



OWNERSHIP DISCLOSURE FORM

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

VENDOR NAME: 22nd Century Technologies, Inc.

PURSUANT TO N.J.S.A. 52:25-24.2, ALL PARTIES ENTERING INTO A CONTRACT WITH THE STATE ARE REQUIRED TO PROVIDE A STATEMENT OF OWNERSHIP.
Please answer all questions and complete the information requested.

- | | YES | NO |
|--|-------------------------------------|-------------------------------------|
| 1. The vendor is a Non-Profit Entity ; and therefore, no disclosure is necessary. | ☐ | ☒ |
| 2. The vendor is a Sole Proprietor ; and therefore, no other disclosure is necessary.
A Sole Proprietor is a person who owns an unincorporated business by himself or her-self.
A limited liability company with a single member is not a Sole Proprietor. | ☐ | ☒ |
| 3. The vendor is a corporation, partnership, or limited liability company with individuals, partners, members, stockholders, corporations, partnerships, or limited liability companies owning a 10% or greater interest; and therefore, disclosure is necessary. | ☒ | ☐ |

If you answered **YES** to Question 3, you must disclose the information requested in the space below:*

- (a) the names and addresses of all stockholders in the corporation who own 10% or more of its stock, of any class;
(b) all individual partners in the partnership who own a 10% or greater interest therein; or,
(c) all members in the limited liability company who own a 10% or greater interest therein.

NAME Satvinder Singh	NAME The Anil Sharma Irrevocable Trust
ADDRESS 22493 Terra Rosa Place	ADDRESS 22493 Terra Rosa Place
ADDRESS 22493 Terra Rosa Place	ADDRESS 22493 Terra Rosa Place
CITY Ashburn	CITY Ashburn
STATE VA	STATE VA
ZIP 20148	ZIP 20148

- | | YES | NO |
|---|-------------------------------------|--------------------------|
| 4. For each of the corporations, partnerships, or limited liability companies identified in response to Question #3 above, are there any individuals, partners, members, stockholders, corporations, partnerships, or limited liability companies owning a 10% or greater interest of those listed business entities? | ☒ | ☐ |

If you answered **YES** to Question 4, you must disclose the information requested in the space below:*

- (a) the names and addresses of all stockholders in the corporation who own 10% or more of its stock, of any class;
(b) all individual partners in the partnership who own a 10% or greater interest therein; or,
(c) all members in the limited liability company who own a 10% or greater interest therein. The disclosure(s) shall be continued until the names and addresses of every non-corporate stockholder, individual partner, and/or member a 10% or greater interest has been identified.

NAME Satvinder Singh	NAME Anil Sharma
ADDRESS 22493 Terra Rosa Place	ADDRESS 22493 Terra Rosa Place
ADDRESS 22493 Terra Rosa Place	ADDRESS 22493 Terra Rosa Place
CITY Ashburn	CITY Ashburn
STATE VA	STATE VA
ZIP 20148	ZIP 20148

5. As an alternative to completing this form, a Vendor with any direct or indirect parent entity which is publicly traded, may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10% or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10% or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10% or greater beneficial interest.*

* Attach additional sheets if necessary



SOURCE DISCLOSURE FORM

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

BID SOLICITATION # AND TITLE: M2001- Temporary Staff Services

VENDOR NAME: 22nd Century Technologies, Inc.

The Vendor/Bidder submits this Form in response to a Bid Solicitation issued by the State of New Jersey, Department of the Treasury, Division of Purchase and Property, in accordance with the requirements of N.J.S.A. 52:34-13.2.

PART 1



All services will be performed by the Contractor and Subcontractors in the United States. Skip Part 2.



Services will be performed by the Contractor and/or Subcontractors outside of the United States. **Complete Part 2.**

PART 2

Where services will be performed outside of the United States, please list every country where services will be performed by the Contractor and all Subcontractors. If any of the services cannot be performed within the United States, the Contractor shall state, with specificity, the reasons why the services cannot be performed in the United States. The Director of the Division of Purchase and Property will review this justification and if deemed sufficient, the Director may seek the Treasurer's approval.

