

MA 18P 24080700000000000016  
NEW

**State of Maine**



**Master Agreement**

**Effective Date:** 08/07/24

**Expiration Date:** 02/28/29

**Master Agreement Description:** NASPO Value Point Contract for Lab Equipment & Supplies

**Buyer Information**

Justin Franzose 207-624-7337 ext. justin.franzose@maine.gov

**Issuer Information**

Justin Franzose 207-624-7337 ext. justin.franzose@maine.gov

**Requestor Information**

Justin Franzose 207-624-7337 ext. justin.franzose@maine.gov

**Agreement Reporting Categories**

**Authorized Departments**

ALL

**Vendor Information**

**Vendor Line #:** 1

**Vendor ID**

VS0000026390

**Vendor Name**

Pacific Star Corporation

**Alias/DBA**

Pacific Star Corporation

**Vendor Address Information**

4350 South Wayside Drive #106

Houston, TX 77087

US

**Vendor Contact Information**

Angelica Delgado  
7135270889 ext.  
CUSTOMER@PFSTAR.COM

**Payment Discount Terms**

**Discount 1:** 1.0000%      0      **Days**  
0      **Days**  
0      **Days**  
0      **Days**

**Commodity Information**

**Vendor Line #:** 1

**Vendor Name:** Pacific Star Corporation

**Commodity Line #:** 1

**Commodity Code:** 49300

**Commodity Description:** Miscellaneous Laboratory Supplies, Consumables

**Commodity Specifications:**

**Commodity Extended Description:** Subject to NASPO ValuePoint contract MA2024003

<b>Quantity</b>	<b>UOM</b>	<b>Unit Price</b>
0.00000		0.000000
<b>Delivery Days</b>	<b>Free On Board</b>	
5	FOB Dest, Freight Prepaid	
<b>Contract Amount</b>	<b>Service Start Date</b>	<b>Service End Date</b>
0.00	08/07/24	02/28/29
<b>Catalog Name</b>	<b>Discount</b>	
	0.0000 %	
	<b>Discount Start Date</b>	<b>Discount End Date</b>

**Commodity Terms and Conditions**

**Vendor Line #:** 1

**Commodity Line #:** 1

**T&C #:** 165

**T&C Name:** Payment Terms

**T&C Details:** Net 30

Please see authorized signatures displayed on the next page

Each signatory below represents that the person has the requisite authority to enter into this Contract. The parties sign and cause this Contract to be executed.

State of Maine - Department of Administrative and Financial Services

DocuSigned by:  
*David Morris* 9/16/2024  
2A644AE5681E482

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Signature Date

David Morris, Acting Chief Procurement Officer

Vendor

*Desita Natalia* 9/9/2024

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Signature Date

Desita Natalia - Sales Support

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Print Representative Name and Title

## RIDERS

<input checked="" type="checkbox"/>	The following riders are hereby incorporated into this Contract and made part of it by reference:
<input checked="" type="checkbox"/>	Rider A – Scope of Work and/or Specifications
<input checked="" type="checkbox"/>	Rider B – Terms and Conditions
<input type="checkbox"/>	Rider C - Exceptions
<input type="checkbox"/>	Bid Cover Page and Debarment Form
<input checked="" type="checkbox"/>	Debarment, Performance, and Non-Collusion Certification
<input checked="" type="checkbox"/>	Price sheet
<input type="checkbox"/>	Other – Included at Department’s Discretion

**RIDER A**  
**Scope of Work and/or Specifications**

The purpose of this master agreement is to order laboratory equipment and supplies on an as needed basis. This master agreement is subject to NASPO ValuePoint master agreement #MA2024003, which is attached and hereby incorporated into this contract. All state agencies may submit delivery orders including the agreed upon prices and discounts until the expiration date of the master agreement. All delivery orders and formal price quotations will be subject to the terms, conditions, discounts, and pricing of this master agreement.

- 1. DEFINITIONS:** The following definitions are applicable to these standard terms and conditions:
  - a. The term “Buyer” or “State” shall refer to the Government of the State of Maine or a person representing the Government of the State of Maine.
  - b. The term “Department” or “DAFS” shall refer to the State of Maine Department of Administrative and Financial Services.
  - c. The term “Bureau” or “BGS” shall refer to the State of Maine Bureau of General Services.
  - d. The term “Office” shall refer to the State of Maine Office of State Procurement Services.
  - e. The term “Contractor”, “Vendor”, or “Provider” shall refer to the organization that is providing goods and/or services through the contract to which these standard terms and conditions have been attached and incorporated.
  - f. The term “Contract” or “Agreement” shall refer to the contract document to which these standard terms and conditions apply, taking the format of a Buyer Purchase Order (BPO) or Master Agreement (MA) or other contractual document that is mutually agreed upon between the State and the Contractor.
  
- 2. WARRANTY:** The Contractor warrants the following:
  - a. That all goods and services to be supplied by it under this Contract are fit and sufficient for the purpose intended, and
  - b. That all goods and services covered by this Contract will conform to the specifications, drawing samples, symbols or other description specified by the Office, and
  - c. That such articles are merchantable, good quality, and free from defects whether patent or latent in material and workmanship, and
  - d. That all workmanship, materials, and articles to be provided are of the best grade and quality, and
  - e. That it has good and clear title to all articles to be supplied by it and the same are free and clear from all liens, encumbrances and security interest.

Neither the final certificate of payment nor any provision herein, nor partial nor entire use of the articles provided shall constitute an acceptance of work not done in accordance with this agreement or relieve the Contractor liability in respect of any warranties or responsibility for faulty material or workmanship. The Contractor shall remedy any defects in the work and pay any damage to other work resulting therefrom, which shall appear within one year from the date of final acceptance of the work provided hereunder. The Office shall give written notice of observed defects with reasonable promptness.

