



STATE OF OHIO
DEPARTMENT OF ADMINISTRATIVE SERVICES
GENERAL SERVICES DIVISION
OFFICE OF PROCUREMENT SERVICES
4200 SURFACE ROAD, COLUMBUS, OH 43228-1395

OPTIONAL USE CONTRACT FOR: NATIONWIDE VEHICLE RENTALS

CONTRACT No.: RS902820

EFFECTIVE DATES: 03/13/20 to 09/15/21
* Renewal through 09/15/23

The State of Ohio Department of Administrative Services (DAS) has agreed to participate in a consortium contract. The State of Oregon, Department of Administrative Services, Procurement Services is the lead entity for the NASPO ValuePoint Cooperative Purchasing Organization and their Master Price Agreement number is 9408. This contract is administered by the State of Oregon, on behalf of NASPO ValuePoint. The state of Ohio has accepted prices as a result of Bid Number DASPS-2262-18, which opened on 01/07/19. The State of Oregon completed the evaluation of the proposal response(s). The respective Proposal, including the incorporated contract terms and conditions, standard contract terms and conditions, special contract terms & conditions, any bid addenda, specifications, pricing schedules and any attachments incorporated by reference and accepted by DAS, and the State of Ohio, [Standard Terms and Conditions](#) become a part of this Optional Use Contract.

The Optional Use Contract is effective beginning and ending on the dates noted above unless, prior to the expiration date, the Contract is renewed, terminated or cancelled in accordance with the Contract Terms and Conditions.

This Optional Use Contract is available to all State Agencies, State institutions of higher education and properly registered members of the Cooperative Purchasing Program of the Department of Administrative Services, as applicable.

Agencies are eligible to make purchases of the listed supplies and/or services in any amount and at any time as determined by the agency. The State makes no representation or guarantee that agencies will purchase any volume of supplies and/or services.

SPECIAL NOTE: State agencies may make purchases under this Optional Use Contract up to \$2500.00 using the state of Ohio payment card. Any purchase that exceeds \$2500.00 will be made using the official state of Ohio purchase order (ADM-0523). Any non-state agency, institution of higher education or Cooperative Purchasing member will use forms applicable to their respective agency.

This Optional Use Contract and any Amendments thereto are available from the DAS Web site at the following address:

<http://procure.ohio.gov>

Signed: _____
Kathleen C. Madden, Director Date

* Indicates renewal through 9/15/23, per Amendment 5.

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* Indicates an addition of the Link to NASPO Information and Summary of Amendments to the Table of Contents, effective 09/16/21.

STATE OF OHIO
PARTICIPATING ADDENDUM
FOR
NATIONWIDE VEHICLE RENTALS

AS ISSUED BY THE STATE OF OREGON CAN BE FOUND BY CLICKING THE LINK BELOW

[Enterprise Rent-A-Car and National Car Rental PA](#)

MASTER AGREEMENT 9408

[Master Agreement 9408](#)

* MASTER PRICE AGREEMENT

NASPO VALUEPOINT CONTRACT INFORMATION

[NASPO ValuePoint Contract Information](#)

STATE OF OHIO CUSTOMER ACCOUNT NUMBERS

State Agencies	xz38x01
State Cooperative Purchasing Program (COOP) Members	xz38Z01

RESERVATION WEBLINK

A reservation weblink for State Agencies and COOP Members is available by request to the Contractor's contact.

This reservation weblink is to be kept secure and inaccessible to the general public

* Pricing link has been removed and is contained in the OhioBuys Catalog, effective 09/16/22, per Amendment 5.

SPECIAL TERMS AND CONDITIONS

CONTRACT RENEWAL: The State of Ohio will follow the expiration dates and renewals as set forth in the NASPO ValuePoint Master Agreement Number 9408.

PARTICIPATING ADDENDUM: Contractor shall enter into a Participating Addendum which shall set forth the specific State of Ohio terms and conditions to which Contractor shall agree to abide.

COOPERATIVE PURCHASING CONTRACT: This Contract may be relied upon by Ohio institutions of higher education and Ohio political subdivisions. Ohio political subdivisions include any county, township, municipal corporation, school district, conservancy district, township park district, park district created under Chapter 1545 of the Revised Code, regional transit authority, regional airport authority, regional water and sewer district, port authority or any other political subdivision as described in the Ohio Revised Code. To qualify to use this Contract the political subdivision must be currently enrolled in the State's Cooperative Purchasing Program. Purchases made from this Contract by a political subdivision that is not properly registered with the State's Cooperative Purchasing Program will be a violation of law and may be contrary to the political subdivision's competitive bidding requirements. If a political subdivision or institution of higher education relies upon this Contract to issue a purchase order or other ordering document, the political subdivision or institution of higher education "steps into the shoes" of the State under this Contract. The political division's or institution of higher education's order and this Contract are between the Contractor and the political subdivision or institution of higher education. The Contractor must look solely to the political subdivision or institution of higher education for performance, including payment. The Contractor agrees to hold the state of Ohio harmless with regard to political subdivisions and institution of higher education's orders and political subdivision's and institution of higher education's performance. DAS may cancel this Contract and may seek remedies if the Contractor fails to honor its obligations under an order from a political subdivision or institution of higher education.

CONTRACTOR QUARTERLY SALES REPORTS: The Contractor must report the quarterly dollar value (in U.S. dollars and rounded to the nearest whole dollar) of the Administrative Fee Components, to include both state agencies and political subdivisions, under this Contract by calendar quarter (e.g. January-March, April-June, July-September and October-December). The dollar value of the Administrative Fee Components is the amount paid by the Contract user for the such services listed on the purchase order or other encumbering document, as recorded by the Contractor.

The Contractor will receive an email with a User ID and password and must report the quarterly Administrative Fee Components to the Department of Administrative Services (DAS) via the Internet using the web form at the Ohio DAS Contract Management Contractor Portal, <https://cm.ohio.gov/>. If no sales occur, the Contractor must show zero. The report must be submitted sixty (60) days following the completion of the reporting period. The Contractor is responsible for emailing the Analyst listed on page one of the contract with any company contact changes.

The Contractor shall also submit a close-out report within one hundred and twenty (120) days after the expiration of this Contract. The Contract expires upon the physical completion of the last outstanding task or delivery order of the Contract. The close-out report must cover all sales not shown in the final quarterly report and reconcile all errors and credits. If the Contractor reported all contract sales and reconciled all errors and credits on the final quarterly report, then the Contractor should show zero "0" sales in the close-out report.

The Contractor must forward the Quarterly Sales Report to one of the following addresses,

For same day or overnight deliveries:
Huntington National Bank
ATTN: L-3686
7 Easton Oval
Columbus, OH 43219

All other deliveries may be sent to the following address:
Department of Administrative Services
L-3686
Columbus, OH 43260-3686

If the Contractor fails to submit sales reports, falsifies reports or fails to submit sales reports in a timely manner, DAS may suspend, terminate or cancel this Contract.

SPECIAL TERMS AND CONDITIONS (Continued)

CONTRACTOR REVENUE SHARE: The Contractor must pay the Department of Administrative Services (DAS) a revenue share of Administrative Fee Components (as defined below) under this contract. The Contractor must remit the revenue share in U.S. dollars within sixty (60) days after the end of the quarterly sales reporting period. The revenue share equals 0.75% of the total amount of Administrative Fee Components for the quarterly period. Contractors must include the revenue share in their prices. The revenue share is included in the award price(s) and reflected in the total amount charged to ordering agencies which includes both state agencies and political subdivisions using this Contract. The term "Administrative Fee Components" is defined as base rental charges and the following optional products: GPS units, satellite radio service, toll device, Personal Affects Insurance (PAI), Personal Effects Coverage (PEC), and any charges for additional roadside assistance purchased by the Traveler, BUT specifically excluding: taxes, facility charges and concession recovery and other pass-through fees and charges.

The contractor must remit any monies due as the result of the close-out report at the time the close-out report is submitted to DAS. The Contractor must pay the revenue share amount due by check. To ensure the payment is credited properly, the Contractor must identify the check as a "Revenue Share" and include the Ohio Contract Management Remittance Report.

The Contractor should make the check payable to: Treasurer, State of Ohio.

Use the following address for same day or overnight deliveries:

Huntington National Bank
ATTN: L-3686
7 Easton Oval
Columbus, OH 43219

All other deliveries may be sent to the following address:
Department of Administrative Services
L-3686
Columbus, OH 43260-3686

If the full amount of the revenue share is not paid within sixty (60) calendar days after the end of the applicable reporting period, the non-payment constitutes a contract debt to the State. The State may either initiate withholding or setting off payments or employ the remedies available under Ohio law for the non-payment of the revenue share.

If the Contractor fails to pay the revenue share in a timely manner, DAS may suspend, terminate or cancel this Contract.

* **PROHIBITION OF THE EXPENDITURE OF PUBLIC FUND FOR OFFSHORE SERVICES:** No State Cabinet Agency, Board or Commission will enter into any contract to purchase services provided outside of the United States or that allows State data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States, unless a duly signed waiver from the State has been attained. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided to the State in the Contract.

Further, no State agency, board, commission, State educational institution, or pension fund will make any purchase from or investment in any Russian institution or company. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid to Contractor for purchases or investments in a Russian institution or company in violation of this paragraph. The provisions of this paragraph will expire when the applicable Executive Order is no longer effective.

The Contractor must complete the Contractor/Subcontractor Affirmation and Disclosure Form affirming the Contractor understands and will meet the requirements of the above prohibition. During the performance of this Contract, if the Contractor changes the location(s) disclosed on the Affirmation and Disclosure Form, Contractor must complete and submit a revised Affirmation and Disclosure Form reflecting such changes

* Indicates addition of Prohibition of the Expenditure of Public Fund for Offshore Services, per Amendment 5.

I. SCOPE: To provide Nationwide Vehicle Rental Services in accordance with the Oregon Master Agreement 9950, issued on behalf of the NASPO ValuePoint Cooperative Purchasing Organization (formerly WSCA, Western States Contracting Alliance).

II. MUTUALLY AGREED UPON EXCEPTIONS:

- A. Drop fee for Home City or non-airport in-state one-way rentals (i.e. vehicles picked up and dropped off in the same state) in the State of Ohio shall be \$75.00
- B. The following paragraphs amend the State of Ohio Standard Terms and Conditions and do hereby become part hereof. In the event that one of these paragraphs conflict with the Terms and Conditions, the Amendment will prevail.

Mutually Agreed Upon Exceptions

Section V. D. Automobile and General Liability Insurance is rewritten as follows:

During the term of the Contract and any renewal thereto, the Contractor, and any agent of the Contractor, at its sole cost and expense shall maintain a policy of Automobile Liability Insurance in accordance with the State and Federal laws, unless otherwise stated. In addition, Contractor shall carry Commercial General Liability Insurance coverage for liabilities arising out of the conduct of its employees with a \$1,000,000 annual aggregate and a \$500,000 per occurrence limit for bodily injury, personal injury, wrongful death and property damage. The defense cost shall be outside the policy limits. Such policy shall designate the State of Ohio as an Additional Insured, as its interest may appear. The policy shall also be endorsed to include a blanket waiver of subrogation and a statement that the Contractor's commercial general liability insurance shall be primary over any other coverage. Umbrella/excess liability insurance may be used to meet the required limits and the coverage must follow form. The State reserves the right to approve all policy deductibles and levels of self-insured retention-captive insurance programs and may require the Contractor to have their policy(ies) endorsed to reflect per project / per location general aggregate limits.

Said certificates shall contain a clause or endorsement providing thirty (30) days prior written notice of cancellation, non-renewal or decrease in coverage will be given to the State. Failure of the Contractor to maintain this coverage for the duration of the Contract, and any renewals thereto, may be considered as a default. All insuring companies shall have and maintain at least an A- (Excellent) rating from A.M. Best, unless otherwise approved in writing by the State.

Section VI. D. Contract Remedies is rewritten as follows:

- 1. Actual Damages. The Contractor is liable to the State for all actual and direct damages caused by the Contractor's default.
- 2. Deduction of Damages from Contract Price. The State may withhold payment and deduct all or any part of the damages resulting from the Contractor's default from any part of the Contractor's compensation still due on the Contract.

Section VIII. A. Confidentiality is rewritten as follows:

The Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. The Contractor may not disclose any confidential information obtained by the Contractor as a result of this Contract, without the written permission of the State. The Contractor must assume that all State information, documents, data, source codes, software, models, know-how, trade secrets, or other material is confidential. In addition, the Contractor may not disclose any documents or records excluded by Ohio law from public records disclosure requirements.