Name of Contractor / Sub-contractor	Performance Location by Country	Description of Service(s) to be Performed Outside of the United States *	Reason Why the Service(s) Cannot be Performed in the United States *

***Attach additional sheets if necessary to describe which service(s), if any, will be performed outside of the U.S. and the reason(s) why the service(s) cannot be performed in the U.S.**

Any changes to the information set forth in this Form during the term of any Contract awarded under the referenced Bid Solicitation or extension thereof shall be immediately reported by the Contractor to the Director of the Division of Purchase and Property. If during the term of the Contract, the Contractor shifts the location of services outside the United States, without a prior written determination by the Director, the Contractor shall be deemed in breach of Contract, and the Contract will be subject to termination for cause pursuant to the State of New Jersey Standard Terms and Conditions.

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I may be subject to criminal prosecution under the law, and it will constitute a material breach of my contract(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

C. Rist

Signature

January 12, 2023

Date

Caroline Rist, Vice President Compliance

Print Name and Title



DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS INVOLVING THE VENDOR FORM

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

BID SOLICITATION # AND TITLE: M2001- Temporary Staff Services

VENDOR NAME: 22nd Century Technologies, Inc.

PART 1

PLEASE LIST ALL OFFICERS/DIRECTORS OF THE VENDOR BELOW.

NAME	Satvinder Singh		
TITLE	President		
ADDRESS	8251 Greensboro Drive, Suite 900		
ADDRESS			
CITY	McLean	STATE	VA ZIP 22102

NAME	Anil Sharma		
TITLE	CEO		
ADDRESS	8251 Greensboro Drive, Suite 900		
ADDRESS			
CITY	McLean	STATE	VA ZIP 22102

NAME			
TITLE			
ADDRESS			
ADDRESS			
CITY		STATE	ZIP

NAME			
TITLE			
ADDRESS			
ADDRESS			
CITY		STATE	ZIP

**Attach Additional Sheets If Necessary.*

PART 2

PLEASE REFER TO THE PERSONS LISTED ABOVE AND/OR THE PERSONS AND/OR ENTITIES LISTED ON THE OWNERSHIP DISCLOSURE FORM WHEN ANSWERING THESE QUESTIONS.

- Has any person or entity listed on this form or its attachments ever been arrested, charged, indicted, or convicted in a criminal or disorderly persons matter by the State of New Jersey (or political subdivision thereof), or by any other state or the U.S. Government? **NO**
- Has any person or entity listed on this form or its attachments ever been suspended, debarred or otherwise declared ineligible by any government agency from bidding or contracting to provide services, labor, materials or supplies? **NO**
- Are there currently any pending criminal matters or debarment proceedings in which the firm and/or its officers and/or managers are involved? **NO**
- Has any person or entity listed on this form or its attachments been denied any license, permit or similar authorization required to engage in the work applied for herein, or has any such license, permit or similar authorization been revoked by any agency of federal, state or local government? **NO**
- Has any person or entity listed on this form or its attachments been involved as an adverse party to a public sector client in any civil litigation or administrative proceeding in the past five (5) years? **NO**

IF ANY OF THE ANSWERS TO QUESTIONS 1-5 ARE "YES", PLEASE PROVIDE THE REQUESTED INFORMATION IN PART 3.
IF ALL OF THE ANSWERS TO QUESTIONS 1-5 ARE "NO", NO FURTHER ACTION IS NEEDED; PLEASE SIGN AND DATE THE FORM.

PART 3

DESCRIPTION OF THE INVESTIGATION OR LITIGATION, ETC.

If you answered "YES" to any of questions 1 - 5 above, you must provide a detailed description of any investigation or litigation, including, but not limited to, administrative complaints or other administrative proceedings involving public sector clients during the past five (5) years. The description must include the nature and status of the investigation, and for any litigation, the caption and a brief description of the action, the date of inception, current status, and if applicable, the disposition.