**3. TAXES:** Contractor agrees that, unless otherwise indicated in the order, the prices herein do not include federal, state, or local sales or use tax from which an exemption is available for purposes of this order. Contractor agrees to accept and use tax exemption certificates when supplied by the Office as applicable. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Contractor, Contractor agrees to notify the Office and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to the Office.

**4. PACKING AND SHIPMENT:** Deliveries shall be made as specified without charge for boxing, carting, or storage, unless otherwise specified. Articles shall be suitably packed to secure lowest transportation cost and to conform to the requirements of common carriers and any applicable specifications. Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading, and shipping orders. Bill of lading should accompany each invoice. Count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**5. DELIVERY:** Delivery should be strictly in accordance with delivery schedule. If Contractor's deliveries fail to meet such schedule, the Office, without limiting its other remedies, may direct expedited routing and the difference between the expedited routing and the order routing costs shall be paid by the Contractor. Articles fabricated beyond the Office's releases are at Contractor's risk. Contractor shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet delivery schedule, and, unless otherwise specified herein, no deliveries shall be made in advance of the Office's delivery schedule. Neither party shall be liable for excess costs of deliveries or defaults due to the causes beyond its control and without its fault or negligence, provided, however, that when the Contractor has reason to believe that the deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to the Office. If the Contractor's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Contractor and subcontractor and without fault of negligence or either of them and the articles or services to be furnished were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

**6. FORCE MAJEURE:** The State may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The State may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

**7. INSPECTION:** All articles and work will be subject to final inspection and approval after delivery, notwithstanding prior payment, it being expressly agreed that payment will not constitute final acceptance. The Office, at its option, may either reject any article or work not in conformity with the requirements and terms of this order, or re-work the same at Contractor's expense. The Office may reject the entire shipment where it consists of a quantity of similar articles and sample inspection discloses that ten (10%) percent of the articles inspected are defective, unless Contractor agrees to reimburse the Office for the cost of a complete inspection of the articles included in such shipment. Rejected material may be returned at Contractor's risk and expense at the full invoice price plus applicable incoming transportation charges, if any. No replacement of defective articles of work shall be made unless specified by the Office.

**8. INVOICE:** The original and duplicate invoices covering each and every shipment made against this order showing Contract number, Vendor number, and other essential particulars,

must be forwarded promptly to the ordering agency concerned by the Vendor to whom the order is issued. Delays in receiving invoice, and any errors or omissions on statements, will be considered just cause for withholding settlement without losing discount privileges. All accounts are to be carried in the name of the agency or institution receiving the goods, and not in the name of the Office.

**9. ALTERATIONS:** The Office reserves the right to increase or decrease all or any portion of the work and the articles required by the bidding documents or this agreements, or to eliminate all or any portion of such work or articles or to change delivery date hereon without invalidating this Agreement. All such alterations shall be in writing. If any such alterations are made, the contract amount or amounts shall be adjusted accordingly. In no event shall Contractor fail or refuse to continue the performance of the work in providing of articles under this Agreement because of the inability of the parties to agree on an adjustment or adjustments.

**10. TERMINATION:** The Office may terminate the whole or any part of this Agreement in any one of the following circumstances:

- a. The Contractor fails to make delivery of articles, or to perform services within the time or times specified herein, or
- b. If Contractor fails to deliver specified materials or services, or
- c. If Contractor fails to perform any of the provisions of this Agreement, or
- d. If Contractor so fails to make progress as to endanger the performance of this Agreement in accordance with its terms, or
- e. If Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed on account of its insolvency, or
- f. Whenever for any reason the State shall determine that such termination is in the best interest of the State to do so.

In the event that the Office terminates this Agreement in whole or in part, pursuant to this paragraph with the exception of (f), the Office may procure (articles and services similar to those so terminated) upon such terms and in such manner as the Office deems appropriate, and Contractor shall be liable to the Office for any excess cost of such similar articles or services.

**11. NON-APPROPRIATION:** Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

**12. COMPLIANCE WITH APPLICABLE LAWS:** Contractor agrees that, in the performance hereof, it will comply with applicable laws, including, but not limited to statutes, rules, regulations or orders of the United States Government or of any state or political subdivision(s) thereof, and the same shall be deemed incorporated herein by reference. Awarding agency requirements and regulations pertaining to copyrights and rights in data. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Retention of all required records for three years after grantees or



subgrantees make final payments and all other pending matters are closed. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act, (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000). Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

**13. INTERPRETATION:** This Agreement shall be governed by the laws of the State of Maine as to interpretation and performance.

**14. DISPUTES:** The Office will decide any and all questions which may arise as to the quality and acceptability of articles provided and installation of such articles, and as to the manner of performance and rate of progress under this Contract. The Office will decide all questions, which may arise as to the interpretation of the terms of this Agreement and the fulfillment of this Agreement on the part of the Contractor.

**15. ASSIGNMENT:** None of the sums due or to become due nor any of the work to be performed under this order shall be assigned nor shall Contractor subcontract for completed or substantially completed articles called for by this order without the Office's prior written consent. No subcontract or transfer of agreement shall in any case release the Contractor of its obligations and liabilities under this Agreement.

**16. STATE HELD HARMLESS:** The Contractor agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and other persons, firm or corporation furnishing or supplying work, services, articles, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.

**17. SOLICITATION:** The Contractor warrants that it has not employed or written any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and it has not paid, or agreed to pay any company, or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Office shall have the absolute right to annul this agreement or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

**18. WAIVER:** The failure of the Office to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition or the future exercise of such right, but the obligation of Contractor with respect to such future performance shall continue in full force and effect.

