |
| Proposal | A sealed written offer to perform a Contract to supply materials, supplies, services, and/or equipment in reply to a Request For Proposal (RFP). |
| Purchaser | The authorized user of the Contract, as identified in the Solicitation, who may or actually does make purchases of material, supplies, services, and/or equipment under the resulting Contract. |
| Purchasing Entity | Has the same meaning as "Purchaser" in the State of Washington Contract and is a state, city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase. |
| Request For Proposal (RFP) | The form utilized to solicit Proposals in the formal, sealed Bid/Proposal procedure and any amendments thereto issued in writing by the DES. The specifications and qualification requirements are written in an outcome based form allowing for consideration of a broad range of different solutions to meet the procurement need. |
| Responsible | The ability, capacity, and skill to perform the Contract or provide the service required , including, but not limited to the character, integrity, reputation, judgment, experience, and efficiency of the Bidder; Further considerations may include, but are not limited to whether the Bidder can perform the contract within the time specified, the quality of performance of previous contracts or services, the previous and existing compliance by the Bidder with laws relating to the contract or services and such other information as may be secured having a bearing on the |

decision to award the contract:

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| Responsive | A Proposal that meets all material terms of the Solicitation document. |
| Response | A Proposal. |
| Solicitation | The process of notifying prospective Bidders that the DES desires to receive competitive Proposals for furnishing specified materials, supplies, services, and/or equipment. Also includes reference to the actual documents used for that process, including: the Request For Proposals (RFP), along with all attachments and exhibits thereto. |
| Subcontractor | A person or business that is, or will be, providing or performing an essential aspect of the Contract under the direction and responsibility of the Contractor and with the agreement of the DES. |
| Vendor | A provider of materials, supplies, services, and/or equipment. |
| Washington's Electronic Business Solution (WEBS) | The Vendor registration and Bidder notification system maintained by the Washington State Department of Enterprise Services located at: www.ga.wa.gov/webs . |

NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

APPENDIX C - 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 Statement of Work;
- (5) The Solicitation; and
- (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 means a written notice from a Purchasing Entity to Contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a Product for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the Product, unless the Purchasing Entity provides a written notice of rejection to Contractor.

Acceptance Testing means the process for ascertaining that the Product meets the standards set forth in the section titled Standard of Performance and Acceptance, prior to Acceptance by the Purchasing Entity.

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 in furtherance 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, is a subsidiary organization of the National Association of State Procurement Officials (NASPO) and the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia. NASPO ValuePoint is identified in the

Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

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

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

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

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

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

3. TERM OF THE MASTER AGREEMENT

The initial term of this Master Agreement is for two (2) years or through June. This Master 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.

4. AMENDMENTS

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

5. 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 Contract Administrator. See Section 4.3 of the Contract sets out additional requirements for assignment and subcontracting.

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.

6. 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 60 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

7. 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, and rights attending any warranty or default in performance in association with any Order. Cancellation of the Master Agreement due to Contractor default may be immediate.

8. CONFIDENTIALITY, NON-DISCLOSURE, AND INJUNCTIVE RELIEF

Section 8.4 of the Contract prescribes requirements for protection of confidential and personal information.

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

9. RIGHT TO PUBLISH

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

10. DISPUTES, DEFAULTS, AND REMEDIES

Section 11 of the Contract sets forth the grounds, procedures, and notice required for termination of the Master Agreement by the Lead State Contract Administrator. Section 11 does not limit the right of cancellation in section 7 of these NASPO ValuePoint Master Agreement Terms and Conditions.

b. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. 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.

c. The disputes resolution panel provisions in section 10.1, Problem Resolution and Disputes, of the Contract shall govern only with respect to Purchasing Entities inside the State of Washington.

11. SHIPPING AND DELIVERY

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. Sections 5.2 and 5.3 of the Contract govern shipping, risk of loss, and delivery to Purchasing Entities.

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 Ordering Entity's Purchase Order number.

12. CHANGES IN CONTRACTOR REPRESENTATION

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel, in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better

education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

13. FORCE MAJEURE

Neither party to this Master Agreement shall be held responsible for delay or default caused by acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences so long as they are beyond that party's reasonable control and could not have been avoided by exercising reasonable diligence. The provisions of section 10.3 of the Contract supplement these provisions. The Lead State Contract Administrator may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

14. INDEMNIFICATION

a. General immunity and hold harmless provisions applicable to the State of Washington agencies, officials, agents and employees are prescribed in section 9b of Appendix K, Washington State Supplemental Standard Terms and Conditions. With respect to other persons and entities, the Contractor shall defend, indemnify and hold harmless NASPO ValuePoint, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, bodily injury, or damage to 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 ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim").