PERSON OR ENTITY NAME	N/A		
CONTACT NAME		PHONE NUMBER	
CASE CAPTION			
INCEPTION OF THE INVESTIGATION		CURRENT STATUS	
SUMMARY OF INVESTIGATION			

**Attach Additional Sheets If Necessary.*

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I may be subject to criminal prosecution under the law, and it will constitute a material breach of my contract(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

C. Rist

Signature
Caroline Rist, Vice President Compliance
Print Name and Title

January 12, 2023

Date



DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN FORM

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

BID SOLICITATION # AND TITLE: M2001- Temporary Staff Services

VENDOR NAME: 22nd Century Technologies, Inc.

Pursuant to N.J.S.A. 52:32-57, et seq. (P.L. 2012, c.25 and P.L. 2021, c.4) any person or entity that submits a bid or proposal or otherwise proposes to enter into or renew a contract must certify that neither the person nor entity, nor any of its parents, subsidiaries, or affiliates, is identified on the New Jersey Department of the Treasury's Chapter 25 List as a person or entity engaged in investment activities in Iran. The Chapter 25 list is found on the Division's website at <https://www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf>. Vendors/Bidders must review this list prior to completing the below certification. If the Director of the Division of Purchase and Property finds a person or entity to be in violation of the law, s/he shall take action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

CHECK THE APPROPRIATE BOX

☒ I certify, pursuant to N.J.S.A. 52:32-57, et seq. (P.L. 2012, c.25 and P.L. 2021, c.4), that neither the Vendor/Bidder listed above nor any of its parents, subsidiaries, or affiliates is listed on the New Jersey Department of the Treasury's Chapter 25 List of entities determined to be engaged in prohibited activities in Iran.

OR

☐ I am unable to certify as above because the Vendor/Bidder and/or one or more of its parents, subsidiaries, or affiliates is listed on the New Jersey Department of the Treasury's Chapter 25 List. I will provide a detailed, accurate and precise description of the activities of the Vendor/Bidder, or one of its parents, subsidiaries or affiliates, has engaged in regarding investment activities in Iran by completing the information requested below.

Entity Engaged in Investment Activities
Relationship to Vendor/ Bidder
Description of Activities

Duration of Engagement
Anticipated Cessation Date

**Attach Additional Sheets If Necessary.*

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I may be subject to criminal prosecution under the law, and it will constitute a material breach of my contract(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

C. Rist

Signature

January 12, 2023

Date

Caroline Rist, Vice President Compliance

Print Name and Title



CERTIFICATION OF NON-INVOLVEMENT IN PROHIBITED ACTIVITIES IN RUSSIA OR BELARUS

CONTRACT / BID SOLICITATION TITLE M2001- Temporary Staff Services
CONTRACT / BID SOLICITATION No. N/A

Pursuant to N.J.S.A. 52:32-60.1, et seq. ([P.L. 2022, c.3](#)) any person or entity (hereinafter "Vendor") that seeks to enter into or renew a contract with a State agency for the provision of goods or services, or the purchase of bonds or other obligations, must complete the certification below indicating whether or not the Vendor is engaged in prohibited activities in Russia or Belarusⁱ. If the Department of the Treasury finds that a Vendor has made a certification in violation of the law, it shall take any action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

CERTIFICATION

I, the undersigned, certify that I have read the definition of "Vendor" below, and have reviewed the [Department of the Treasury's list](#) of Vendors engaged in prohibited activities in Russia or Belarus, and having done so certify:

(Check the Appropriate Box)

- ☒ A. That the Vendor is not identified on the Department of the Treasury's list of Vendors engaged in prohibited activities in Russia or Belarus **and** is not engaged in prohibited activities in Russia or Belarus.
- OR**
- ☐ B. That I am unable to certify as to "A" above, because the Vendor is identified on the Department of the Treasury's list of Vendors engaged in prohibited activities in Russia and/or Belarus.
- OR**
- ☐ C. That I am unable to certify as to "A" above, because the Vendor, though not identified on the Department of the Treasury's list of Vendors engaged in prohibited activities in Russia or Belarus, is engaged in prohibited activities in Russia or Belarus. A detailed, accurate and precise description of the Vendor's activity in Russia and/or Belarus is set forth below.