The Contractor's obligation to maintain the confidentiality of the information will not apply where the information:

- 1. Was already in the Contractor's possession before disclosure by the State, and the information was received by the Contractor without the obligation of confidence;
- 2. Is independently developed by the Contractor;
- 3. Is or becomes publicly available without breach of this Contract except as provided in the next full paragraph;
- 4. Is rightfully received by the Contractor from a third party without an obligation of confidence;
- 5. Is disclosed by the Contractor with the written consent of the State; or
- 6. Is released in accordance with a valid order of a court or governmental agency, provided that the Contractor:
 - a. Notifies the State of such order immediately upon receipt of the order; and
 - b. Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be serviced by the original order of production.

The Contractor must return all originals of any information provided by the State and destroy any copies the Contractor has made on termination or expiration of this Contract.

The Contractor will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the State may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

III. PRIMARY CONTACTS.

A. The primary contact for the Participating State:

*Contact: Stephanie Klingler
State/Political Entity: State of Ohio, Department of Administrative Services
Address: 4200 Surface Rd.
City, State, Zip: Columbus, OH 43228
*Phone: 614-387-1130
Fax: 614-485-1056
*Email: Stephanie.Klingler@das.ohio.gov

B. Contractor's primary contact for Participating State:

*Contact: Jess Moffett
Entity: The Subsidiaries of Enterprise Holdings, Inc.
*Address: 3245 Morse Rd.
*City, State, Zip: Columbus, OH 43231
*Phone: 614-418-7170
*Email: Jessica.M.Moffett@ehi.com

C. The primary contact for Lead State:

Contact: Kaliska King, CPPB, OPBC, State Procurement Analyst
State/Political Entity: Oregon Department of Administrative Services, EGS-Procurement Services
Address: 1225 Ferry St SE
City, State, Zip: Salem, OR 97301-4285
Phone: 503-378-5332
Email: Kaliska.King@oregon.gov

D. The primary contact for the Contractor:

Contact: Craig Lacko
Entity: The Subsidiaries Enterprise Holdings, Inc.
Address: 4041 Airport Center Drive
City, State, Zip: Palm Springs, CA 92264
Phone: 415-290-1369
Fax: 918-401-8812
Email: Craig.Lacko2@ehi.com

*Indicates update to the contractor's primary contact, including email and phone, and the primary contact for the participating state, including email and phone, effective 04/20/21.

CONTRACTOR INDEX

CONTRACTOR AND TERMS:

254724
EAN Holdings, LLC
PO Box 402383
Atlanta, GA 30384

CONTRACT NO.: RS902820

TERMS: Net 30

*CONTRACTOR'S CONTRACT: Jess Moffett

*Telephone: 614-418-7170

*Email: Jessica.M.Moffett@ehi.com

SUMMARY OF AMENDMENTS

Amendment Number	Effective Date	Description
5	09/16/22	This amendment is issued to notify that as a result of mutual agreement between the State of Ohio and the Contractor, this contract is renewed for an additional twelve (12) months, effective 09/16/22 through 09/15/23. Additionally, this amendment is issued to update the pricelist, effective with all orders issued on or after 9/16/22. Finally, this amendment is issued to include updated language regarding the Prohibition of the Expenditure of Public Funds for Offshore Services.
4	10/11/21	This amendment is issued to update the pricelist, effective with all orders issued on or after 10/11/21.
3	09/16/21	This amendment is issued to notify that as a result of mutual agreement between the State of Ohio and the Contractor, this contract is renewed for an additional twelve (12) months, effective 09/16/21 through 09/15/22. Additionally, this amendment is issued to update the Table of Contents, update the pricing to include additional vehicles, and add a link to the NASPO Valuepoint site, effective 09/16/21.
2	04/20/21	This amendment is issued to update the contact information for EAN Holdings, Inc., effective 04/20/21. Additionally, this amendment is issued to update the State of Ohio contact.
1	05/21/20	This amendment is issued to include information on obtaining a reservation weblink, effective 05/21/20. This amendment is also issued to include a Summary of Amendments.



NASPO ValuePoint Master Agreement

This NASPO ValuePoint Master Agreement ("Master Agreement") is between the State of Oregon, acting by and through the Department of Administrative Services, Procurement Services ("DAS PS"), as the Lead State, on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program and other Participating Entities and The Subsidiaries of Enterprise Holdings, Inc. listed on Schedule 1 hereto ("Contractor"). This Master Agreement is effective on the date that it has been signed by the parties and has been approved as required by applicable law ("Effective Date").

1. Master Agreement Order of Precedence

a. Any Request for Service placed under this Master Agreement shall consist of the following documents:

(1) A Participating Entity's Participating Addendum ("PA"), substantially in the form attached hereto as Exhibit A;

(2) NASPO ValuePoint Master Agreement and its exhibits (in the following order of Precedence):

The Master Agreement terms and conditions, less its exhibits

Exhibit D- Provisions Required by Federal Law

Exhibit B - Description of Vehicle Rental Services

Exhibit C - Rates

Exhibit F- Sample Standard Rental Agreement

Exhibit A - Sample Participating Addendum

Exhibit E - NASPO ValuePoint Detailed Sales Data Report Form

(3) A Request for Services issued against the Master Agreement and a Participating Addendum or other agreed upon ordering process set forth in the Participating Addendum;

(4) Any terms and conditions provided electronically or online or as part of Services descriptions or guidelines; and

(5) Any Offeror's online or third party terms and conditions.

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. Participating Entities' terms and conditions that apply to this Master Agreement are only those that are contained herein and those additional terms and conditions that are expressly accepted by Contractor in writing and signed by the applicable Participating Entity and Contractor.

2. Definitions

Authorized User Data means all information and data created by or in any way originating with Authorized User, and all data that is the output of computer processing of or other electronic manipulation of any data that was created by or in any way originated with Authorized User, whether such data or output is stored on Authorized User's hardware, Contractor's hardware or exists in any system owned, maintained or otherwise controlled by Authorized User or by Contractor.

Authorized User means a person authorized by the Participating Entity to use the Services under this Master Agreement as defined in each Participating Entity's Participating Addendum.

Contract means any agreement between Contractor and Purchasing Entity for the Services, including a Request for Service.

Contractor means the person or entity delivering the 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 of Oregon which is centrally administering this Master Agreement

Master Agreement (or MA) means the agreement for car rental services executed by and between the Lead State, acting on behalf of the members of the NASPO ValuePoint Cooperative Purchasing Program, and the Contractor, as now or hereafter amended.

NASPO ValuePoint is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other

eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.

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 a 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.

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

Request for Services means the process or method for ordering or request initiated by an Authorized User requesting Services whether in person, in writing, by phone or other electronic means.

Services means the vehicle rental services to be provided by Contractor.

Traveler means an Authorized User traveling pursuant to a Request for Service issued under this Master Agreement.

3. Term of the Master Agreement; Non-exclusivity

a. The initial term of this Master Agreement is for two (2) years. This Master Agreement may be extended beyond the original contract period for four (4) additional years at the Lead State's discretion and by mutual agreement as to the terms and pricing and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. This Master Agreement is not exclusive. Purchasing Entities retain the right to contract for Services or through any selection process authorized by law, or to perform the Services themselves. Neither NASPO ValuePoint nor the Lead State guarantees that any

specific number of Contracts will be issued or that any specific amount of Services will be required.

4. Amendments

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

5. Participants and Scope

a. Contractor may not deliver Services under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Request for Service 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 Requests for Service, governing law and venue relating to Requests for Service 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. Request for Services or contract) used by the Purchasing Entity to place the Request for Service.

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

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

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

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

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located. In such circumstances, Contractor agrees to coordinate such 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.

6. Administrative Fees

a. No later than sixty (60) Calendar days following the end of each calendar quarter, for each calendar quarter, 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) on all base rental charges and the following optional products: GPS units, satellite radio service, toll device, Personal Affects Insurance (PAI), Personal Effects Coverage (PEC), and any charges for additional roadside assistance purchased by the Traveler, BUT specifically excluding: taxes, facility charges and concession recovery and other pass-through fees and charges.

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 pricing in the Participating Entities 'Participating Addendum to include an additional administrative fee for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint

Administrative Fee in subsection 6a shall be applied to the adjusted prices (if any) in Participating Addenda.

7. NASPO ValuePoint Summary and Detailed Usage Reports

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

a. **Summary Sales Data**, The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org/>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than sixty (60) Calendar 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) Provider name; (2) Renting Entity (State) (3) City Vehicle Rented in ; (4) State Vehicle Rented In (5) Vendor Rental Agreement Number (6) Checkout Date (7) Check in Date (8) Miles Driven (9) Vehicle Type Reserved (10) Vehicle Type Driven (11) Vehicle Type Charged (12) Master Agreement Rental Price (13) Days Charged (14) Total Charged Renting Entity 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 sixty (60) Calendar days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in shown in Exhibit E.

c. Report data for Travelers 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) calendar days after the conclusion of each calendar quarter.

e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the

reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

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

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

Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.

Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.

Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

The Parties acknowledge that NASPO ValuePoint and Contractor have entered into an agreement permitting Contractor to use NASPO ValuePoint logos in connection with this Master Agreement and the promotion of the Services, hereunder, and that agreement is in effect.

The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.

9. RESERVED

10. Right to Publish

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

11. Price and Rate Guarantee Period

All prices and rates must be guaranteed for the initial two-year term of the Master Agreement. Following the initial two-year term of the Master Agreement period, if the Lead State exercises the option to renew, the parties shall negotiate in good faith the rates applicable to any renewal term. If the parties are unable to reach agreement on the new rates, both parties shall have the right to either elect to continue the Master Agreement at the current rates for the renewal term, or to terminate the Master Agreement at the end of the then current term. 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. Any such Rate adjustments shall apply to all Participating Entities and Purchasing Entities.

12. Individual Customers

a. 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.

b. **Authorized User Data.** Authorized User or Traveler retains ownership of all its information and data ("Authorized User Data") that Traveler or Authorized User delivers to Contractor in connection with their utilization of the Services. Contractor may use Authorized User Data for the purposes of providing the Services under this Master Agreement and in accordance with Contractor's privacy policy and the applicable Rental Agreement. In all instances, Contractor shall use and maintain Authorized User Data in accordance with all applicable laws, including all applicable data privacy laws and laws relating to the protection of personally identifiable information.

Administration of Requests for Service or Orders

13. Request for Service

- a. Master Agreement and Request for Services or confirmation numbers shall be clearly shown on all acknowledgments, invoices, and on all correspondence.
- b. Purchasing Entities may define entity requirements and informally complete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.
- c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of services contemplated by this Master Agreement.
- d. Contractor shall not begin work without a valid Request for Services or other appropriate commitment document under the law of the Purchasing Entity and a signed Participant Addendum. Requests for Service may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
- e. Establishment of Account. From time to time, Purchasing Entities may request and work with Contractor to establish an account and the applicable documentation and processes permitting Authorized Users to obtain of the Services described in the Scope of Services attached hereto as Exhibit B.

DAS, upon agreement with Contractor, may add related services and products to this Agreement.
- f. Once an account is established and the Purchasing Entity and Contractor have agreed upon an ordering process, Authorized Users may order or submit requests of the Services by a method and in a form to be agreed upon between Contractor and Purchasing Entity ("Request for Service").
- g. This Agreement is not exclusive. A Purchasing Entity currently may have one or more agreement(s) for the Services or similar services or products. Purchasing Entity may request Services from and enter into agreements with Contractor pursuant to the terms and conditions of this Agreement and the Participating Addendum. Contractor may provide Services or Products to any third party, provided Contractor may not sacrifice the quality of the Services provided to Purchasing Entity for the benefit of another client.

h. All Requests for Service issued pursuant to this Master Agreement, at a minimum, shall include:

- (1) The Services being provided;
- (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 pricing elements consistent with this Master Agreement;
- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

g. All communications concerning administration of Requests for Service 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 Request for Service.

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

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

14. Reserved

15. Laws and Regulations

Any and all Services offered and furnished shall comply fully with all applicable Federal and State laws and regulations, including the Federal Terms and Conditions set forth in Exhibit C.

16. Reserved

17. Payment

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

18. Warranty

Contractor represents and warrants that:

- (a) Contractor has the power and authority to enter into and perform this Master Agreement;
- (b) This Master Agreement, when executed and delivered, is a valid and binding obligation of Contractor enforceable in accordance with its terms;
- (c) Contractor shall, at all times during the term of this Master Agreement, be qualified, competent, and duly licensed to perform the Services;
- (d) Contractor has the skill and knowledge possessed by well-informed members of its industry, trade or profession and Contractor shall apply that skill and knowledge with care and diligence to perform the Services in a workmanlike manner and in accordance with the highest standards prevalent in Contractor's industry, trade or profession;
- (e) The Services delivered by Contractor will materially comply with any service descriptions, specifications, standards or requirements set forth in this Master Agreement; and
- (f) Warranties cumulative. The warranties set forth in section are in addition to, and not in lieu of, any other warranties set forth elsewhere in this Master Agreement.

19. Right to Use

Contractor grants Participating Entities and Authorized Users the right to use any websites or applications necessary for the Services.