**19. MATERIAL SAFETY:** All manufacturers, importers, suppliers, or distributors of hazardous chemicals doing business in this State must provide a copy of the current Material Safety Data Sheet (MSDS) for any hazardous chemical to their direct purchasers of that chemical.

**20. COMPETITION:** By accepting this Contract, Contractor agrees that no collusion or other restraint of free competitive bidding, either directly or indirectly, has occurred in connection with this award by the Office.

**21. INTEGRATION:** All terms of this Contract are to be interpreted in such a way as to be consistent at all times with this Standard Terms and Conditions document, and this document shall take precedence over any other terms, conditions, or provisions incorporated into the Contract.

**22. ORDER OF PRECEDENCE.** In the event of a conflict between the documents comprising this Agreement, the Order of Precedence shall be:

- a. Exceptions - If applicable
- b. General Terms & Conditions for Goods and/or Services under Buyer Purchase Orders and Master Agreements
- c. Scope of Work - If applicable
- d. Vender Agreement - Included at Department's Discretion
- e. Other - Included at Department's Discretion

**23. CYBERSECURITY AND PROHIBITED TECHNOLOGIES:** The Provider certifies to the best of Provider's knowledge and belief that the aforementioned organization, its principals and any subcontractors named in this Contract:

- a. is not a foreign adversary business entity, <https://www.maine.gov/oit/prohibited-technologies>, Title 5 MRSA §2021 (3); and
- b. is not on the list of prohibited companies or does not obtain or purchase any information or communications technology or services included on the list of prohibited information and communications technology and services <https://www.maine.gov/oit/prohibited-technologies>, Title 5 MRSA §2030-B.

A person who knowingly signs this contract, in violation of this section, commits a civil violation for which a fine may be adjudged in an amount that is twice the amount of this contract or \$250,000, whichever is greater, Title 5 MRSA §2030-A.

**Participating Addendum  
for  
Laboratory Equipment and Supplies  
between  
State of Maine  
and  
Pacific Star Corporation**

This Participating Addendum is entered into by State of Maine (“Participating Entity”) and the following Contractor (each a “Party” and collectively the “Parties”) for the purpose of participating in NASPO ValuePoint Master Agreement Number MA2024003, executed by Contractor and the State of Maine (“Lead State”) for Laboratory Equipment and Supplies (“Master Agreement”):

Pacific Star Corporation (“Contractor”)  
4350 South Wayside Drive #106  
Houston, TX 77087

**I. PARTICIPATING ADDENDUM CONTACTS.**

Contractor’s contact for this Participating Addendum is:

Desita Natalia  
Sales Support  
desita@pfstar.com  
713-527-0889 X: 123

Participating Entity’s contact for this Participating Addendum is:

Justin Franzose  
Procurement Analyst II  
justin.franzose@maine.gov  
207-624-7337

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below or 8/30/2024, whichever is later, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- III. PARTICIPATION AND USAGE.** This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity’s use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.
- IV. GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity’s laws.
- V. SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to Contractor and Participating Entity and Purchasing Entities.
  - a. Products.** All products available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
  - b. Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
  - c. Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor’s NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor’s subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto.

**Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.** The terms of this Participating Addendum, including those modifying or adding to the terms of the Master Agreement, apply only to the Parties and shall have no effect on Contractor's participating addenda with other participating entities or Contractor's Master Agreement with the Lead State.

- VI. ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Master Agreement Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.
- VII. PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.** Pacific Star will send State of Maine quarterly usage reports.
- VIII. FEDERAL FUNDING REQUIREMENTS.** 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. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.
- IX. ATTACHMENTS.** This Participating Addendum includes the following attachments:
- a. Attachment A: Participating Entity Modifications and Additions to Master Agreement Terms and Conditions:
    - I. EQUAL EMPLOYMENT OPPORTUNITY During the performance of this contract, the Contractor agrees as follows. A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation, unless related to a bona fide occupational qualification. The Contractor shall take affirmative action to ensure that applicants are employed and employees are treated during their employment, without regard to their race, color, religion, sex, age, national origin, physical or mental disability, or sexual orientation. Such action shall include, but not be limited to, the following: employment, upgrading, demotions, transfers, recruitment or recruitment advertising; layoffs or terminations; rates of pay or other forms of compensation; and selection for training, including apprenticeship. B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religious creed, sex, national origin, ancestry, age, physical or mental disability, or sexual orientation. C. The Contractor will send to each labor union or representative of the workers with which he has a collective or bargaining agreement, or other contract or understanding, whereby he is furnished with labor for the performances of his contract, a notice, to be provided by the contracting department or agency, advising the said labor union or workers' representative of the Contractor's commitment under this section and shall post copies of the notice in conspicuous places available to employees and to applicants for employment. D. The Contractor will cause the foregoing provisions to be inserted in all contracts for any work covered by this agreement so that such provisions will be binding upon each subcontractor. E. Contractors and subcontractors with contracts in excess of \$50,000 will also pursue in good faith affirmative action programs.
    - II. GOVERNING LAW This Agreement shall be governed in all respects by the laws, statutes, and regulations of the United States of America and of the State of Maine. Any

legal proceeding against the State regarding this Agreement shall be brought in State of Maine administrative or judicial forums. The Contractor consents to personal jurisdiction in the State of Maine.

III. STATE HELD HARMLESS The contractor shall release, protect, indemnify and hold the State of Maine and their officers, agencies, and employees, harmless from and against any damage, cost or liability, including reasonable attorney’s fees, for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, his employees or subcontractors or volunteers.