Description of Prohibited Activity (*Attach Additional Sheets If Necessary.*)

Additional Certification of Federal Exemption and/or License

(Complete only if appropriate)

- ☐ D. I, the undersigned, certify that Vendor is currently engaged in activity in Russia and/or Belarus, but is doing so consistent with federal law and/or regulation and/or license. A detailed description of how the Vendor's activity in Russia and/or Belarus is consistent with federal law, or is within the requirements of the federal exemption and/or license is set forth below. (*Attach Additional Sheets If Necessary.*)

C. Rist

Signature of Vendor's Authorized Representative

Caroline Rist, Vice President Compliance

N.J.S.A. 47:1A-1, N.J.S.A. 1A-1.1 **Personal identifying information**

Print Name and Title of Vendor's Authorized Representative

22nd Century Technologies, Inc.

Vendor's Name

8251 Greensboro Drive, Suite 900

Vendor's Address (Street Address)

McLean, VA 22102

Vendor's Address (City/State/Zip Code)

January 12, 2023

Date

Vendor's FEIN

(703) 479-8222

Vendor's Phone Number

(732) 537-0888

Vendor's Fax Number

contracts@tscti.com

Vendor's Email Address

Definitions

ⁱ Vendor means: (1) A natural person, corporation, company, limited partnership, limited liability partnership, limited liability company, business association, sole proprietorship, joint venture, partnership, society, trust, or any other nongovernmental entity, organization, or group; (2) Any governmental entity or instrumentality of a government, including a multilateral development institution, as defined in Section 1701(c)(3) of the International Financial Institutions Act, 22 U.S.C. 262r(c)(3); or (3) Any parent, successor, subunit, direct or indirect subsidiary, or any entity under common ownership or control with, any entity described in paragraph (1) or (2).

ⁱⁱ Engaged in prohibited activities in Russia or Belarus means: (1) companies in which the Government of Russia or Belarus has any direct equity share; (2) having any business operations commencing after the effective date of this act that involve contracts with or the provision of goods or services to the Government of Russia or Belarus; (3) being headquartered in Russia or having its principal place of business in Russia or Belarus, or (4) supporting, assisting or facilitating the Government of Russia or Belarus in their campaigns to invade the sovereign country of Ukraine, either through in-kind support or for profit.



STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY

33 WEST STATE STREET, P.O. BOX 0230
TRENTON, NEW JERSEY 08625-0230

VENDOR/BIDDER CERTIFICATION AND POLITICAL CONTRIBUTION DISCLOSURE FORM
PUBLIC LAW 2005, CHAPTER 271

CONTRACT #: M2001- Temporary Staff Services VENDOR/BIDDER: 22nd Century Technologies, Inc.

At least ten (10) days prior to entering into the above-referenced Contract, the Vendor/Bidder must complete this Certification and Political Contribution Disclosure Form in accordance with the directions below and submit it to the State contact for the referenced Contract.

NOTE that the disclosure requirements under Public Law 2005, Chapter 271 are separate and different from the disclosure requirements under Public Law 2005, Chapter 51 (formerly Executive Order 134). Although no Vendor/Bidder will be precluded from entering into a contract by any information submitted on this form, a Vendor's/Bidder's failure to fully, accurately and truthfully complete this form and submit it to the appropriate State agency may result in the imposition of fines by the New Jersey Election Law Enforcement Commission.

DISCLOSURE

The following is the required Vendor/Bidder Disclosure of all Reportable Contributions made in the twelve (12) months prior to and including the date of signing of this Certification and Disclosure to: (i) any State, county, or municipal committee of a political party, legislative leadership committee, candidate committee of a candidate for, or holder of, a State elective office, or (ii) any entity that is also defined as a "continuing political committee" under N.J.S.A. 19:44A-3(n) and N.J.A.C. 19:25-1.