General Provisions

21. Insurance

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

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

(1) Commercial General Liability for the acts or omissions of Contractor's employees 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 \$1 million per occurrence/\$2 million general aggregate;

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

(3) Automobile Liability Insurance (which may be self-insured). Contractor shall provide Automobile Liability Insurance covering all owned, non-owned, or hired vehicles with a combined single limit of \$1 Million for bodily injury and property damage. For clarification, this automobile liability insurance covers Contractor's operation of its vehicles and does not include coverage for Participating Entities or their respective renters.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names Oregon, and the Participating States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

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

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

22. Records Administration and Audit

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Requests for Service 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. Such audits shall take place during regular business hours, at Contractor's premises, upon not less than five (5) business days' notice. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

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

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

23. Confidentiality, Non-Disclosure, and Injunctive Relief

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing the Service under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning

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

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

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

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

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

24. Public Information

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

25. Assignment/Subcontracts

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

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

26. Changes in Contractor Representation

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

27. Independent Contractor

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

28. Cancellation

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

29. Force Majeure

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

30. Defaults and Remedies

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

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any material term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within sixty (60) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

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

public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, to the extent provided for under this Master Agreement.

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

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Suspend Contractor from being able to respond to future bid solicitations; and
- (4) Suspend Contractor's performance; and
- (5) Withhold payment until the default is remedied.

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

31. Waiver of Breach

Failure of Contractor or 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 must be in writing. Waiver by Contractor or the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Contractor or Purchasing Entity with respect to any Request for Services, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Request for Services 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 Request for Services.

32. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed

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

33. Indemnification

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

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

(1) The Contractor's obligations under this section shall not extend to any combination of the Services with any other product, system or method, unless the Services or 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 Services; or
- (c) reasonably required, in order to use the Services in its intended manner, and the infringement could not have been avoided by substituting another reasonably available service, product, system or method capable of performing the same function; or
- (d) It would be reasonably expected to use the Services in combination with such service, product, system or method.

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

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

34. No Waiver of Sovereign Immunity

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

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

35. Governing Law and Venue

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

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

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or

contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

36. Assignment of Antitrust Rights

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

37. Contract Provisions for Orders Utilizing Federal Funds

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

Authorized Signatures: The undersigned hereby certifies that he or she has the authority to sign on behalf of the Subsidiaries of Enterprise Holdings, Inc. set forth on Schedule 1 hereto.

The Subsidiaries of Enterprise Holdings, Inc. as listed on Schedule 1

By: 

Title: Secretary

Date: September 9, 2019

The State of Oregon acting by and through its Department of Administrative Services, Enterprise Goods and Services, Procurement Services

By: 

Title: DEP. STATE Chief Proc. OFFICER Date: 9-16-19

SCHEDULE 1

Subsidiaries of Enterprise Holdings, Inc.

Enterprise Leasing Company of STL, LLC
Enterprise Leasing Company of Georgia, LLC
Enterprise Leasing Company of Florida, LLC
Enterprise Leasing Company of KS, LLC
EAN Holdings, LLC
Enterprise Leasing Company of Orlando, LLC
Enterprise Leasing Company of Indianapolis, LLC
Enterprise Rent-A-Car Company of Boston, LLC
Enterprise Leasing Company of Denver, LLC
Enterprise Leasing Company of Chicago, LLC
Enterprise RAC Company of Maryland, LLC
Enterprise Leasing Company of Philadelphia, LLC
Enterprise RAC Company of Baltimore, LLC
Enterprise Leasing Company of Minnesota, LLC
Enterprise Leasing Company of Detroit, LLC
Enterprise Leasing Co of Norfolk/Richmond, LLC
Enterprise Rent-A-Car Co of San Francisco, LLC
ELRAC, LLC
SNORAC, LLC
Enterprise Rent-A-Car Company of Sacramento, LLC
Enterprise Rent-A-Car Company of Los Angeles, LLC
CLERAC, LLC
Enterprise Rent-A-Car Company of Pittsburgh, LLC
Enterprise Rent-A-Car Company of Wisconsin, LLC
Enterprise Rent-A-Car Company of UT, LLC
CAMRAC, LLC
Enterprise Leasing Company of Phoenix, LLC
Enterprise Leasing Company - Southeast, LLC
Enterprise Leasing Company - West, LLC
Enterprise Leasing Company - South Central, LLC
PENRAC, LLC
Enterprise Rent-A-Car Company - Midwest, LLC
Enterprise RAC Company of Montana/Wyoming, LLC
PRERAC, Inc.

Approved pursuant to ORS 291.047

Oregon Department of Justice

By: Via email Karen Johnson
Sr. Assistant Attorney General

Date: 8/30/2019

Exhibit A to NASPO ValuePoint Master Agreement

SAMPLE PARTICIPATING ADDENDUM

MASTER AGREEMENT # ____
Exhibit __
FORM PARTICIPATING ADDENDUM

NASPO ValuePoint
PARTICIPATING ADDENDUM # _____



NATIONWIDE CAR RENTAL SERVICES
Lead by the State of Oregon ("Lead State")

Master Agreement #: 9409

Contractor: The Subsidiaries of

Enterprise Holdings, Inc. set forth on Schedule 1 to the Master Agreement

Participating Entity: State of xxxxxxx

(Removable Instruction: These items must be negotiated in each Participating Addendum: Definition of Authorized User (a Participating Entity should include all persons who will be authorized to use the Services under the specific Participating Addendum), and rates only if a Participating State adds in a state specific Administrative fee. See the Description of Vehicle Rental Services and look at any added services for example Roadside Assistance.)

The following Goods or services are included in this Addendum:

- **Removable Example: All Goods and accessories listed on the Contractor page of the NASPO ValuePoint website.**

The following Goods or services are not included in this Addendum:

- **Removable Example: Product modifications.**

Master Agreement Terms and Conditions:

1. **Scope:** This addendum covers the car rental services provided by Contractor under the Enterprise Rent-A-Car and National Car Rental brands, led by the State of Oregon for use by state agencies and other entities located in the Participating State [or State Entity] authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.

[Removable Instruction: Participating States should ensure that paragraph 2 properly defines the scope of participation. The model language in paragraph enables participation by all political subdivisions, institutions of higher education, and other entities included in

the state's statewide contract program.]

2. **Participation:** This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of xxxxxxx. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. **Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	
Address:	
Telephone:	
Fax:	
Email:	

Participating Entity

Name:	
Address:	
Telephone:	
Fax:	
Email:	

4. Participating Entity Modifications Or Additions To The Master Agreement

These modifications or additions apply only to Contractor and the Participating Entity.

Participating Entity must check one of the boxes below.

No changes to the terms and conditions of the Master Agreement are required.

The following changes are modifying or supplementing the Master Agreement terms and conditions.

[Removable Instruction: Insert text here to address specific changes to the terms and conditions. Indicate which section numbers of the Master Agreement are modified. If no changes are required, check the box above and delete this paragraph.]

5. Reserved

6. **Subcontractors:** All contactors, dealers, and resellers authorized in the State of xxxxxx, as shown on the dedicated Contractor (cooperative contract) website, are

Exhibit B to NASPO ValuePoint Master Agreement

Description of Vehicle Rental Services

GENERAL DESCRIPTION OF SERVICES: Contractor shall provide the following Services:

SECTION 1: GENERAL

1.1 Licensing Requirements:

Contractor shall secure, maintain and pay for any federal, state and local licenses required to provide the services referenced in the Master Agreement (MA).

1.2 Implementation:

1.2.1 Account Implementation Procedures:

To assist Participating Entities that are new to the NASPO Program, Contractor maintains a representative available to each state's Participating Entities. The entire implementation process will be managed by the Participating Entities account management team, with support from internal departments, including all necessary implementation and marketing materials for distribution to Participating States and Participating Entities.

As required progress will be monitored through a timeline and strategy checklist.

Contractor's local branches, available at enterprise.com or nationalcar.com, in each Participating State will be notified about the partnership with the state and details regarding their rental program.

For Participating States and Participating Entities currently a part of the NASPO program, Contractor shall look for continuous points for Master Agreement improvement and development.

1.3 Promotion:

Contractor shall further develop each Participating State and Participating Entity's program to grow the program. Contractor's representatives will work directly with Participating States and Participating Entities with their state program on a regular basis, and will explore the current car rental environment of the state. Following the lead of the Participating State and Participating Entity, Contractor shall partner with the designated point of contact(s), and following state guidelines and protocols, develop an implementation plan, including approved communications to support the promotion of the Master Agreement.

approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The contractor's dealer participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

- Z. Request for Service: Any rental completed by a Participating Entity or Purchasing Entity for car rental services available from this Master Agreement shall be deemed to be a Purchase of Service (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Request for Service agree in writing that another contract or agreement applies to such Request for Service.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating Entity:	Contractor: The Subsidiaries of Enterprise Holdings, Inc. set forth on Schedule 1 to the Master Agreement
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

[Removable Instruction: Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	
Telephone:	
Email:	

***[Please email fully executed PDF copy of this document to
PA@naspovaluepoint.org
to support documentation of participation and posting in appropriate data bases.]***

- 1.4 Provide the Participating Entity car rental Services for nationwide locations on the terms and conditions as set forth in the MA. A Participating Entity may purchase any quantity of Services listed in the MA at the prices listed in the awarded MA.
- 1.5 Renters under the NASPO contract must be at least 18-years old. Students renting or driving vehicles rented on behalf of universities or colleges must be operating the vehicle on official university/college business, or in connection with university/college-sanctioned activities. Drivers of vehicles with 10-passenger seating capacity must be 21 years old. Renters must be 25 years of age or older to rent 12- and 15-passenger vans. All renters must have a driver's license that is valid during the entire rental period and book under a valid NASPO or authorized State Account Number. Contractor will waive underage and young renter fees for renters age 18 through 20 years of age. Contractor maintains the right to verify employment or other affiliation with Participant that would give them the right to rent as a "Traveler".
- 1.6 Rental receipts must clearly detail all charges that Contractor has the capability to include.
- 1.7 **Rental Conditions:** The awarded MA is a rental only Agreement and nothing herein contained shall be construed as transferring to Participating State or Participating Entity any ownership right, title, or interest in or to any vehicle rented hereunder. Participant is not granted hereby and shall not have any right or option hereunder to purchase any rental vehicle either during the term or on expiration of a rental contract. This is not a financing or lease agreement.
- 1.8 **Maintenance and Operating Expenses:** Traveler will be responsible for gasoline and other expenses as required by law. All other maintenance and operating expenses (including insurance) are the responsibility of the Contractor. Contractor shall only rent vehicles that have been maintained in accordance with manufacturer's requirements, and industry standards.
- 1.9 **Vehicle Downtime:** If in the Traveler's judgment a vehicle is or becomes substantially impaired or unsafe to operate, Contractor shall immediately replace the vehicle upon notification by Traveler. Such replacement shall be at no extra charge so long as the impairment or unsafe condition is not caused, in whole or in part, by the negligence or willful misconduct or intentional act of the Traveler. Contractor shall deliver the replacement vehicle to a location determined by Traveler. Contractor shall be responsible for all repairs and towing of vehicle so long

as the repairs and/or towing, as the case may be, are not caused, in whole or in part, by the negligence or intentional act of the Traveler.

1.10 Assignment: Purchasing Entity and Traveler will not assign a Contract or permit anyone other than a properly authorized and licensed Traveler to operate any rental vehicle.

1.11 Accidents: Purchasing Entity shall require the Traveler to promptly notify the Contractor of all accidents involving any rental vehicle Traveler has in its possession, including the time, place and nature of the accident or damage, the names and addresses of parties involved, persons injured, witnesses, owners of property damaged, the place at which Contractor may examine the vehicle and such other information as may be known by Traveler, and promptly advise Contractor of all correspondence, papers, notices and documents delivered to Traveler in connection with any claim or demand involving or relating to any vehicle or its operation. Purchasing Entity and Traveler shall cooperate with Contractor in the investigation of all such claims and demands and in the recovery of damages from liable third persons.

1.12 Liability for Rental Vehicle:

Contractor shall hold State, Purchasing Entity and Traveler harmless from any physical damage, loss, vandalism, fire or theft of the rental vehicle provided rental vehicle was not used by the Purchasing Entity or Traveler in any manner listed in Section 2.8. The Contractor shall not charge the State, Purchasing Entity or Traveler any collision/loss damage waiver fee for a vehicle rented hereunder. Contractor specifically waives any right to submit any claim against the State, Purchasing Entity or Traveler for any physical damage, loss, vandalism, fire or theft, or any other costs such as downtime, loss of revenue, administrative expenses and other expenses, of a rental vehicle provided under this Master Agreement, provided rental vehicle was not used by the Purchasing Entity or Traveler in any manner listed in Section 2.8. Notwithstanding above, Travelers shall not smoke in Contractor's vehicles, and Contractor may charge Purchasing Entity for any smoking damages caused by Traveler or Traveler's passengers in the vehicle while in Traveler's possession.