IV. NON-APPROPRIATION Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement. This does not relieve the State or an entity from obligation to pay for products shipped and/or services performed for which funds have been appropriated.

V. ORDERS: Any order placed by a Participating Entity or Purchasing Entity for a product and/or service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the order agree in writing that another contract or agreement applies to such order.

VI. TRAVEL: Standard Business Expenses may be allowed with prior authorization from an Eligible Entity. For Maine, the amount will not be more than that allowed for State of Maine employees (<http://www.maine.gov/osc/travel/per-diem>).

VII. Credit/Procurement Card: The state of Maine may use credit/debit cards, at its choice, for purchases of \$5,000 or under. The same quoted price must be charged for a credit/debit card purchase as a purchase executed through a Purchase Order or Delivery Order (regardless of payment method). No surcharge for credit or debit card purchases is allowed.

**X. NOTICE.** Any notice required herein shall be sent to the following:

For Contractor:

Desita Natalia  
Sales Support  
desita@pfstar.com  
713-527-0889 X: 123

For Participating Entity:

Justin Franzose  
Procurement Analyst II  
justin.franzose@maine.gov  
207-624-7337

**XI. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT.** Upon execution, Contractor shall promptly email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at [pa@naspovaluepoint.org](mailto:pa@naspovaluepoint.org). The Parties acknowledge and agree that the Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

**SIGNATURE**

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

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

**CONTRACTOR:**

*Desita Natalia*

**Signature**

Desita Natalia

**Printed Name**

Sales Support

**Title**

9/9/2024

**Date**

**PARTICIPATING ENTITY:**

DocuSigned by:

*David Morris*

2A644AF5681F482...

**Signature**

David Morris

**Printed Name**

Acting Chief Procurement Officer

**Title**

9/16/2024

**Date**

## MASTER AGREEMENT

### State of Idaho Contract MA2024003

#### Parties

Department of Administration, Division of Purchasing	Pacific Star Corporation
Division of Purchasing 650 W. State St., Room 100 Boise, ID 83720-0075	Pacific Star Corporation 4350 South Wayside Drive, #106 Houston, TX 77087

#### Contract Summary

Contract Number MA2024003 Contract Title: Laboratory Equipment and Supplies Contract Effective: December 1, 2023	Service Start Date: March 1, 2024 Service End Date: February 28, 2029
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#### Recitals

1. This Master Agreement number MA2024003 for Laboratory Equipment and Supplies, Band 1 Full-Line Catalog (“the Master Agreement”) is awarded in collaboration with NASPO ValuePoint by and through the Department of Administration, Division of Purchasing pursuant to state of Idaho solicitation number RFP20232032 (“the Solicitation”).
2. The Contract is issued under the authority provided in the State Procurement Act, title 67, chapter 92, Idaho Code.
3. Pacific Star Corporation (“Contractor”) agrees to provide Property as detailed herein.

#### Agreement

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the parties agree as follows:

#### NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

**I. Definitions**

- 1.1 Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.
- 1.2 Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.3 Embedded Software** means one or more software applications which permanently reside on a computing device.

- 1.4 **Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- 1.5 **Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
- 1.6 **Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
- 1.7 **NASPO ValuePoint** is a division of the National Association of State Procurement Officials (“NASPO”), a 501(c)(3) corporation. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.
- 1.8 **Order** or **Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
- 1.9 **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).
- 1.10 **Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.
- 1.11 **Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.
- 1.12 **Product** or **Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.
- 1.13 **Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

## II. Term of Master Agreement

- 2.1 **Initial Term.** The initial term of this Master Agreement is for five (5) years. The term of this Master Agreement may be amended beyond the initial term for three (3) additional years at the Lead State’s discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead State may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.
- 2.2 **Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.3 **Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period if in the judgment of the Lead State a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead State under its state law to otherwise negotiate contract extensions.



### III. Order of Precedence

- 3.1 Order.** Any Order placed under this Master Agreement will consist of the following documents:
- 3.1.1** A Participating Entity's Participating Addendum ("PA");
  - 3.1.2** NASPO ValuePoint Master Agreement, including all attachments thereto;
  - 3.1.3** A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
  - 3.1.4** The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
  - 3.1.5** Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 3.2 Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.
- 3.3 Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

### IV. Participants and Scope

- 4.1 Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.
- 4.2 Applicability of Master Agreement.** NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum, subject to Section III. For the purposes of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g., purchase order or contract) used by the Purchasing Entity to place the Order.
- 4.3 Authorized Use.** Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating Entities is subject to applicable state law and 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.
- 4.4 Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.
- 4.5 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to [pa@naspovaluepoint.org](mailto:pa@naspovaluepoint.org) to support documentation of participation and posting in appropriate databases.
- 4.6 Eligibility for a Participating Addendum.** Eligible entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent of the Chief Procurement Official of the state where the entity is located. Coordinate requests for such

participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists; the entity must ensure that they have the requisite procurement authority to execute a Participating Addendum.