The Vendor/Bidder is required to disclose Reportable Contributions by: the Vendor/Bidder itself; all persons or other business entities owning or controlling more than 10% of the profits of the Vendor/Bidder or more than 10% of the stock of the Vendor/Bidder, if the Vendor/Bidder is a corporation for profit; a spouse or child living with a natural person that is a Vendor/Bidder; all of the principals, partners, officers or directors of the Vendor/Contractor and all of their spouses; any subsidiaries directly or indirectly controlled by the Vendor/Bidder; and any political organization organized under section 527 of the Internal Revenue Code that is directly or indirectly controlled by the Vendor/Bidder, other than a candidate committee, election fund, or political party committee.

"Reportable Contributions" are those contributions that are required to be reported by the recipient under the "New Jersey Campaign Contributions and Expenditures Reporting Act," P.L. 1973, c.83 (C.19:44A-1 et seq.), and implementing regulations set forth at N.J.A.C. 19:25-10.1 et seq. As of January 1, 2005, contributions in excess of \$300 during a reporting period are deemed "reportable."

Name and Address of Committee to which a Reportable Contribution was made	Date of Reportable Contribution	Amount of Reportable Contribution	Contributor's Name
Indicate "NONE" if no Reportable Contribution was made.			
None		\$	Satvinder
		\$	24 Hayhu
		\$	
		\$	The Anil
Attach additional sheets if necessary			

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor/Bidder, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor/Bidder is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I will be subject to criminal prosecution under the law, and it will constitute a material breach of my agreement(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

C. Rist

Signature

Caroline Rist, Vice President Compliance

Print Name and Title

January 12, 2023

Date



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY
CONTRACT COMPLIANCE & AUDIT UNIT
EEO MONITORING PROGRAM
33 WEST STATE STREET
P. O. BOX 206
TRENTON, NEW JERSEY 08625-0206

ELIZABETH MAHER MUOIO
State Treasurer

MAURICE A. GRIFFIN
Acting Director

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

ISSUANCE CERTIFICATE OF EMPLOYEE INFORMATION REPORT

Enclosed is your Certificate of Employee information Report (hereinafter referred to as the "Certificate" and issued based on the Employee Information Report (AA-302) form completed by a representative of your company or firm. Immediately upon receipt, this certificate should be forwarded to the person in your company or firm responsible for ensuring equal employment opportunity and/or overseeing the company or firm's contracts with public agencies. Typically, this person may be your company or firm's Human Resources Manager, Equal Employment Opportunity Officer or Contract Administrator. If you do not know to whom the certificate should be forward, kindly forward it to the head of your company or firm. Copies of the certificate should also be distributed to all facilities of your company or firm who engage in bidding on public contracts in New Jersey and who use the same federal identification number and company name. The certificate should be retained in your records until the date it expires. This is very important since a request for a duplicate/replacement certificate will result in a \$75.00 fee.

On future successful bids on public contracts, your company or firm must present a photocopy of the certificate to the public agency awarding the contract after notification of the award but prior to execution of a goods and services or professional services contract. Failure to present the certificate within the time limits prescribed may result in the awarded contract being rescinded in accordance with N.J.A.C. 17:27-4.3b.

Please be advised that this certificate has been approved only for the time periods stated on the certificate. As early as ninety (90) days prior to its expiration, the Division will forward a renewal notification. Upon the Division's receipt of a properly completed renewal application and \$150.00 application fee, it will issue a renewal certificate. In addition, representatives from the Division may conduct periodic visits and/or request additional information to monitor and evaluate the continued equal employment opportunity compliance of your company or firm. Moreover, the Division may provide your company or firm with technical assistance, as required. Please be sure to notify the Division immediately if your company's federal identification number, name or address changes.