A loss of use fee may be applied only if a Traveler uses the rental vehicle in any manner listed in Section 2.8 (Improper Use of Vehicle) and damage to the rental vehicle is caused. The onetime Loss of use fee is set forth in Exhibit C Rates.

1.12.1 Liability Protection for Rental Vehicle:

Contractor shall provide liability protection with each U.S. vehicle rental transaction at no additional cost to Purchasing Entity for a vehicle operated in compliance with the terms of the Contract. This liability protection, which shall be voided if the rental vehicle is used in any manner listed in Section 3.1, shall extend third party liability protection to Purchasing Entity and Traveler in a combined single limit amount per occurrence of not

less than \$1,000,000 per accident for bodily injury, death, or property damage to others arising out of the use or operation of the rental vehicle.

1.12.2 Property in the vehicle:

Contractor is not responsible for loss of or damage to any Participating Entity or Traveler's personal property in or on the vehicle, in any service vehicle, on Contractor's premises, or received or handled by Contractor. Personal Effects Coverage (PEC) may be purchased at the time of rental. Cost varies based on location.

1.13 Reservation:

In order to guaranty the availability of the vehicle, Traveler must make a reservation at least 96 hours in advance. If a Traveler walks into a Branch location the rental rates shall be honored on the cars available at the time of Request for Services. Reservations may be made by Participating Entity or Traveler, contracted travel agencies. Reservations shall guarantee vehicle availability including automatic, no-added cost substitution. Reserved vehicle will be held for 3 hours after the Traveler's estimated time of arrival prior to release. Whenever possible, the Participating Entity or Traveler will advise the Contractor a minimum of 8 hours in advance of any change of travel plans necessitating rental vehicle cancellation or delayed pickup, however, in no situation shall the State, Participating Entity or Traveler be liable for payment of "no shows". Travelers and Purchasing Entity's will cancel reservations in the same manner they were made when possible. The Rates and coverages provided herein shall only be available to the Participating Entity and Traveler if the Participating's Entity's Account Number is used at the time of the reservation or at the commencement of the rental transaction.

1.13.1 Reservation Systems/Options:

Contractor shall maintain an internet reservation system where Travelers can access the rates. Contractor shall make available contracted rates on all major Global Distribution Systems (GDS). Contractor shall maintain a toll free 24 hour 365 days a year reservation phone number where Contractor's agents have access to the rates. This telephone number must be available by a toll free line. Contractor shall also accept reservations at branch locations via walk-in or local telephone number. Contractor personnel at all Contractor locations must have access to the MA rates and terms and conditions contained in this MA.

1.13.1.1 Short Notice Reservation:

Contractor shall not charge additional fees for short notice reservations.

1.13.2 Traveler Pick up from Contractor:

Contractor's "We'll Pick You Up" service is available to our customers. With a 24-hour notice, we will pick up a Traveler at any home or business address in the United States. This service is available at no additional cost within a 5 mile radius of the rental location.

Fees may apply outside of this area. Any delivery of vehicles and pick-up of vehicles after the completion of a rental and any such provided service and cost associated with such will be determined by the renting location.

1.13.3 International Vehicle Rental:

Rentals originating outside of the US are not available under this Master Agreement.

1.14 Vehicle Demand:

Contractor shall attempt to meet 100% percent of Purchasing Entity or Travelers requests and shall meet 100% of confirmed guaranteed reservations when 96 hours' advance notice is given. If a reserved vehicle is not available at the time of pickup by the Traveler, Contractor shall substitute a vehicle of similar or greater quality at no additional cost. Contractor shall note on the invoice that a vehicle of same or greater quality was substituted at same or lower price.

1.15 Vehicle Pick Up/ Return:

Contractor must ensure this process is expedited and easy for the Traveler. At airport locations with counters, Contractor personnel will be available during terminal hours of operation to meet the standard of 90% of all incoming flights. For locations without airport counters, a courtesy phone or clearly identifiable sign indicating the telephone number to call for Contractors shuttle is required. Shuttle service pickup must be available within 15 minutes of Traveler's notification to Contractor. Vehicle pickup should routinely be within a total of 30 minutes from initial contact with the Contractor.

Except with respect to Emerald Aisle rentals available to Contractor's Emerald Club program, Contractor requires Traveler to sign Contractor's Standard Rental Contract, a representative sample of which is attached as Exhibit F. Refer to Section 2.9 for refueling. Contractor will also provide the Traveler with accident, repair, roadside assistance information and vehicle return instructions. With the exception of Emerald Aisle rentals, Contractor shall provide to Traveler a completed copy of the Standard Rental Form showing estimated charges to be billed for the rental, including any pass-through charges that may subsequently be billed to Traveler.

1.15.1 Preferred Customer/Loyalty Program:

Contractor shall provide a specific preferred customer or loyalty program for Travelers who elect to participate and whose Travelers' Participating Entity's policies allow such participation.

1.16 Contractor Rental Sites not at Airports:

Contractor shall ensure all MA prices and terms and conditions are available at all Contractor locations and that there is 100% percent MA adherence. Contractor shall

provide seamless service and full compliance with the terms and conditions of the MA at all Contractor locations.

1.17 Airport and Branch Locations:

Contractor shall have rental branches at airport locations at the 2017 top 50 commercial airline airports as shown at:

https://www.rita.dot.gov/bts/sites/rita.dot.gov/bts/files/publications/national_transportation_statistics/html/table_01_44.html

Locations must be well-lighted, clean, properly maintained and clearly identified as the Contractors vehicle rental counter.

1.18 Rate Structure

1.18.1 Round Trip Rentals:

Contractor shall charge only the MA rates for rental of vehicle at each branch location. Rate includes all charges for reservations, shuttle service, collision/loss damage waiver, standard roadside assistance, liability protection for U.S. rentals and other locations where required by law (and in such circumstances in the minimum amounts required by applicable law) and unlimited mileage.

Rates under the MA are not subject to blackout dates and do not require a minimum rental period. Applicable weekend/weekly discounts will be calculated and applied.

Rates are base rates; they are exclusive of fuel for re-fueling, optional services or features purchased by Traveler, local and state sales and federal excise taxes, airport concession fees, city surcharges or city differential fees applicable in certain cities, legislative or mandated taxes or fees, bond issues imposed by government bodies and similar charges controlled by third party(ies). Contractor shall itemize those charges as separate line items on the rental agreement and add the charges to the base rate. Where the Purchasing Entity is not exempt from sales taxes on sales within their state, the Contractor shall add the sales taxes on the billing invoice as a separate entry. Enterprise and National charge 33 percent of the daily rate for hourly charges up to the cost of the daily rate.

1.18.2 One Way Rentals:

One-way rentals must be reserved as one-way rentals. Rates for airport rentals beginning and ending at airport locations are set forth as One-Way Daily Rates in the Pricing Sheet (Exhibit C). One-Way Daily Rates include unlimited mileage. Contractor shall not charge any drop fee or mileage charge for one way rentals from and to Airport locations.

Off-Airport Locations. One-Way rates that are vehicle reservations that do not begin or end at an airport location. Also, off airport locations have an additional \$125.00 drop fee for one-way rentals.

1.18.3 Daily Surcharge:

Contractor may charge a daily surcharge in addition to the daily rate at the amount and in those markets identified in the rate section.

1.19 Fact-Finding Assistance:

The Contractor shall assist any investigative unit of the Participating Entity or Traveler concerning alleged wrongdoing or suspected fraud or abuse by any Travelers or those entities doing business with the Contractor. Reciprocal assistance from the Purchasing Entity with regard to investigations shall be provided to the Contractor.

1.20 Roadside Assistance:

Standard Roadside Assistance is included in the vehicle rental; and provides assistance in connection with damage to the vehicle, glass replacement and towing (related to an accident). Travelers in need of emergency road service in the United States and Canada may call a dedicated 24-hour roadside assistance line. Instructions for contacting the roadside assistance line are included in the Standard Rental Agreement provided at the time of rental. Contractor's customer service can be reached 24 hours a day at 1-800-261-7331 or by email from the Enterprise website <https://www.enterprise.com>. Travelers using the Enterprise Rent-A-Car App and National Car Rental App also can press the Roadside button. Contractor shall provide a toll-free roadside assistance number 24 hours a day, 365 days a year. Contractor's Roadside Assistance Department shall work with Travelers to ensure the proper solution is found in a timely manner by utilizing Contractor local rental office, manufacturer's programs, dealer networks or other vendors. Contractor shall provide Travelers instructions for reporting accidents and any other roadside problems.

If experiencing any operating problems, the Traveler may choose to return the vehicle to a Contractor branch location at his or her convenience or request a different vehicle to be brought to a specific location as soon as possible.

Optional Roadside Protection may be purchased at the Rates set forth in Exhibit C to provide coverage for lockout service, jump starts, tire changes, fuel delivery, key replacement and towing for events unrelated to an accident. However Contractor's policy states this optional protection does not include replacement of lost keys or remote entry devices in California, Kansas, Nevada and New York.

1.21 Travelers with Disabilities:

Contractor shall offer available adaptive driving devices, including hand controls, spinner knobs, pedal extenders, and left-foot accelerators, subject to vehicle compatibility.

For Enterprise, information regarding device availability and reservations is available at <https://www.enterprise.com/en/help/customers-with-disabilities.html?icid=footer.customer.service--disabilities--ENUS.NULL>

For National, information regarding device availability and reservations is available at <https://www.nationalcar.com/en/support/customers-with-disabilities.html>

For reservations and more information, renters may call:

- o Enterprise: 866-225-4284 (users of TTY devices use 866-534-9270)
- o National: 888-273-5262 (users of TTY devices use 800-328-6323)

Contractor does not offer lift-equipped vans or wheelchair ramps for rental. Enterprise's "We'll Pick You Up" service is available for mobility device-equipped vehicles. Our branch locations can provide pick-up and delivery service in either the car the customer will be renting or a car of the same class.

1.22 1.21 Environmental Awareness:

1.21.1 Hybrid Vehicles:

Contractor shall provide hybrid vehicles at most of its locations. Pricing for hybrid vehicles is located in the Exhibit C Rates.

1.22.1 Alternative Fuel Vehicles:

Where available and on not less than seven (7) days advance request, Contractor shall provide a class of vehicles known as Alternative Fuel (E85, natural gas or hydrogen) or "hybrid" vehicles. Hybrid vehicles must have a federal MPG rating of at least 25 MPG.

SECTION 2: VEHICLE REQUIREMENTS:

2.1 Non- Smoking Vehicles:

Contractor shall make every attempt to provide under this MA, non-smoking vehicles. At the time of rental, Traveler may request a different vehicle if the vehicle smells like smoke.

2.2 Vehicle Stock:

Contractor shall maintain an adequate number of vehicles on hand to meet the needs of Participants with advance reservations.

2.3 Required Vehicles and Equipment:

Contractor shall only provide Purchasing Entity's and Travelers with rental vehicles with fewer than 40,000 miles. Contractor certifies that odometer and original miles are the same and are accurate. Minimum standard equipment shall include automatic transmission, power steering, power brakes, air conditioning, AM/FM radio, air bags and all season radial tires. Contractor shall equip and maintain all rental vehicles to meet all federal, state and local vehicle safety standards, codes, and ordinances.

2.4 Vehicle Condition:

At time of vehicle pickup, Contractor shall ensure the rental vehicle has a full tank of gas or as otherwise provided in Section 2.9 and proper fluid levels; coolant protected to -20 degrees; and is in clean condition (inside and out). All vehicles should be in a like-new condition, reasonable wear and tear excepted, with no body damage or mechanical problems that impedes the safe operation of the vehicle.

2.5 Repossessing the Vehicle:

Contractor can repossess the vehicle if it is reported to be illegally parked, being used to violate the law or the terms of this Contract, or it is reported by local law enforcement to be abandoned. Contractor can also repossess anytime it discover that a misrepresentation was made to obtain the vehicle. Contractor shall first notify the Traveler or Purchasing Entity to attempt to resolve any issues in advance of any Contractor action to repossess the vehicle.

2.6 Vehicle Classes:

- Sedans: Economy/ Compact, Intermediate/ standard, and full size.
- Passenger Vans: Mini Vans and 12 passenger vans.
- SUV's: Mid/Standard SUV and full size/ Premium SUV
- Pick-ups: Small truck and Large Truck
- Other Categories:
- Premium, Jeep crossover, Convertible, Compact Hybrid, Intermediate Hybrid, Full size Hybrid, and 15 passenger vans.

Cargo Vans may not be rented under this Contract.

2.7 Toll Pass. Contractor's TollPass programs, where available, may be purchased at the time of the rental transaction. The TollPass program, policies and charges may be changed at any time without notice. Fees charged for the TollPass program do not include toll charges. Toll charges including citations may be collected by Contractor or a third party. These charges will be billed separately from the vehicle rental charges.