- 4.7 Prohibition on Resale.** Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products purchased under this Master Agreement. Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.
- 4.8 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.
- 4.9 Release of Information.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan.
- 4.10 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

## V. NASPO ValuePoint Provisions

- 5.1 Applicability.** NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.
- 5.2 Administrative Fees**
- 5.2.1 NASPO ValuePoint Fee.** Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead State's solicitation.
- 5.2.2 State Imposed Fees.** Some states may require an additional fee be paid by Contractor directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee rate or amount, payment method, and schedule for such reports and payments will be incorporated into the applicable Participating Addendum. Unless agreed to in writing by the state, Contractor may not adjust the Master Agreement pricing to include the state fee for purchases made by Purchasing Entities within the jurisdiction of the state. No such agreement will affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by Purchasing Entities outside the jurisdiction of the state requesting the additional fee.
- 5.3 NASPO ValuePoint Summary and Detailed Usage Reports**

- 5.3.1 Sales Data Reporting.** In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum (“Sales Data”). Timely and complete reporting of Sales Data is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.
- 5.3.2 Summary Sales Data.** “Summary Sales Data” is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.
- 5.3.3 Detailed Sales Data.** “Detailed Sales Data” is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.
- 5.3.4 Sales Data Crosswalks.** Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data (“Crosswalks”). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor’s part number or SKU for each Product in Offeror’s catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor’s customer lists and product catalog change.
- 5.3.5 Executive Summary.** Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.
- 5.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review**
- 5.4.1 Staff Education.** Contractor shall work cooperatively with NASPO ValuePoint personnel. Contractor shall present plans to NASPO ValuePoint for the education of Contractor’s contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the master agreement and participating addendum process, and the manner in which eligible entities can participate in the Master Agreement.
- 5.4.2 Onboarding Plan.** Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and

confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

- 5.4.3 Annual Contract Performance Review.** Contractor shall participate in an annual contract performance review with the Lead State and NASPO ValuePoint, which may at the discretion of the Lead State be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, Contractor reporting, and timeliness of payment of administration fees.
- 5.4.4 Use of NASPO ValuePoint Logo.** The NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with NASPO ValuePoint.
- 5.4.5 Most Favored Customer.** Contractor shall, within thirty (30) days of their effective date, notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this Master Agreement or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

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

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

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

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

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

**6.1.1** All prices and rates must be guaranteed through the end of the 2023 calendar year. f

**6.1.2** Contractor may request a price increase no more than once per Contract year by submitting a request to the State at least thirty (30) days prior to the end of the then current term. Price increases must be calculated from the published price list and may only be requested in accordance with changes made by the manufacturer or distributor in their established, nationally distributed price list or published catalog. The Lead State reserves the right to accept or reject any proposed price increase. A price increase will not be effective until approved, in writing, by the Lead State.

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

**VII. Ordering**

- 7.1 Order Numbers.** Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.
- 7.2 Quotes.** Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an “as needed” basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.
- 7.3 Applicable Rules.** Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities’ rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- 7.4 Required Documentation.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- 7.5 Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.
  - 7.5.1** Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement.
  - 7.5.2** Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.
  - 7.5.3** Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
  - 7.5.4** Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement’s terms.
  - 7.5.5** Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.
- 7.6 Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:
  - 7.6.1** The services or supplies being delivered;
  - 7.6.2** A shipping address and other delivery requirements, if any;
  - 7.6.3** A billing address;
  - 7.6.4** Purchasing Entity contact information;
  - 7.6.5** Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
  - 7.6.6** A not-to-exceed total for the products or services being ordered; and
  - 7.6.7** The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.

- 7.7 **Communication.** All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- 7.8 **Contract Provisions for Orders Utilizing Federal Funds.** Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

## VIII. Shipping and Delivery

- 8.1 **Shipping Terms.** All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.
  - 8.1.1 Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor's until final inspection and acceptance when responsibility will pass to the Purchasing Entity except as to latent defects, fraud, and Contractor's warranty obligations.
- 8.2 **Minimum Shipping.** The minimum shipment amount, if any, must be contained in the Master Agreement. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered will be shipped without charge.
- 8.3 **Inside Deliveries.** Delivery is FOB Destination, inside delivery, to the Purchasing Entity's specified address unless otherwise agreed to by Purchasing Entity.. Inside Delivery refers to a delivery to a location other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Costs to repair any damage to the building interior (e.g., scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.
- 8.4 **Packaging.** All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

## IX. Inspection and Acceptance

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

incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

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

**X. Warranty**

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



- 10.6 Contractor hereby disclaims all other warranties, conditions, or guarantees with respect to the subject matter of this agreement, whether statutory, written, oral, express, or implied including, without limitation, any warranty of merchantability, suitability, or fitness for a particular purpose.
- 10.7 To the extent permitted by law, Contractor's cumulative liability to any Purchasing Entity for any loss or damage resulting from any claim, demand, or action under this Agreement shall be limited to the greater of (a) the amount paid by Purchasing Entity to Contractor in the twelve months preceding the claim; or (b) one million dollars (\$1,000,000.00). The foregoing limitation of liability shall not apply to claims that are subject to this Master Agreement's general indemnification and intellectual property indemnification obligations.

**XI. Product Title**

- 11.1 **Conveyance of Title.** Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests.
- 11.2 **Embedded Software.** Transfer of title to the Product must include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license will be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.
- 11.3 **License of Pre-Existing Intellectual Property.** Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"), to the extent necessary to use the Product. The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

**XII. Indemnification**

- 12.1 **General Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement except to the extent that such claims, damages or causes of action are a result of the negligence or willful misconduct of NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, or their officers or employees..
- 12.2 **Intellectual Property Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").
  - 12.2.1 The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
    - 12.2.1.1 provided by the Contractor or the Contractor's subsidiaries or affiliates;
    - 12.2.1.2 specified by the Contractor to work with the Product;
    - 12.2.1.3 reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

**12.2.1.4** reasonably expected to be used in combination with the Product.

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

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

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

### **XIII. Insurance**

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

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

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

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

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

**13.4 Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within 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.

**13.5 Notice of Endorsement.** 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) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.