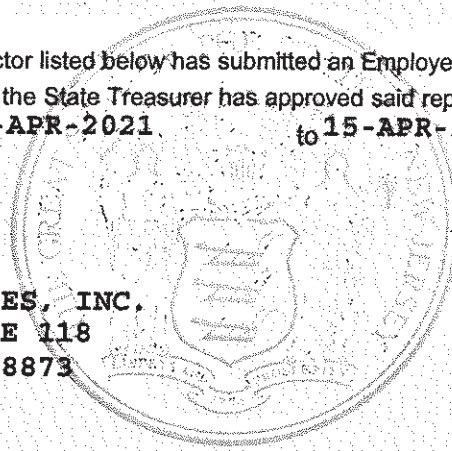
If you have any questions, please call (609) 292-5473 and a representative will be available to assist you.

Certification 58914

CERTIFICATE OF EMPLOYEE INFORMATION REPORT RENEWAL

This is to certify that the contractor listed below has submitted an Employee Information Report pursuant to N.J.A.C. 17:27-1.1 et. seq. and the State Treasurer has approved said report. This approval will remain in effect for the period of **15-APR-2021** to **15-APR-2024**

**22ND CENTURY TECHNOLOGIES, INC.
220 DAVIDSON AVE., SUITE 118
SOMERSET NJ 08873**



Elizabeth Maher Muoio

ELIZABETH MAHER MUOIO
State Treasurer



MACBRIDE PRINCIPLES FORM

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

BID SOLICITATION # AND TITLE: M2001- Temporary Staff Services

VENDOR NAME: 22nd Century Technologies, Inc.

Pursuant to Public Law 1995, c. 134, a responsible Vendor/Bidder is required to provide a certification in compliance with the MacBride Principles and Northern Ireland Act of 1989. Pursuant to N.J.S.A. 52:34-12.2, Vendor/Bidder must complete the certification below by checking one of the two options listed below and signing where indicated. If a Vendor/Bidder that would otherwise be awarded a purchase, contract or agreement does not complete the certification, then the Director may determine, in accordance with applicable law and rules, that it is in the best interest of the State to award the purchase, contract or agreement to another Vendor/Bidder that has completed the certification and has submitted a bid within five (5) percent of the most advantageous bid. If the Director finds contractors to be in violation of the principles that are the subject of this law, he/she shall take such action as may be appropriate and provided by law, rule or contract, including but not limited to, imposing sanctions, seeking compliance, recovering damages, declaring the party in default and seeking debarment or suspension of the party.

I, the undersigned, on behalf the Vendor/Bidder, certify pursuant to N.J.S.A. 52:34-12.2 that:

CHECK THE APPROPRIATE BOX



The Vendor/Bidder has no business operations in Northern Ireland; or

OR



The Vendor/Bidder will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in section 2 of P.L. 1987, c. 177 (N.J.S.A. 52:18A-89.5) and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of its compliance with those principles.

CERTIFICATION

I, the undersigned, certify that I am authorized to execute this certification on behalf of the Vendor, that the foregoing information and any attachments hereto, to the best of my knowledge are true and complete. I acknowledge that the State of New Jersey is relying on the information contained herein, and that the Vendor is under a continuing obligation from the date of this certification through the completion of any contract(s) with the State to notify the State in writing of any changes to the information contained herein; that I am aware that it is a criminal offense to make a false statement or misrepresentation in this certification. If I do so, I may be subject to criminal prosecution under the law, and it will constitute a material breach of my contract(s) with the State, permitting the State to declare any contract(s) resulting from this certification void and unenforceable.

C. Rist

Signature

January 12, 2023

Date

Caroline Rist, Vice President Compliance

Print Name and Title

INFORMATION AND INSTRUCTIONS

For Completing the “Two-Year Vendor Certification and Disclosure of Political Contributions” Chapter 51 Form

Background Information

On September 22, 2004, then-Governor James E. McGreevey issued E.O. 134, the purpose of which was to insulate the negotiation and award of State contracts from political contributions that posed a risk of improper influence, purchase of access or the appearance thereof. To this end, E.O. 134 prohibited State departments, agencies and authorities from entering into contracts exceeding \$17,500 with individuals or entities that made certain political contributions. E.O. 134 was superseded by Public Law 2005, c. 51, signed into law on March 22, 2005 (“Chapter 51”).