PARTICIPANT RESPONSIBILITIES

2.8 IMPROPER USE OF VEHICLE:

Purchasing Entity and Traveler agree the rental vehicle will not be used and/or the driver (as the case may be):

- a) By a driver who is under the influence of alcohol or any prohibited drugs.

- b) For any illegal purpose.
- c) To Push or tow another vehicle unless the vehicle is equipped for towing and is specified in the rental agreement.
- d) To carry passengers or property for hire.
- e) In a test, race or contest.
- f) By an unlicensed driver.
- g) By a person other than an authorized Traveler with the minimum driver requirements.
- h) Outside of the United States except where such use is specifically authorized by the Contract.
- i) Off paved or maintained roads or driveways. (Gravel and/or dirt roads maintained by a state, county or local municipality or individual property owner are considered maintained roads or driveways.)
- j) By a driver who allows more passengers to occupy the vehicle than there are seatbelts or who does not require all passengers to comply with applicable seatbelt and child restraint laws.
- k) By a driver who is under 18 years of age.
- l) By a driver or occupant who is smoking.
- m) By a driver who obtained the vehicle through fraud or misrepresentation.
- n) By a driver who intentionally caused the damage to or loss of the vehicle.
- o) In a live artillery fire exercises, or used in training or tactical maneuvers, or in police or other law enforcement activities, it is being understood that the Master Agreement is intended for business travel only.
- p) Will not leave the keys in the vehicle while unattended. If vehicle is stolen, the Participant must be able to produce the keys.
- q) Will not use passenger vans with a capacity of 10 or more passengers to transport children in the twelfth (12th) grade or younger for school related functions.
- r) Will not operate or use passenger vans with a capacity of 10 or more passengers in the country of Canada.
- s) 10 passenger vans Travelers must be 21 years of age.

t) 12 and 15 passenger vans Travelers must be 25 years of age.

2.9 Fuel and Refueling Options:

Traveler shall return a vehicle to the Contractor with the same fuel level as the Vehicle had at time of pick up unless an alternative fuel arrangement was made at the time of vehicle pick up. Failure to do so will incur additional charges for refueling.

2.10 Return of the Vehicle:

Traveler shall return the vehicle to the agreed return location as specified on the Standard Rental Agreement Enterprise and National charge 33 percent of the daily rate for hourly charges up to the cost of the daily rate. The vehicle shall have the same amount of gas in it as when the vehicle rental began unless an alternative fuel arrangement was made at the time of vehicle pick up.

2.11 Citations or Violations:

Fines, Expenses, Costs and Administrative Fees: Participant shall pay all fines, penalties and court costs for parking, traffic, toll and other violations, and charges.

2.12 Traveler Reservation:

At the time of reservation, Purchasing Entity or Traveler will provide the Participant account number. At the time of rental, the Traveler will present a method of payment, acceptable to Contractor and a valid driver's license. Rates and coverages provided herein shall only be available to the Participating Entity and Traveler if the Participating's Entity's Account Number is used at the time of the reservation or at the commencement of the rental transaction.

2.13 Master Agreement Contractor Choice:

Contractor acknowledges that it is not the exclusive provider of vehicle rental services contracted by NASPO Value Point, and Purchasing Entities and Travelers may use the Contractor offering the lowest price vehicle rental choice or the contract that best fits the Travelers need at the time of rental or otherwise designated by the Participating Entity under the Master Agreements administered by NASPO ValuePoint.

Exhibit C- Rates

Vehicle Type	Daily Rate	Weekly Rate	Monthly Rate
Sedans			
Economy/Compact	\$33.00	\$165.00	\$660.00
Intermediate/Standard	\$34.75	\$173.75	\$695.00
Full Size	\$37.50	\$187.50	\$750.00
Passenger Vans			
Mini Van	\$65.00	\$325.00	\$1,300.00
12 Passenger	\$122.00	\$610.00	\$2,440.00
SUV's			
Mid/Standard SUV	\$62.00	\$310.00	\$1,240.00
Full Size / Premium SUV	\$86.00	\$430.00	\$1,720.00
Pick- Up Truck's			
Small Pick Up Truck	\$70.00	\$350.00	\$1,400.00
Large Pick Up Truck	\$75.00	\$375.00	\$1,515.50
Other Class's Offered			
Premium	\$82.00	\$410.00	\$1,640.00
Jeep/ Crossover	\$65.00	\$325.00	\$1,300.00
Convertible	\$82.00	\$410.00	\$1,640.00
Compact Hybrid	\$49.00	\$245.00	\$980.00
Intermediate Hybrid	\$49.00	\$245.00	\$980.00
Full Size Hybrid	\$54.00	\$270.00	\$1,080.00
15 Passenger Van	\$140.00	\$700.00	\$2,800.00

Other Charges

Vehicle Type	Enterprise/National Airport One-Way Daily Rates	Mileage
Sedans		
Economy/Compact	\$83.00	Unlimited
Intermediate/Standard	\$83.00	Unlimited
Full Size	\$83.00	Unlimited
Passenger Vans		
Mini Van	\$145.00	Unlimited
12 Passenger	Not Available	Not Available
SUV's		
Mid/Standard SUV	\$145.00	Unlimited
Full Size / Premium SUV	\$165.00	Unlimited
Pick- Up Truck's		

Small Pick Up Truck	\$145.00	Unlimited
Large Pick Up Truck	Not Available	Not Available
Other Class's Offered		
Premium	\$129.00	Unlimited
Jeep/ Crossover	Not Available	Not Available
Convertible	Not Available	Not Available
Compact Hybrid	\$129.00	Unlimited
Intermediate Hybrid	\$129.00	Unlimited
Full Size Hybrid	\$129.00	Unlimited
15 Passenger Van	Not Available	Not Available
Misc. Other Fees		
Additional Roadside Protection		\$5.99/ per day
Personal Accident Insurance/Personal Effects Coverage		\$5.13 - \$13.00 per day, subject to change

<u>Surcharge Amount</u>	<u>National and Enterprise Airport Surcharge Locations</u>
\$3.00 per day	Richmond, VA
\$5.00 per day	Augusta, GA; Harrisburg, PA; Phoenix; Sacramento, Scranton, PA; State of Illinois (excluding Chicago); State of Tennessee (excluding Nashville); State of South Carolina (excluding Myrtle Beach); Rochester (ROC); Buffalo (BUF); Syracuse (SYR)
\$7.00 per day	Albany (ALB); Westchester (HPN); Stewart (SWF); ISLIP (ISP); Burlington (BTV)
\$10.00 per day	State of Alaska; Atlanta; Burbank; Hawaii Airports; Jackson, WY; John-Wayne Airport (SNA); Los Angeles area (excluding LAX); Minneapolis/ST. Paul; Monterey; Nashville; Oakland; Pittsburg; Providence; common Wealth of Puerto Rico; Rapid City; San Diego; San Francisco (including the convention center); San Jose; State of Texas.
\$12.00 per day	Baltimore; Boston; Detroit; Philadelphia; Washington, DC.
\$15.00 per day	Chicago; Hawaii; Los Angeles International Airport (LAX); Newark (EWR).
\$23.00 per day	LaGuardia (LGA), Kennedy (JFK)

<u>Surcharge Amount</u>	Enterprise Brand Home City Surcharges
\$7.00 per day	Long Island Metro, Westchester Metro (including Greenwich and Stamford CT); Burlington Metro (VT)
\$10.00 per day	State of Alaska; commonwealth of Puerto Rico; Boston home city: Bemidji and Moorhead, MN; State of Nebraska (excluding Omaha and Lincoln); State of Wyoming (excluding Cheyenne, Laramie, and Jackson); San Francisco downtown.
\$12.00 per day	Washington, DC area
\$15.00 per day	Chicago Home City; Hawaii Home-City.
\$23.00 per day	NYC Boroughs (Bronx, Brooklyn, Manhattan, Queens, and Stanton Island)
National Licensee Differential	Location
\$6.00 per day	Wisconsin (Appleton Airport, Green Bay Airport, January 1-December 31 st .)
Item	Rate
Smoking/damage cleaning	Actual Cost
Vehicle Drop Off and Pick up Service	If available to be determined by location.
One time Loss of Use Fee	A onetime loss of use fee of up to and not to exceed \$245.00 will be charged only if damage occurs while the Traveler is using the vehicle improperly as set forth in Section 2.8 and damage to the rental vehicle is caused thereby. (up to \$245.00 is loss fee, this fee is one time charge, not to exceed amount and not a per day charge.)
15 Passenger Van available only at	Enterprise Locations

Exhibit D to NASPO ValuePoint Master Agreement PROVISIONS REQUIRED BY FEDERAL LAW

Without limiting the generality of Section 15 of the Master Agreement, if applicable, Contractor shall comply and, as indicated, cause all subcontractors to comply with the following federal requirements. For purposes of this Master Agreement, all references to federal laws are references to federal laws as they may be amended from time to time.

1. United States Government Subcontracting for Commercial Items. The Affiliates of EAN are approved prime contractors of the United States government and in certain circumstances function as subcontractors through contracts with prime contractors of the U.S. government. As such, the Affiliates maintain appropriate registrations in System for Award Management (SAM) administered by the U.S. Government which includes the central contractor registrations system (CCR) and online representations and certifications application (ORCA). The Affiliates shall not discriminate in their employment on the basis of any protected classification, and agree to comply with such non-discrimination laws and Executive Orders to the extent applicable. The EEO clauses set forth in 41 CFR 60-1.4(c), 60-741.5, 60-250.5, 60-300.5 and 48 CFR 52.222-35, 52.222-26, 52-222.36 and 29 CFR part 471, Appendix A to Subpart A, are incorporated herein by reference. The Affiliates shall, during performance of this Agreement, comply will all applicable provisions of Executive Order 11246, the affirmative action commitments for disabled veterans, veterans of the Vietnam Era, other veterans and disabled workers; and the related regulations of the Secretary of Labor, 41 CFR Chapter 60 to the extent applicable. **Affiliates shall abide by the requirements of 41 CFR 60-741.5(a), prohibiting discrimination against qualified individuals on the basis of disability and requiring affirmative action to employ and advance in employment qualified individuals with disabilities.**

In the event that Customer is awarded a prime contract with funds payable to Customer by the United States government or its agencies and Affiliates are qualified subcontractors to any such award for purposes of payments for services under this Agreement, Affiliates shall accept the following "mandatory flow down" Federal Acquisition Regulations (FAR) 44.402, 52-212(e) and 52.244-6 for commercial items:

Utilization of Small Business Concerns	FAR 52.219-8	Nov 2016
Equal Opportunity	FAR 52.222-26	Sept 2016
Equal Opportunity for Veterans	FAR 52.222-35	Oct 2015
Equal Opportunity for Workers with Disabilities	FAR 52.222-36	Jul 2014
Notification of Employee Rights Under the National Labor Relations Act	FAR 52.222-40	Dec 2010
Preference for Privately Owned U.S.-Flag Commercial Vessels	FAR 52.247-64	Feb 2006
Combating Trafficking in Persons	FAR 52.222-50	Mar 2015
Contractor Code of Business Ethics and Conduct	FAR 52.203-13	Oct 2015
Employment Eligibility Verification	FAR 52.222-54	Oct 2015

If additional FAR requirements must be imposed upon Affiliates by law or by prime contract, such must be separately agreed to in writing by the applicable Affiliate(s) and Customer. In such case, there is no guarantee by EAN or the Affiliates that Rates will remain as stated in the Agreement.

2. Clean Air, Clean Water, EPA Regulations. If this Master Agreement, including amendments, exceeds \$100,000 then Contractor shall comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) (33 U.S.C. 1251 to 1387), specifically including, but not limited to Section 508 (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15), which prohibit the

use under nonexempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations shall be reported to the Participating Entity or Purchasing Entity, HHS and the appropriate Regional Office of the Environmental Protection Agency. Contractor shall include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000 in Federal Funds, language requiring the subcontractor to comply with the federal laws identified in this section.

3. Energy Efficiency. Contractor shall comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94163).

4. Truth in Lobbying. The Contractor certifies, to the best of the Contractor's knowledge and belief that:

4.1. No federal appropriated funds have been paid or will be paid, by or on behalf of Contractor, to any person for influencing or attempting to influence an officer or employee of an 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.

4.2. If any funds other than federal appropriated funds have been paid or will be paid 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 this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions.

4.3. The Contractor shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients and subcontractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this Master Agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Master Agreement imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

5. Reserved

6. Resource Conservation and Recovery. Contractor shall comply and cause all subcontractors to comply with all applicable mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962)

requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247-253.

7. Substance Abuse Prevention and Treatment. Contractor shall comply with federal rules and statutes pertaining to the Substance Abuse, Prevention, and Treatment Block Grant, if applicable, including the reporting provisions of the Public Health Services Act (42 USC 300x through 300x-64).