(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.

15. 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.

16. 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.

17. INSURANCE

a. Insurance provisions for the State of Washington are prescribed in section 10 of Appendix K of the solicitation, Washington State Supplemental Standard Terms and Conditions. Unless otherwise agreed in a Participating Addendum by other Participating Entities, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option; result in termination of its Participating Addendum.

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

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

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

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

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

Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.

e. Contractor shall furnish to the Lead State, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within thirty (30) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

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

18. LAWS AND REGULATIONS

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

19. LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, limited license to publish, translate, reproduce, modify, deliver, 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 license shall be subject to any third party rights in the Pre-existing Intellectual Property. Contractor shall obtain, at its own expense, on behalf of the Purchasing Entity, written consent of the owner for the licensed Pre-existing Intellectual Property.

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

21. 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. The resulting Master Agreements permit Purchasing Entities to define project-specific requirements and preform an informal competition among the 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 compliance with the law of the Purchasing Entity.

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

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

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

22. PARTICIPANTS

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

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

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@wsca-naspo.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. State Participating Addenda or other Participating Addenda shall not be construed to amend the terms of this Master Agreement between the Lead State and Contractor

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of the Chief Procurement Official of the state where the Participating Entity is located. Contractors may upon request obtain a copy of the written authorization from the Lead State Contract Administrator. 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.

23. PAYMENT

Payment for completion of a contract order 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. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

24. PUBLIC INFORMATION

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

25. RECORDS ADMINISTRATION AND AUDIT

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of seven (7) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. If any litigation, claim or audit is started before the expiration of the seven (7) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

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.

26. 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 26a 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.

27. NASPO VALUEPOINT SUMMARY AND DETAILED USAGE REPORTS

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

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

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

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.

28. INSPECTION AND ACCEPTANCE

a. The Purchasing Entity's inspection of all materials, supplies and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for acceptance. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements.

b. If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the Purchaser will promptly notify the Contractor. Without limiting any other rights, the Purchaser may require the Contractor to: (1) repair or replace, at Contractor's expense, any or all of the damaged goods; (2) refund the price of any or all of the damaged goods; or (3) accept the return of any or all of the damaged goods.

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

29. WARRANTY

Sections 7.3 and 7.4 of the Contract prescribe warranty requirements.

30. SYSTEM FAILURE OR DAMAGE

In the event of system failure or damage caused by the Contractor or its Product, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

31. 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, pledges, mortgages, 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.

32. 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.

33. ASSIGNMENT OF ANTITRUST RIGHTS

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

34. 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.

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 (in most cases also the Lead State). The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

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

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

36. NASPO VALUEPOINT EMARKET CENTER

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

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

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

OR

a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint 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 Contractor shall either upload a hosted catalog into the eMarket Center or integrate a punchout site with the eMarket Center.

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

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

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

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

(a) Hosted Catalog. By providing a hosted catalog, the Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to SciQuest, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data [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 (whether an increase or decrease) to pricing or product/service offerings (new products, altered SKUs, etc.) must be pre-approved by the Lead State and shall be subject to any other applicable restrictions with respect to the frequency or amount of such revisions. However, no cooperative contract enabled in the eMarket Center may include price changes on a more frequent basis than once per quarter. The following conditions apply with respect to hosted catalogs:

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

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

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

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

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

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

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

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

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

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

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

h. UNSPSC Requirements: Contractor shall support use of the United Nations Standard Product and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by SciQuest for the suppliers and are

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

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

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

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

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.

(June 2015)

CONTRACTOR INFORMATION AND PROFILE

ErgoFlex Systems, Inc. dba Xybix Systems company information, ordering, and payment information is below.



Bidder Information

CONTRACT MANAGEMENT AND PERFORMANCE PLAN

ErgoFlex Systems, Inc. dba Xybix Systems response to their Contract Management and Performance Plan is included below.



Organization Chart



Additional

CONTRACTOR NATIONWIDE DISTRIBUTION PLAN

ErgoFlex Systems, Inc. dba Xybix Systems response to the nationwide distribution plan is below.



Nationwide
Distribution Plan

SUPPLIER DIVERSITY PLAN

ErgoFlex Systems, Inc. dba Xybix Systems response to supplier diversity is below.



Supplier Diversity
Plan