On September 24, 2008, Governor Jon S. Corzine issued E.O. 117 which is designed to enhance New Jersey’s efforts to protect the integrity of procurement decisions and increase the public’s confidence in government. The Executive Order builds upon the provisions of Chapter 51.

Two-Year Certification Process

Upon approval by the State Chapter 51 Review Unit, the Certification and Disclosure of Political Contributions form is valid for a two (2) year period. Thus, if a vendor receives approval on January 1, 2014, the certification expiration date would be December 31, 2015. Any change in the vendor’s ownership status and/or political contributions during the two-year period will require the submission of new Chapter 51/Executive Order 117 forms to the State Review Unit. **Please note that it is the vendor’s responsibility to file new forms with the State should these changes occur.**

State Agency Instructions: Prior to the awarding of a contract, the State Agency should first use NJSTART (<https://www.njstart.gov/bso/>) to check the status of a vendor’s Chapter 51 certification before contacting the Review Unit’s mailbox at CD134@treas.nj.gov. If the State Agency does not find any Chapter 51 Certification information in NJSTART and/or the vendor is not registered in NJSTART, then the State Agency should send an e-mail to CD134@treas.nj.gov to verify the certification status of the vendor. If the response is that the vendor is NOT within an approved two-year period, then forms must be obtained from the vendor and forwarded for review. If the response is that the vendor is within an approved two-year period, then the response so stating should be placed with the bid/contract documentation for the subject project.

Instructions for Completing the Form

Part 1: BUSINESS ENTITY INFORMATION

Business Name – Enter the full legal name of the vendor, including trade name if applicable.

Address, City, State, Zip and Phone Number -- Enter the vendor's street address, city, state, zip code and telephone number.

Vendor Email – Enter the vendor’s primary email address.

Vendor FEIN – Please enter the vendor’s Federal Employment Identification Number.

Business Type - Check the appropriate box that represents the vendor's type of business formation.

Listing of officers, shareholders, partners or members - Based on the box checked for the business type, provide the corresponding information. (A complete list must be provided.)

Part 2: DISCLOSURE OF CONTRIBUTIONS

Read the three types of political contributions that require disclosure and, if applicable, provide the recipient's information. The definition of "Business Entity/Vendor" and "Contribution" can be found on pages 3 and 4 of this form.

Name of Recipient - Enter the full legal name of the recipient.

Address of Recipient - Enter the recipient's street address.

Date of Contribution - Indicate the date the contribution was given.

Amount of Contribution - Enter the dollar amount of the contribution.

Type of Contribution - Select the type of contribution from the examples given.

Contributor's Name - Enter the full name of the contributor.

Relationship of the Contributor to the Vendor - Indicate the relationship of the contributor to the vendor. (e.g. officer or shareholder of the company, partner, member, parent company of the vendor, subsidiary of the vendor, etc.)

NOTE: If form is being completed electronically, click "Add a Contribution" to enter additional contributions. Otherwise, please attach additional pages as necessary.

Check the box under the recipient information if no reportable contributions have been solicited or made by the business entity. **This box must be checked if there are no contributions to report.**

Part 3: CERTIFICATION

Check Box A if the representative completing the Certification and Disclosure form is doing so on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity.

(No additional Certification and Disclosure forms are required if BOX A is checked.)

Check Box B if the representative completing the Certification and Disclosure form is doing so on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity with the exception of those individuals and/or entities that submit their own separate form. For example, the representative is not signing on behalf of the vice president of a corporation, but all others. The vice president completes a separate Certification and Disclosure form. **(Additional Certification and Disclosure forms are required from those individuals and/or entities that the representative is not signing on behalf of and are included with the business entity's submittal.)**

Check Box C if the representative completing the Certification and Disclosure form is doing so on behalf of the business entity only. **(Additional Certification and Disclosure forms are required from all individuals and/or entities whose contributions are attributable to the business entity and must be included with the business entity submittal.)**

Check Box D when a sole proprietor is completing the Certification and Disclosure form or when an individual or entity whose contributions are attributable to the business entity is completing a separate Certification and Disclosure form.