8. Audits. Contractor shall comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled "Audits of States, Local Governments and Non-Profit Organizations."

9. Debarment and Suspension. Contractor shall not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Nonprocurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding their exclusion status and that of their principals prior to award.

10. Reserved

11. Americans with Disabilities Act. Contractor shall comply and cause all subcontractors to comply with Title II of the Americans with Disabilities Act of 1990 (codified at 42 USC 12131 et. seq.) in the construction, remodeling, maintenance and operation of any structures and facilities, and in the conduct of all programs, services and training associated with the performance of work.

12. Pro-Children Act. Contractor shall comply and cause all subcontractors to comply with the Pro-Children Act of 1995 (codified at 20 USC section 6081 et. seq.).

13. Federal Tax Information. Contractor shall comply, if applicable, with the provisions of Section 6103(b) of the Internal Revenue Code, the requirements of IRS Publication 1075, and the Privacy Act of 1974, 5 U.S.C. §552a et. seq. related to federal tax information.

Exhibit E- NASPO ValuePoint Detailed Sales Data Report Form

See Attached Reporting File

STATE OF OHIO

STANDARD TERMS & CONDITIONS

- I. **GLOSSARY** – The following definitions are applicable to all components of the Contract:
- A. **Acceptance:** Approval and retention by the Ordering Agency of any products, supplies, services or other Deliverables, delivered to fulfill Contract requirements.
 - B. **Contracting Agency:** The agency with which the Contractor enters into the Contract and that has the authority to enforce the Terms and Conditions of this Contract. The Contracting Agency may also be the Ordering Agency.
 - C. **Default:** The omission or failure to perform any obligation under this Contract.
 - D. **Deliverable:** Any Contractor-provided products, supplies, services or work product described in the specifications of the Contract.
 - E. **Ordering Agency:** The entity, including State agencies and State of Ohio Cooperative Purchasing members authorized under Section 125.04 of the Ohio Revised Code, that purchases and accepts the products, supplies, services or other Deliverables under this Contract and that is responsible for payment. The Ordering Agency may also be the Contracting Agency.
 - F. **State:** The State of Ohio.
 - G. **Time and Materials Contract:** A Contract in which Contractor is paid (1) an hourly rate for labor actually performed and (2) if applicable and with prior approval by the Ordering Agency, for the cost of the materials or supplies actually used by the Contractor. Such rates and costs shall be established through Contractor's submission of a price sheet, written quote, estimate, or invoice, as approved by the State. Hourly rates may include wages, overhead, general and administrative expenses, and reasonable profit. Materials or supplies may include the Contractor's direct and indirect costs attributable to the work performed.
- II. **REGULATORY CONTRACT REQUIREMENTS**
- A. **ANTITRUST.** The State and the Contractor recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by the State. The Contractor therefore assigns to the State all state and federal antitrust claims and causes of action that the Contractor has or acquires relating to the goods and services acquired under this Contract.
 - B. **APPROPRIATION OF FUNDS.** The State's funds are contingent upon the availability of lawful appropriations by the Ohio General Assembly. If the General Assembly fails at any time to continue funding for the payments or any other obligations due by the State under this Contract, the State will be released from its obligations on the date funding expires. If appropriations are approved, the State may continue this Contract past the current biennium by issuing written notice of continuation to the Contractor. Any obligations of the State are subject to Section 126.07 of the Ohio Revised Code.
 - C. **CAMPAIGN CONTRIBUTIONS.** Unless this Contract was solicited by competitive bid pursuant to Section 125.07 of the Ohio Revised Code, Contractor hereby certifies that all applicable parties are in full compliance with Section 3517.13 of the Ohio Revised Code.
 - D. **COMPLIANCE WITH LAW.** The Contractor must comply throughout the duration of the Contract with all applicable federal, state, local laws and Executive Orders while performing under this Contract.
 - E. **CONFLICT OF INTEREST/ETHICS.** Contractor represents, warrants and certifies that it and its employees engaged in the administration or performance of this Contract are knowledgeable of and understand the Ohio Ethics and Conflict of Interest laws including but not limited to Chapter 102 and Sections 2921.42 and 2921.43 of the Ohio Revised Code. Contractor further represents, warrants, and certifies that neither Contractor nor any of its employees will do any act that is inconsistent with such laws or otherwise presents a conflict of interest.

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- F. **CONTRACTOR'S WARRANTY AGAINST AN UNRESOLVED FINDING FOR RECOVERY.** The Contractor warrants that the Contractor is not subject to an unresolved finding for recovery pursuant to Section 9.24 of the Ohio Revised Code. If the warranty is false on the date the parties signed this Contract, the Contract is void *ab initio* and the Contractor shall immediately repay any funds paid under this Contract.
- G. **DEBARMENT.** Contractor represents and warrants that neither it, nor any of its subcontractors, are debarred from consideration for contract awards by any governmental agency. If this representation and warranty is found to be false, this Contract is void *ab initio* and the Contractor shall immediately repay any funds paid under this Contract.
- H. **DRUG FREE WORKPLACE.** The Contractor agrees to comply with all applicable state and federal laws regarding drug-free workplace and shall make a good faith effort to ensure that all Contractor employees, while working on State property, will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way.
- I. **EQUAL EMPLOYMENT OPPORTUNITY.** The Contractor will comply with all state and federal laws regarding equal employment opportunity and fair labor and employment practices, including Section 125.111 of the Ohio Revised Code and all related Executive Orders.

Before a Contract can be awarded or renewed, an Affirmative Action Plan must be submitted to and approved by the Ohio Department of Administrative Services, Equal Opportunity Division.

- J. **PROHIBITION OF THE EXPENDITURE OF PUBLIC FUNDS FOR OFFSHORE SERVICES.** No State Cabinet, Agency, Board or Commission will enter into any contract to purchase services provided outside the United States or that allows State data to be sent, taken, accessed, tested, maintained, backed-up, stored, or made available remotely outside (located) of the United States. Notwithstanding any other terms of this Contract, the State reserves the right to recover any funds paid for services the Contractor performs outside of the United States for which it did not receive a waiver. The State does not waive any other rights and remedies provided the State in the Contract.

The Contractor must complete the [Contractor/Subcontractor Affirmation and Disclosure form](#) affirming the Contractor understands and will meet the requirements of the above prohibition. During the performance of this Contract, the Contractor must not change the location(s) disclosed on the Affirmation and Disclosure Form, unless a duly signed waiver from the State has been attained to perform the services outside the United States.

- K. **GOVERNING LAW.** This Contract shall be governed by the laws of the State of Ohio, and the venue for any disputes will be exclusively with the appropriate court in Franklin County, Ohio.
- L. **INDEPENDENT CONTRACTOR ACKNOWLEDGEMENT.** It is fully understood and agreed that Contractor is an independent contractor and is not an agent, servant, or employee of the State. Contractor declares that it is engaged as an independent business and has complied with all applicable federal, state, and local laws regarding business permits and licenses of any kind, including but not limited to any insurance coverage, workers' compensation, or unemployment compensation that is required in the normal course of business and will assume all responsibility for any federal, state, municipal or other tax liabilities. Additionally, Contractor understands that as an independent contractor, it is not a public employee and is not entitled to contributions from the State to any public employee retirement system.

Contractor acknowledges and agrees any individual providing personal services under this Contract is not a public employee for purposes of Chapter 145 of the Ohio Revised Code. Unless Contractor is a "business entity" as that term is defined in Section 145.037 of the Ohio Revised Code ("an entity with five or more employees that is a corporation, association, firm, limited liability company, partnership, sole proprietorship, or other entity engaged in business") Contractor shall have any individual performing services under the Contract complete and submit to the Ordering Agency the Independent Contractor/Worker Acknowledgement form.

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STANDARD TERMS & CONDITIONS

Contractor's failure to complete and submit the Independent Contractor/Worker Acknowledgement prior to commencement of the work, service or deliverable, provided under this Contract, shall serve as Contractor's certification that Contractor is a "Business entity" as the term is defined in Section 145.037 of the Ohio Revised Code.

- M. REGISTRATION WITH THE SECRETARY OF STATE.** Contractor certifies that it is either:
1. A company that is properly registered with the Ohio Secretary of State; or
 2. A foreign corporation, not incorporated under the laws of the State of Ohio, but is registered with the Ohio Secretary of State pursuant to Sections 1703.01 to 1703.31 of the Ohio Revised Code, as applicable; or
 3. Exempt from registration requirements of the Ohio Secretary of State.
- N. TAXES.** Pursuant to Section 5739.02 of the Ohio Revised Code, the State is exempt from sales tax.
- O. TRADE.** Pursuant to Section 9.76(B) of the Ohio Revised Code, Contractor warrants that Contractor is not boycotting any jurisdiction with whom the State of Ohio can enjoy open trade, including Israel, and will not do so during the Contract period.

The State of Ohio does not acquire supplies or services that cannot be imported lawfully into the United States. The Contractor certifies that it, its subcontractors, and any agent of the Contractor or its subcontractors, acquire any supplies or services in accordance with all trade control laws, regulations or orders of the United States, including the prohibited source regulations set forth in subpart 25.7, Prohibited Sources, of the Federal Acquisition Regulation and any sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control. A list of those sanctions by country can be found at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx>. These sanctions generally preclude acquiring any supplies or services that originate from sources within, or that were located in or transported from or through Cuba, Iran, Libya, North Korea, Syria, or the Crimea region of Ukraine.

- P. TRAVEL.** Any travel that the Contractor requires to perform its obligations under this Contract will be at the Contractor's expense. The State will pay for any additional travel that it requests only with prior written approval. The State will pay for all additional travel expenses that it requests in accordance with Section 126.31 of the Ohio Revised Code and Rule 126-1-02 of the Ohio Administrative Code.
- Q. USE OF MBE AND EDGE VENDORS.** Section 125.081 of the Ohio Revised Code requires State agencies to set-aside purchases for Minority Business Enterprises (MBE) and Executive Order 2008-13S encourages use of Encouraging Diversity, Growth and Equity (EDGE) businesses. Therefore, the State encourages the Contractor to purchase goods and services from Ohio certified MBE and EDGE vendors.

III. CONTRACT CONSTRUCTION

- A. TERM OF CONTRACT.** The effective date of the Contract is the effective date stated in the Contract or the date the Contract is fully executed, whichever is later. The Contract will remain in effect until the earliest of: (1) the ending date stated in the Contract; (2) the Contract is fully performed by both parties; (3) the Contract is canceled or terminated; or (4) the Contract expires at the end of a biennium unless continued by the State.

This Contract may be renewed upon satisfactory performance of activities hereunder, appropriation of funds by the Ohio General Assembly, and at the sole discretion of the State. The State will issue a notice to the Contractor if the State decides to renew this Contract. The Contractor shall not obligate resources in anticipation of a renewal until notice is provided.

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STANDARD TERMS & CONDITIONS

B. CONTRACT AMENDMENTS / WAIVER.

1. **AMENDMENTS.** No change to any provision of this Contract will be effective unless it is in writing and signed by both parties. Notwithstanding the foregoing, the State may reduce non-material changes to writing and provide notice to the Contractor.
2. **WAIVER.** The failure of either party at any time to demand strict performance by the other party of any of the terms of this Contract will not be a waiver of those terms or to any other terms of this Contract. Waivers must be in writing to be effective, and either party may at any later time demand strict performance.

C. ASSIGNMENT / DELEGATION. The Contractor must not assign any of its rights nor delegate any of its duties under this Contract without written consent of the State. Any assignment or delegation not consented to may be deemed void by the State.

D. BINDING EFFECT. Subject to the limitations on assignment provided elsewhere in this Contract, this Contract will be binding upon and inure to the benefit of the respective successors and assigns of the State and the Contractor.

E. LANGUAGE CONSTRUCTION. This Contract will be construed in accordance with the plain meaning of its language and neither for nor against the drafting party.

F. DAYS. When this Contract refers to days, it means calendar days, unless it expressly provides otherwise.

G. HEADINGS. The headings in this Contract are for convenience only and will not affect the interpretation of any of the Contract terms and conditions.

H. INJUNCTIVE RELIEF. Nothing in this Contract is intended to limit the State's right to injunctive relief if such is necessary to protect its interests or to keep it whole.

I. NOTICES. For any notice under this Contract to be effective the notice must be made in writing and delivered to the appropriate contact provided in the Contract.

J. ORDER OF PRIORITY. Unless otherwise stated elsewhere in this Contract, the Special Terms and Conditions will take precedence over the Standard Terms and Conditions. If there is any inconsistency or conflict between this Contract and any provision incorporated by reference by the Contractor, this Contract will prevail.

K. PUBLICITY. The Contractor shall not do the following without prior, written consent from the State:

1. Advertise that the Contractor is doing business with the State;
2. Use this Contract as a marketing or sales tool; or
3. Affix any advertisement or endorsement, including any logo, graphic, text, sound, video, and company name, to any State-owned property, application, or website, including any website hosted by Contractor or a third party.