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

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

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

**XIV. General Provisions**

**14.1 Records Administration and Audit**

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

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

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

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

**14.2.1 Confidentiality.** Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients.

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

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

**14.2.1.3** Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's

possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity; or (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

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

  - 14.2.2.1** Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.
  - 14.2.2.2** Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.
  - 14.2.2.3** Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.
  - 14.2.2.4** Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.
- 14.2.3 Injunctive Relief.** Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be adequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.
- 14.2.4 Purchasing Entity Law.** These provisions will be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.
- 14.2.5 NASPO ValuePoint.** The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead

State of the identity of any entity seeking access to the Confidential Information described in this subsection.

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

**14.3 Assignment/Subcontracts**

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

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

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

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

**14.6 Cancellation.** Unless otherwise set forth herein, this Master Agreement may be canceled by either party upon sixty (60) days' written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

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

**14.8 Defaults and Remedies**

**14.8.1** The occurrence of any of the following events will be an event of default under this Master Agreement:

**14.8.1.1** Nonperformance of contractual requirements;

**14.8.1.2** A material breach of any term or condition of this Master Agreement;

**14.8.1.3** Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;

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

**14.8.1.5** Any default specified in another section of this Master Agreement.

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

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

**14.8.3.1** Any remedy provided by law;

**14.8.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;

**14.8.3.3** Assessment of liquidated damages as provided in this Master Agreement;

**14.8.3.4** Suspension of Contractor from being able to respond to future bid solicitations;

**14.8.3.5** Suspension of Contractor's performance; and

**14.8.3.6** Withholding of payment until the default is remedied.

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

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

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

**14.11 No Waiver of Sovereign Immunity**

**14.11.1** In no event will this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a

Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

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

**14.12 Governing Law and Venue**

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

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

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

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

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

**Signatures**

Division of Purchasing

Pacific Star Corporation

Signature: *Chelsea Robillard*

Signature: *Desita Natalia*

Name: Chelsea Robillard

Name: Desita Natalia

Title: State Purchasing Manager

Title: Sales Support

Date: January 8, 2024

Date: 01/08/2024

**Attachments**

Appendix A – Scope of Work  
Appendix B – Cost/Category Discounts



## **Appendix A**

### **SCOPE OF WORK**

#### **I. Master Agreement Objectives**

The purpose of this competitive solicitation is to develop contracts for the purchase of laboratory equipment and supplies. The RFP is requesting proposals on two (2) defined bands ("Bands") of laboratory equipment and supplies, as follows:

Band 1 FULL-LINE CATALOG of laboratory equipment and supplies, excluding microscopes. Unless otherwise excluded, the resulting contract for this Band will include all laboratory equipment and supplies.

Band 2 MICROSCOPES

Offerors responding to Band 1, Full-Line Catalog and/or Band 2, Microscopes MUST accept orders from and extend contract prices to all 50 states and U.S. territories, to include qualified public entities and qualified non-profits.

#### **II. Master Agreement Deliverables**

##### **A. BAND 1 – FULL-LINE CATALOG**

Full-line catalog of laboratory equipment and supplies. Unless otherwise excluded, the resulting contract for this Band will include all laboratory equipment and supplies.

##### **B. BAND 2 - MICROSCOPES**

Microscopes including parts and components (e.g. illuminators, condensers, eyepieces, objectives, filters, stands, arms, bulbs, heads, power supplies, cases, dust covers, workbenches, cameras, monitors, keyboards, mouses, software, maintenance, and support etc.) commonly used in a wide variety of public entity settings for educational, research, clinical requirements; including microscopes designed for applications in life sciences; materials sciences; and forensic sciences; as well as in environmental and industrial settings.

Including, *but not limited to*, the following types:

- Student microscope
- Monocular/Digital Compound Monocular microscopes
- Binocular/Digital Compound Binocular microscopes
- Trinocular Compound microscopes
- Dual-View Binocular compound microscopes
- Stereo/Digital stereo microscopes
- Digital Zoom microscopes
- Digital Imaging microscopes
- Polarizing Microscopy Polarized Light microscopes
- Electron Microscopy sample preparation
- Confocal instruments
- Inverted microscopes
- Metallurgical microscopes
- Gemological microscopes
- Asbestos counting microscopes
- Inspection System Stereo microscopes/projector microscopes
- Video & Digital, Stereo and compound microscopes with viewing screens
- EPI-fluorescent microscopes (binocular/trinocular and inverted models)
- Digital microscope cameras
- Measuring microscopes

Electron microscopes

#### A. Items Not Included In This Contract

The following items are NOT included in this RFP:

Equipment and Supplies which may be included in a vendor's catalog, but which are not specifically designed or intended for laboratory use (e.g. reception chairs, couches, coffee tables, general office equipment, etc.)

### III. Contractor Responsibilities and Tasks

#### A. Ordering

1. Contractor must provide and maintain a toll-free phone number for order placement. At a minimum the buyer shall be able to place an order, inquire about orders, and be provided price and availability information. Contractor must establish a wait time to place an order of less than 3 minutes. The toll-free number must also provide customer service Monday-Friday, 8am-8pm EST.
2. Contractor must accept orders via email.
3. Contractor must provide and maintain an Internet-based ordering system consisting of a website that is accessible by both the Purchasing Entity and the Lead State, for the resulting contract. **This requirement is mandatory for Band 1 and optional for Band 2.**
  2. The web site, at a minimum, must:
    - a. Allow Participating Entities and Purchasing Entities to search Contractor's catalog based on key word, brand name, description, etc.
    - b. Provide List Price, Discount information and Contract Pricing for the Purchasing Entity (which may vary based on an individual state's Administrative Fee).
    - c. Allow Participating Entities and Purchasing Entities to place an order on-line, with a secure means for storing procurement card information.
    - d. Provide tracking/status information after an order is submitted.
    - e. Maintain a database for each Participating Entity. Purchasing Entities shall be identified by a unique number. The database shall include a comprehensive sales record that includes all sales for that Purchasing Entity for the life of the contract. The sales record shall include at a minimum: the date and status of each order (including the date of shipment); the quantity and pricing; as well as the contact information for the individual at the Purchasing Entity that placed the order.
    - f. Provide training materials and FAQs for use of the website and the contract, as well as troubleshooting tips.
    - g. Provide contact information for ordering, billing, credit, service, and other complaints/issues.
    - h. Provide a current list of names and contact information for all of Contractor's sales representatives assigned to support the Contract, identifying the geographic area assigned to each one.
    - i. The awarded Contractor(s) will have a maximum of sixty (60) calendar days after award to post their fully functional NASPO ValuePoint webpage on their company website. Failure to meet the sixty (60) day requirement will be considered a default and may lead to cancellation of the award.