L. SEVERABILITY. If any provision of the Contract or the application of any provision is held by a court to be contrary to law, the remaining provisions of the Contract will remain in full force and effect.

M. SUBCONTRACTING. The State recognizes that it may be necessary for the Contractor to use a subcontractor to perform a portion of the work under the Contract. In those circumstances, the Contractor shall submit a list identifying the Contractor's subcontractors. The Contractor may not enter into subcontracts related to the Contract after award without written approval from the State. If any change occurs during the term of the Contract, that requires a change to identified subcontractors, the Contractor shall amend its list of subcontractors and request written approval from the State. The State reserves the right to reject any subcontractor submitted by the Contractor.

All subcontracts will be at the sole expense of the Contractor and the Contractor will be solely responsible for payment of its subcontractors. The Contractor assumes responsibility for all subcontracting and third-party manufacturer work performed under the Contract. In addition, all

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subcontractors agree to be bound by all of the Terms and Conditions and specifications of the Contract. The Contractor will be the sole point of contact with regard to all contractual matters.

- N. SURVIVORSHIP.** All sections herein relating to payment, confidentiality, license and ownership, indemnification, maintenance, publicity, warranties and limitations on damages shall survive the termination of this Contract.

IV. ORDER AND PAYMENT PROVISIONS

- A. CERTIFICATION OF FUNDS/PURCHASE ORDER REQUIREMENTS.** None of the duties or obligations in this Contract are binding on the State, and the Contractor will not begin performance on this Contract, until all of the following conditions are met:

1. All statutory provisions under the Ohio Revised Code have been met.
2. All necessary funds are made available by the appropriate Ordering Agency.
3. If applicable, an official State of Ohio Purchase Order (P.O.) has been issued from the appropriate Ordering Agency.
4. If required, the Controlling Board of Ohio has approved the purchase in accordance with Section 127.16 of the Ohio Revised Code.

- B. CONTRACT ORDERS.** Ordering Agencies will order supplies or services under this Contract from the Contractor directly. The Contractor may receive orders made by Ordering Agencies by telephone, facsimile, electronically, in person, payment card (if applicable) or purchase order from authorized employees of the Ordering Agency. Neither the Ordering Agency nor the Contracting Agency will be responsible for orders placed by unauthorized employees.

- C. INVOICE REQUIREMENTS.** The Contractor or dealer, authorized to submit invoices, must submit an original invoice to the office designated in the purchase order. The Contractor will only be compensated for the Deliverables accepted by the State. To be a proper invoice, the invoice must include the following:

1. The purchase order number authorizing the delivery of supplies or services;
2. State of Ohio Contract Number (if applicable);
3. Agency Name;
4. Agency Billing Address;
5. Delivery location of supplies or services;
6. Contractor Name;
7. Contractor Address;
8. Contractor's Unique Invoice Number;
9. Date that services were provided or that supplies were delivered;
10. Itemization of supplies or services provided, including cost;
11. For leases, the invoice must also include the payment number (e.g., 1 of 36);
12. For time and material Contracts, the invoice must reflect labor hours actually worked and, if applicable, supplies used; and;
13. Clear statement of total payment expected.

- D. PAYMENT DUE DATE AND PROCESS.** Unless otherwise stated in this Contract and in accordance with Section 126.30 of the Ohio Revised Code payments under this Contract will be due on the 30th calendar day after the date of actual receipt of a proper invoice in the office designated to receive the invoice. The date payment is issued by the State will be considered the date payment is made. Payment of an invoice by the State will not prejudice the State's right to object to or question that or any other invoice or matter in relation thereto. The State's preferred method of payment is by electronic funds transfer. However, the Ordering Agency may also make payment by State of Ohio payment card or by warrant issued by the Auditor of State. At the time of Contract award, Contractor must be able to accept all forms of payment from the State and Ordering Agency.

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V. LIABILITY PROVISIONS

A. **GENERAL REPRESENTATIONS AND WARRANTIES.** The Contractor warrants that:

1. The recommendations, guidance, and performance of the Contractor under this Contract will be in accordance with the industry's professional standards, the requirements of this Contract and without any material defect.
2. No Deliverable will infringe on the intellectual property rights of any third party.
3. All warranties are in accordance with the Contractor's standard business practices.
4. The Deliverables are merchantable and fit for the particular purpose described in this Contract and will perform substantially in accordance with its user manuals, technical materials, and related writings.
5. The Deliverables comply with all governmental, environmental and safety standards.
6. The Contractor has the right to enter into this Contract.
7. The Contractor has not entered into any other contracts or employment relationships that restrict the Contractor's ability to perform under this Contract.
8. The Contractor will observe and abide by all applicable laws and regulations, including those of the State regarding conduct on any premises under the State's control.
9. The Contractor has good and marketable title to any Deliverable delivered under this Contract for which title passes to the State.
10. The Contractor has the right and ability to grant the license granted in any Deliverable for which title does not pass to the State.

If any work of the Contractor or any Deliverable fails to comply with these warranties, and the Contractor is so notified in writing, the Contractor will correct such failure in a commercially reasonable time or as specified in the Contract. If the Contractor fails to comply, the Contractor will refund the amount paid for the Deliverable. The Contractor will also indemnify the State for any direct damages and claims by third parties based on breach of these warranties.

Any other express warranties offered by the Contractor shall be a minimum of one year or the Contractor's standard warranty whichever is longer.

B. **INDEMNITY.** The Contractor must indemnify the State for any and all claims, damages, lawsuits, costs, judgments, expenses, and any other liabilities including, but not limited to, bodily injury to any person (including injury resulting in death) or damage to property, that may arise out of, or are related to, the Contractor's performance under this Contract, providing such is due to the negligence or other tortious conduct of the Contractor, the Contractor's employees, agents, or subcontractors.

The Contractor must also indemnify the State against any claim of infringement of a copyright, patent, trade secret, or similar intellectual property right based on the State's proper use of any Deliverable under this Contract. This obligation of indemnification will not apply where the State has modified or misused the Deliverable and the claim of infringement is based on the modification or misuse. If a successful claim of infringement is made, or if the Contractor reasonably believes that an infringement claim that is pending may actually succeed, the Contractor must take one (1) of the following four (4) actions:

1. Modify the Deliverable so that the Deliverable is no longer infringing;
2. Replace the Deliverable with an equivalent or better item;
3. Acquire the right for the State to use the infringing Deliverable as intended; or
4. Remove the infringing Deliverable and refund the fee the State paid for such Deliverable and any other affected Deliverable.

The State agrees to give the Contractor notice of any such claim as soon as reasonably practicable and to give the Contractor the authority to settle or otherwise defend any such claim upon consultation with and approval by the Office of the Ohio Attorney General.

C. **WORKERS' COMPENSATION.** The Contractor will maintain workers' compensation insurance, as required by Ohio law or the laws of any other state where work under this Contract will be done. The Contractor will also maintain employer's liability insurance with at least a \$1,000,000.00 limit.

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- D. AUTOMOBILE AND GENERAL LIABILITY INSURANCE.** During the term of the Contract and any renewal thereto, the Contractor, and any agent of the Contractor, at its sole cost and expense shall maintain a policy of Automobile Liability Insurance in accordance with the State and Federal laws, unless otherwise stated. In addition, Contractor shall carry Commercial General Liability Insurance coverage with a \$1,000,000 annual aggregate and a \$500,000 per occurrence limit for bodily injury, personal injury, wrongful death and property damage. The defense cost shall be outside the policy limits. Such policy shall designate the State of Ohio as an Additional Insured, as its interest may appear. The policy shall also be endorsed to include a blanket waiver of subrogation and a statement that the Contractor's commercial general liability insurance shall be primary over any other coverage. Umbrella/excess liability insurance may be used to meet the required limits and the coverage must follow form. The State reserves the right to approve all policy deductibles and levels of self-insured retention-captive insurance programs and may require the Contractor to have their policy(ies) endorsed to reflect per project / per location general aggregate limits.

Said certificates shall contain a clause or endorsement providing thirty (30) days prior written notice of cancellation, non-renewal or decrease in coverage will be given to the State. Failure of the Contractor to maintain this coverage for the duration of the Contract, and any renewals thereto, may be considered as a default. All insuring companies shall have and maintain at least an A- (Excellent) rating from A.M. Best, unless otherwise approved in writing by the State.

- E. LIMITATION OF LIABILITY.** Notwithstanding any limitation provisions contained in the documents and materials incorporated by reference into this Contract, the parties agree as follows:
1. Neither party will be liable for any indirect, incidental or consequential loss or damage of any kind including but not limited to lost profits, even if the parties have been advised, knew, or should have known of the possibility of damages.
 2. The Contractor further agrees that the Contractor shall be liable for all direct damages due to the fault or negligence of the Contractor.
- F. PRODUCT RECALL.** In the event product delivered has been recalled, seized, or embargoed and/or has been determined to be misbranded, adulterated, or in the case of consumable product, found to be unfit for human consumption by the packer, processor, manufacturer or by any state or federal regulatory agency, the Contractor shall notify the Contracting Agency and all Ordering Agencies within two business days after notice has been given. The Contractor shall, at the option of the Ordering Agency, either reimburse the purchase price or provide an equivalent replacement product at no additional cost. The Contractor shall be responsible for removal and/or replacement of the affected product within a reasonable time as determined by the Ordering Agency. At the option of the Ordering Agency, the Contractor may be required to reimburse storage and handling fees to be calculated from time of delivery and acceptance to actual removal. The Contractor will bear all costs associated with the removal and proper disposal of the affected product. Failure to reimburse the purchase price or provide equivalent replacement product will be considered a default.

VI. PERFORMANCE AND COMPLIANCE

- A. AUDITS.** The Contractor must keep all financial records in a manner consistent with Generally Accepted Accounting Principles (GAAP) or equivalent accounting principles. Additionally, the Contractor must keep separate business records for this project, including records of disbursements and obligations incurred that must be supported by Contracts, invoices, vouchers and other data as appropriate.

During the period covered by this Contract and until the expiration of three (3) years after final payment under this Contract, the Contractor agrees to provide the State, or any authorized representatives providing financial support to the work undertaken hereunder, with access to and the right to examine any books, documents, papers and records of the Contractor involving transactions related to this Contract.

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The Contractor must, for each subcontract in excess of \$2,500, require its subcontractors to agree to the same provisions of this Section. The Contractor may not artificially divide Contracts with its subcontractors to avoid requiring subcontractors to agree to this provision. This provision does not apply to Contracts where federal funds are used and the federal government requires audits of all subcontracts regardless of the amount of the Contract.

The Contractor must provide access to the requested records no later than five (5) business days after the request by the State, the State's designee or any party with audit rights. If an audit reveals any material deviation from the Contract requirements, any misrepresentations, or overcharge to the State or any other provider of funds for the Contract, the State or other party will be entitled to recover damages as well as the cost of the audit.

- B. F.O.B. DESTINATION/ACCEPTANCE.** The Contractor must provide Deliverables under this Contract F.O.B. Destination. The place of destination will be specified by the Ordering Agency on the agency's purchase order or other ordering document. Cost of the freight must be borne and paid by the Contractor unless otherwise stated.

All risk of loss, regardless of the cause, will remain with the Contractor until title to the Deliverable passes to the State. Unless otherwise provided in this Contract, the State will determine whether the Contractor provided each Deliverable required in this Contract and has fully met all work requirements of this Contract. Title to any Deliverables will pass to the State on Acceptance of the Deliverable.

- C. RETURNED GOODS.** When the use of this Contract involves the purchase of goods, the following applies:

1. Returned goods, when due to Contractor error (i.e. over-shipment, defective merchandise, unapproved substitution, etc.), shall be returned to the Contractor at the Contractor's expense. The Contractor shall make arrangements to remove the returned goods from the ordering agency premises within seven (7) calendar days after notification. The Contractor shall not apply any restocking or other charges to the ordering agency. At the option of the ordering agency, replacement items may be accepted and will be shipped within seven (7) calendar days of notification. Failure of the Contractor to arrange for return of the items within the specified time will result in the items being deemed as abandoned property and the ordering agency will dispose of accordingly.
2. For orders of custom manufactured items, the Contractor must provide a production sample of the item to the ordering agency for acceptance. The production sample must be identical to the item to be provided. The ordering agency will provide written acceptance of the item prior to the Contractor continuing with production. Once delivery and acceptance has been completed and the ordering agency determines for any reason that any remaining quantities will not be used, the agency may request the return of the custom manufactured items. Acceptance of the return of custom manufactured items will be at the option of the Contractor. Failure of the Contractor to provide a production sample and obtain written approval from the ordering agency will result in the Contractor bearing all responsibility and costs associated with the return of these goods.
3. Returned goods of regular catalog stock merchandise, when due to agency error (i.e. over purchase, discontinued use, inventory reduction, etc.) will be accepted by the Contractor if notice is given by the agency within six (6) months of delivery and acceptance. All items to be returned must be unused and in their original containers and in suitable condition for resale. Return of regular stock catalog merchandise, when delivery and acceptance exceed six (6) months will be at the option of the Contractor.

- D. CUSTOM DELIVERABLES.** All custom work done by the Contractor and covered by this Contract will belong to the State with all rights, title, and interest in all intellectual property that comes into existence through the Contractor's work under this Contract being assigned to the State. Additionally, the Contractor waives any shop rights, author rights, and similar retained interests in any such custom developed materials. The Contractor must provide the State with all assistance reasonably needed to vest such rights of ownership in the State. However, the Contractor will retain ownership of all tools, methods, techniques, standards, and other development procedures, as well as generic and

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preexisting shells, subroutines, and similar material incorporated in any custom Deliverable ("Pre-existing Materials").

The Contractor grants the State a worldwide, non-exclusive, royalty-free, perpetual license to use, modify, sell, and otherwise distribute all Pre-existing Materials that are incorporated in any custom-developed Deliverable. The Contractor may not include in any custom Deliverable any intellectual property unless such has been created under this Contract or qualifies as Pre-existing Material. If the Contractor wants to incorporate any Pre-existing Materials in a custom Deliverable, the Contractor must disclose that desire to the State and obtain written approval from the State for doing so in advance. On the request of the Contractor, the State will incorporate any proprietary notice that Contractor may reasonably want for any Pre-existing Materials included in a custom Deliverable in all copies the State makes of that Deliverable. Subject to the limitations and obligations of the State with respect to Pre-existing Materials, the State may make all custom Deliverables available to the general public without any proprietary notices of any kind.

- E. FORCE MAJEURE (EXCUSABLE DELAY).** Neither party will be liable for any delay in its performance that arises from causes beyond its or its subcontractor's control and without its or its subcontractor's negligence or fault. For purposes of this Section, the term "force majeure event" includes without limitation, the following: Acts of God, such as pestilence, lightning, earthquakes, fires, storms, hurricanes, tornadoes, floods, washouts, droughts, severe weather. Additional circumstances and events include epidemics, explosions, restraining of government and people, war, strikes, and other similar events or causes.

If the State or the Contractor cannot perform any part of its obligations under this Contract because of force majeure, that party is excused from those obligations, to the extent that performance is prevented by the force majeure event and that party took all commercially reasonable steps to mitigate or avoid the effects of the force majeure event. If there is only a delay in performance, such delay may extend only for that time lost because of the force majeure event. At any time a party is unable to perform those above-referenced obligations, it must also do the following:

1. Promptly notify the other party, in writing, of any material delay in performance due to a specified force majeure event;
2. Provide detailed information of the force majeure event;
3. Provide a proposed revised performance date to make up for performance delays due to the force majeure event. When applicable, the revised schedule must provide for performance time not to exceed the time lost as a result of the force majeure event.

- F. CONTRACT PERFORMANCE MANAGEMENT.** The Contracting and Ordering Agencies are responsible for administering and monitoring the Contractor's compliance and performance on this Contract. Therefore, the Contractor must respond to complaints about performance of the obligations in this Contract to such entities in a timely manner. If the Contractor fails to perform any one of its obligations under this Contract, it will be in default.

If the Contractor fails to satisfactorily correct the performance or compliance issue within the time designated by the Agency, the Contracting Agency may employ all available options and remedies, including termination of the Contract if necessary to resolve the Contractor's continued nonperformance or noncompliance.

- G. QUALITY ASSURANCE.** At the option of the Contracting or Ordering Agency samples may be taken from deliveries made and submitted for laboratory tests. The Ordering Agency will bear the cost of testing when samples are found to be in compliance with the Contract. If samples do not conform to the Contract, Contractor will bear the costs of testing and the terms and conditions of the Suspension/Termination provision of this Contract will be applied.

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H. CONTRACT REMEDIES.

1. **Actual Damages.** The Contractor is liable to the State for all actual and direct damages caused by the Contractor's default. The State may self-perform or buy substitute Deliverables from a third party for those that were to be provided by the Contractor. The State may recover the costs associated with acquiring substitute Deliverables, less any expenses or costs avoided by the Contractor's default.
2. **Liquidated Damages.** If actual and direct damages are uncertain or difficult to determine, the State may recover liquidated damages. Unless otherwise specified, liquidated damages will be in the amount of 1% of the value of the order, Deliverable, or milestone that are the subject of the default, for every day that the default is not cured by the Contractor.
3. **Deduction of Damages from Contract Price.** The State may withhold payment and deduct all or any part of the damages resulting from the Contractor's default from any part of the Contractor's compensation still due on the Contract.

- I. **SUSPENSION/TERMINATION.** In the event of suspension or termination the State will issue a notice. Any notice of suspension or termination, in full or in part, will be effective as specified in the notice. The Contractor must immediately cease all work, refuse any additional orders, and take all steps necessary to minimize the costs the Contractor will incur related to this Contract as directed by the notice. Suspension, termination or expiration of this Contract will not limit the Contractor's continuing obligations with respect to Deliverables that the State paid for or limit the State's rights in such.

At the State's request, the Contractor must immediately prepare a final report and deliver such report to the State. The report must detail the work completed and/or the orders received and not processed prior to the time of notice. If applicable, the report must include the percentage of the Project's completion, estimated time for delivery of all orders received but not processed, any costs incurred by the Contractor in doing the Project to date, and any Deliverables completed or partially completed but not delivered to the State at the time of notice. Based on the State's approval of the final report and as directed, the Contractor must deliver work, whether completed or not, to the State. Any delivered work will be subject to approval by the State. The Contractor may be entitled to payment for any Deliverables that have been delivered and accepted at a pro-rated amount based on the compensation structure of this Contract.

1. **Contract Suspension.**

- a. **Suspension for Cause.** If the Contractor fails to perform any one of the Contractor's obligations under this Contract, the Contractor will be in default and the State may suspend rather than terminate this Contract. In the case of suspension for default, the State will be entitled to all remedies available under this Contract.
- b. **Suspension for Convenience.** In the case of a suspension for the State's convenience, the amount of compensation due to the Contractor for work performed before the suspension will be determined in the same manner as provided in Section I.2.a. for termination for the State's convenience or the Contractor may be entitled to compensation for work performed before the suspension.

The notice of suspension whether, with or without cause, will be effective immediately, on the Contractor's receipt of the notice.

2. **Contract Termination.**

- a. **Termination for Convenience.** The State may terminate this Contract, or an Ordering Agency may terminate an Order, for its convenience after issuing written notice to the Contractor. The Contractor will be entitled to the pro-rated contract price for any Deliverable or portion of a Deliverable that the Contractor has delivered and the State has accepted before the termination. Total payments will not exceed the amount payable to the Contractor as if the Contract had been fully performed. This will be the Contractor's exclusive remedy in the case of termination for convenience and is available to the Contractor only after the Contractor has submitted a proper invoice.

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b. **Termination for Cause.** If the Contractor fails to perform any of its obligations under this Contract, the Contractor will be in default and the State may terminate this Contract in accordance with this Section. Termination for cause includes but is not limited to:

- 1) **Termination for Persistent Default.** The State may terminate this Contract for defaults that are cured, but are persistent. "Persistent" means three or more defaults. After the State has notified the Contractor of its third default, the State may terminate this Contract without providing the Contractor with an opportunity to cure. The three defaults are not required to be related to each other in any way.
- 2) **Termination for Endangered Performance.** The State may terminate this Contract if the State determines that the performance of the Contract is endangered through no fault of the State.
- 3) **Termination for Financial Instability.** The State may terminate this Contract if the Contractor fails to timely pay its subcontractors, files a petition in bankruptcy or similar action, or the State finds other evidence of the Contractor's financial instability.
- 4) **Termination for Delinquency, Violation of Law.** The State may terminate this Contract if the State determines that the Contractor is delinquent in its payment of federal, state or local obligations including but not limited to taxes, workers' compensation insurance premiums, unemployment compensation contributions, child support, court costs or any other obligation owed to a State agency or political subdivision. The State also may terminate this Contract if the State determines that the Contractor has violated any law during the performance of this Contract.
- 5) **Termination for Subcontractor Default.** The State may terminate this Contract for the default caused by the Contractor's subcontractors. Any claims of its subcontractors due to suspension or termination will be the sole responsibility of the Contractor.
- 6) **Termination for Failure to Retain Certification, License, and Permits.** The State may immediately terminate the Contract if Contractor fails to obtain and maintain all official permits, approvals, licenses, certifications (Including CRP, MBE, EDGE and Veteran Friendly Business Enterprise certifications), and similar authorizations required by this Contract or by any local, state, or federal law throughout the duration of this Contract.

J. **TIME IS OF THE ESSENCE.** Time is of the essence in this Contract. The Contractor must deliver Deliverables and meet milestones as required by the Contract or coordinate an acceptable date and time for delivery with the Ordering Agency. If the Contractor is not able to or does not provide the Deliverables to the Ordering Agency or meet milestones by the date and time set forth in the Contract or agreed upon by the parties, the State may obtain any remedy as described herein or any other remedy at law.

K. **ePROCUREMENT.** This contract will become part of an eProcurement System which will provide electronic contract and catalog hosting and management services. Ordering Agencies will access a web-based site to place orders for the procurement of goods and services using State of Ohio contracts. The Contractor agrees to establish, maintain and support an online contract and catalog.

VII. DATA AND INFORMATION CONTROL

A. **CONFIDENTIALITY.** The Contractor may learn of information, documents, data, records, or other material that is confidential in the performance of this Contract. The Contractor may not disclose any information obtained by the Contractor as a result of this Contract, without the written permission of the State. The Contractor must assume that all State information, documents, data, source codes, software, models, know-how, trade secrets, or other material is confidential. In addition, the Contractor may not disclose any documents or records excluded by Ohio law from public records disclosure requirements.

The Contractor's obligation to maintain the confidentiality of the information will not apply where the information:

1. Was already in the Contractor's possession before disclosure by the State, and the information was received by the Contractor without the obligation of confidence;
2. Is independently developed by the Contractor;

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3. Is or becomes publicly available without breach of this Contract except as provided in the next full paragraph;
4. Is rightfully received by the Contractor from a third party without an obligation of confidence;
5. Is disclosed by the Contractor with the written consent of the State; or
6. Is released in accordance with a valid order of a court or governmental agency, provided that the Contractor:
 - a. Notifies the State of such order immediately upon receipt of the order; and
 - b. Makes a reasonable effort to obtain a protective order from the issuing court or agency limiting disclosure and use of the confidential information solely for the purposes intended to be serviced by the original order of production.

Although some sensitive personal information, such as medical records, addresses, telephone numbers, and social security numbers may be publicly available through other sources, the Contractor shall not disclose or use such information in any manner except as expressly authorized in this Contract. Therefore, notwithstanding item 3 above, the Contractor does have an obligation to maintain the confidentiality of such sensitive personal information.

The Contractor must return all originals of any information provided by the State and destroy any copies the Contractor has made on termination or expiration of this Contract.

The Contractor will be liable for the disclosure of any confidential information. The parties agree that the disclosure of confidential information of the State may cause the State irreparable damage for which remedies other than injunctive relief may be inadequate, and the Contractor agrees that in the event of a breach of the obligations hereunder, the State shall be entitled to temporary and permanent injunctive relief to enforce this provision without the necessity of proving actual damages. This provision shall not, however, diminish or alter any right to claim and recover damages.

- B. PUBLIC RECORDS AND RETENTION OF DOCUMENTS AND INFORMATION.** The Contractor acknowledges, in accordance with Section 149.43 of the Ohio Revised Code, that this Contract, as well as any information, Deliverables, records, reports, and financial records related to this Contract are presumptively deemed public records. The Contractor understands that these records will be made freely available to the public unless the State determines that, pursuant to state or federal law, such materials are confidential or otherwise exempt from disclosure. The Contractor must comply with any direction from the State or an Ordering Agency to preserve and/or provide documents and information, in both electronic and paper form, and to suspend any scheduled destruction of such documents and information.
- C. SECURITY & SAFETY RULES.** When using or possessing State data or accessing State networks and systems, the Contractor, its employees, subcontractors and agents must comply with all applicable State rules, policies, and regulations regarding State-provided IT resources, data security and integrity. When on any property owned or controlled by the State, the Contractor must comply with all security and safety rules, regulations, and policies applicable to people on those premises.
- D. USAGE REPORTS.** At no cost to the State and in addition to other reports required by the Contract, the Contractor shall be required to provide quarterly, bi-annual or annual usage reports as requested by all Contracting Agencies and Co-operative Purchasing Program members. The report may include customer name, date of purchase, item description, quantity, dollar value, aggregate sales to date for each customer and other such information. Electronic media is the preferred method for these reports. Failure to provide the requested reports may be deemed as an event of default.