#### 4. Back-Orders

Contractor must take every available precaution to prevent back-order and out-of-stock contract items necessary for the operation of the Purchasing Entities' facilities. Contractor shall provide communication for back-ordered and/or out-of-stock contracted items. Contractor shall provide assistance to accommodate alternative/substitution items for products that are back-ordered or out-of-stock. Contractor must make effort to provide a price match in the event that the substitution item price is greater than the back-ordered item contract price.

## **B. Packaging and Delivery**

1. Delivery is FOB Destination, inside delivery, to the Purchasing Entity's specified address unless otherwise agreed to by Purchasing Entity.
2. For items ordered under Band 2, Contractor will ship within 45 days, unless otherwise agreed to by Purchasing Entity, after receipt of order (ARO).
3. All other equipment and supplies must be delivered within seven (7) days ARO, unless a longer delivery time is agreed to by the Participating Entity. Contractor will be required to notify the Purchasing Entity within 24 hours of order placement if delivery cannot be completed as required by the Contract. Upon receipt of such notice, or upon failure to deliver within the specified time, the Purchasing Entity may cancel the order without penalty, and make the purchase elsewhere.
4. Delivery FOB destination must be included in pricing, no additional delivery fees may be charged except for items identified below. If any items ordered have special packaging (e.g. dry ice, hazardous materials), handling (e.g. next day delivery required), lift gate delivery or a special pricing arrangement has been made between the manufacturer and the Participating Entity that will require the Contractor to charge additional shipping, these items must be marked/flagged in the ordering system to clearly identify that they are subject to additional charges.
5. Contractor shall properly package and handle all items ordered under the resulting Contract, in accordance with industry standards and all applicable regulations.
6. Any products offered with an applicable shelf life must be date stamped (including gloves).

## **C. Late Delivery And Failure To Deliver**

Contractor must deliver the equipment and supplies ordered pursuant to the resulting Master Agreement in accordance with all of the terms and conditions contained in the Master Agreement. Repeated failure to meet specified delivery requirements may result in Master Agreement termination, or the Lead State may pursue any other remedies that may be available to it, at its discretion. Contractor must complete delivery and installation within the time specified in Section III.B above but may agree to shorter timeframes with Purchasing Entities for specific orders.

## **D. Return of Items**

### **1. Contractor Error**

Equipment or Supplies which are unacceptable because of quality problems, duplicated shipments, outdated product, breakage, or other issues related to Contractor or product performance shall be inspected within three (3) business days and be returned at Contractor's expense within five (5) business days after receipt of notification from the Purchasing Entity, with no restocking charge. If the original packaging cannot be utilized for the return, Contractor must supply the Purchasing Entity with appropriate return packaging within the five (5) business day period. Postage must be paid by Contractor, by issuing an appropriate label to the Purchasing Entity via e-mail and Contractor will assume the risk of loss in transit. The returned product shall either be replaced with acceptable equipment or supplies, or the Purchasing Entity must receive a credit or refund for the purchase price, at the Purchasing Entity's discretion.

### **2. Purchasing Entity Error**

Standard stock equipment and supplies ordered in error by Purchasing Entities will be returned for credit within fifteen (15) days of receipt, at Purchasing Entity's expense. Product must be in resalable condition (original container, unused). There shall be no restocking fee if returned products are resalable.

**E. Invoicing**

DO NOT INVOICE THE IDAHO DIVISION OF PURCHASING.

Contractor will invoice the Purchasing Entity which placed the order. All invoices must list the Entity name; unique identification number assigned by Contractor; Contract number (State of Idaho Master Agreement Number for resulting contract); date ordered; anticipated delivery date; item description, including manufacturer name and model number; list price; discount applied; and net cost to Participating Entity.

**F. Customer Account Numbers**

Contractor must establish unique customer/account identification numbers for use by each individual Purchasing Entity. Some Participating Entities may require (and Contractor will provide) multiple customer/account numbers (e.g. Universities with multiple laboratories).

**G. State Purchasing Card**

In order to be considered for award, the successful vendor must accept both VISA and MasterCard Procurement/Purchasing Cards to a maximum payment value of ten thousand dollars (\$10,000).

**H. Training**

Contractor must provide training that covers basic use of the website, performing searches, ordering, invoicing, customer service tools, credits, etc. to all Purchasing Entities upon request (no more than one, one (1) hour training session per Purchasing Entity per contract year), at no additional cost to the Participating Entity. Contractor may provide training remotely through videoconferencing, webinars, etc.

**I. Records Maintenance and Reporting Requirements**

**Records Maintenance:** Contractor must maintain books, records, documents, and other evidence pertaining to this Master Agreement as required in Attachment D.

**Reporting Requirements:** Contractor must provide summary and detailed usage reports as required in Attachment D and as required by individual states and Participating Entities.

**J. Customer Service Requirements**

The Contractor must offer sufficient customer service support to ensure timely delivery, competent technical support for the products, and profession and timely response and resolution to any issues.

**K. Sustainability**

The Contractor should promote corporate and local sustainability practices by aiming to reduce adverse effects on human health and the environment for the entire product lifecycle, including energy, water, safety, delivery, storage, packaging and training.

**L. Cost**

**1. Discounts to Remain Firm or Greater**

The percentage category discounts from the Contractor's submitted price worksheet is not to decrease for all updates or revisions of Contractor's price worksheet during the life of the Contract and any subsequent contract renewals; however, Contractor may increase the discount at any time. New items or replacement products are to be discounted at the same (or greater) rate as similar products or replaced items.

**2. Price Negotiation During Contract Term**

Contractor is expected to continuously negotiate with manufacturers to obtain improved discounts and extend improved pricing to Participating Entities. Contractor must agree to negotiate in good faith to establish ceiling prices or other more favorable terms and conditions between the Contractor and manufacturer that are applicable to future orders during the term of the Contract.

### **3. Price Lists and Updates**

Contractor must furnish a "hard copy" and/or an electronic copy (at Lead State's option) of the price list(s) and periodic updates to the Division of Purchasing. Contractor must also furnish "hard copy" and/or electronic copy (Participating Entity's option) to all Purchasing Entities for which account numbers have been established. Contractor must distribute price lists in a timely manner as they become effective. Price lists may be updated no more often than quarterly. Updated price lists may include new items but may not increase the price of items which previously appeared unless the price increase is requested in accordance with Section M below. Updates must be simultaneous for the entire line of products. All price lists and website access/ordering capabilities must be supplied to the Participating Entities at no additional cost. Contractor must not add new replacement products for the purpose of a price increase. SKUs shall be consistent, and Contractor shall document discontinued items in writing when submitting replacement products.

### **4. Price List Access**

At any time during the Contract and for a three (3) year period following the end of the Contract, the State reserves the right to request from the Contractor access to and/or a copy of the applicable price list used for the Contract's pricing basis for Contract pricing verification. Failure to provide the requested price list within three (3) business days following the State's request may result in Contract termination.

### **5. Additional Manufacturer Discounts**

For contract items, the Contractor agrees to allow any particular Participating Entity to accept additional discounts offered by a Manufacturer for whom the Contractor is a distributor, if those discounts will result in a lower net price to the Participating Entity. The Contractor agrees to furnish these items under the terms and conditions of the Contract, but at the lower net price as agreed by the Manufacturer and the Participating Entity.

## **M. Price Changes**

1. Price decreases or discount increases are permitted and encouraged at any time. Price reductions announced by a manufacturer must be applied at the time of the announcement for the products that have not yet been delivered to the Participating Entities.
2. All discounts offered must remain firm or higher during the term of the contract.
3. Contractor may request a price increase no more than once per Contract year by submitting a request to the State at least thirty (30) days prior to the end of the then current term. Price increases must be calculated from the published price list and may only be requested in accordance with changes made by the manufacturer or distributor in their established, nationally distributed price list or published catalog. The Lead State reserves the right to accept or reject any proposed price increase. A price increase will not be effective until approved, in writing, by the Lead State.

## **N. Audit Rights**

The Contractor agrees to allow State and Federal auditors and State purchasing staff access to all the records relating to this Contract for audit, inspection, and monitoring of services or performance. Such access will be during normal business hours or by appointment.

**O. Change In Contractor Representative**

The Lead State Procurement Officer, at his/her sole discretion, may require a change in Contractor's Named Representative by giving written notice to Contractor.

**P. Contractor Insurance Requirements**

The Contract shall minimally meet insurance requirements as defined in the Master Agreement. Participating Entities may have different insurance requirements.

### Debarment, Performance, and Non-Collusion Certification

*By signing this document, I certify to the best of my knowledge and belief that the aforementioned organization, its principals, and any subcontractors named in this proposal:*

- a. Are not presently debarred, suspended, proposed for debarment, and declared ineligible or voluntarily excluded from bidding or working on contracts issued by any governmental agency.*
- b. Have not within three years of submitting the proposal for this contract been convicted of or had a civil judgment rendered against them for:*
  - i. fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state or local government transaction or contract.*
  - ii. violating Federal or State antitrust statutes or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;*
  - iii. are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and*
  - iv. have not within a three (3) year period preceding this proposal had one or more federal, state or local government transactions terminated for cause or default.*
- c. Have not entered into a prior understanding, agreement, or connection with any corporation, firm, or person submitting a response for the same materials, supplies, equipment, or services and this proposal is in all respects fair and without collusion or fraud. The above-mentioned entities understand and agree that collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards.*

- Failure to provide this certification may result in the disqualification of the Bidder’s proposal, at the discretion of the Department.**

*To the best of my knowledge all information provided in the enclosed proposal, both programmatic and financial, is complete and accurate at the time of submission.*

Name: Desita Natalia	Title: Sales Support
Authorized Signature: <i>Desita Natalia</i>	Date: 9/9/2024

### **Categories and Discount Schedule**

Chemical: 0% to 50%

Chromatography: 0% to 65%

Equipment & Instruments: 0% to 40%

Filtration Products: 0% to 30%

Lab Accessories: 0% to 50%

Glassware & Plasticware: 0% to 50%

Liquid Handling: 0% to 50%

General Lab Supply: 0% to 70%

Water Testing: 0% to 45%

Apparel: 0% to 70%

Safety & Others: 0% to 70%

### **Online Catalog**

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