Read the five statements of certification prior to signing.

The representative authorized to complete the Certification and Disclosure form must sign and print her/his name, title or position and enter the date.

State Agency Procedure for Submitting Form(s)

The State Agency should submit the completed and signed Two-Year Vendor Certification and Disclosure forms either electronically to: cd134@treas.nj.gov or regular mail at: Chapter 51 Review Unit, P.O. Box 230, 33 West State Street, Trenton, NJ 08625-0230. Original forms should remain with the State Agency and copies should be sent to the Chapter 51 Review Unit.

Business Entity Procedure for Submitting Form(s)

The business entity should return this form to the contracting State Agency.

The business entity can submit the Certification and Disclosure form directly to the Chapter 51 Review Unit only when:

- The business entity is approaching its two-year certification expiration date and is seeking certification renewal;
- The business entity had a change in its ownership structure; OR
- The business entity made any contributions during the period in which its last two-year certification was in effect, or during the term of a contract with a State Agency.

Questions & Information

Questions regarding Public Law 2005, Chapter 51 (N.J.S.A. 19:44A-20.13) or E.O. 117 (2008) may be submitted electronically through the Division of Purchase and Property website at: <https://www.state.nj.us/treas/purchase/eo134questions.shtml>.

Reference materials and forms are posted on the Political Contributions Compliance website at: <http://www.state.nj.us/treasury/purchase/execorder134.shtml>.



State of New Jersey
Department of the Treasury

Division of Purchase and Property

Two-Year Chapter 51/Executive Order 117 Vendor Certification and
Disclosure of Political Contributions

FOR STATE USE ONLY

Solicitation, RFP, or Contract No. _____ Award Amount _____

Description of Services _____

State Agency Name _____ Contact Person _____

Phone Number _____ Contact Email _____

☐ Check if the Contract / Agreement is Being Funded Using FHWA Funds

**Please check if requesting
recertification ☐**

Part 1: Business Entity Information

Full Legal Business Name 22nd Century Technologies, Inc.
(Including trade name if applicable)

Address 8251 Greensboro Drive, Suite 900

City McLean State VA Zip 22102 Phone 703-479-8222

Vendor Email Contracts@tscti.com Vendor FEIN (SS# if sole proprietor/natural person N/A)

Check off the business type and list below the required information for the type of business selected.

MUST BE COMPLETED IN FULL

- ☒ Corporation: LIST ALL OFFICERS and any 10% and greater shareholder (If the corporation only has one officer, please write "sole officer" after the officer's name.)
- ☐ Professional Corporation: LIST ALL OFFICERS and ALL SHAREHOLDERS
- ☒ Partnership: LIST ALL PARTNERS with any equity interest
- ☐ Limited Liability Company: LIST ALL MEMBERS with any equity interest
- ☐ Sole Proprietor

Note: "Officers" means President, Vice President with senior management responsibility, Secretary, Treasurer, Chief Executive Officer or Chief Financial Officer of a corporation, or any person routinely performing such functions for a corporation.

Also Note: "N/A will not be accepted as a valid response. Where applicable, indicate "None."

All Officers of a Corporation or PC

Satvinder Singh

Anil Sharma

**10% and greater shareholders of a corporation
or all shareholders of a PC**

All Equity partners of a Partnership

Satvinder Singh

The Anil Sharma Irrevocable Trust

The Anupama Sharma Irrevocable Trust

SS Trust

All Equity members of a LLC

If you need additional space for listing of Officers, Shareholders, Partners or Members, please attach separate page.

Part 2: Disclosure of Contributions by the business entity or any person or entity whose contributions are attributable to the business entity.

- 1. Report below all contributions solicited or made during the 4 years immediately preceding the commencement of negotiations or submission of a proposal to any:**

Political organization organized under Section 527 of the Internal Revenue Code and which also meets the definition of a continuing political committee as defined in N.J.S.A. 19:44A-3(n)

- 2. Report below all contributions solicited or made during the 5 ½ years immediately preceding the commencement of negotiations or submission of a proposal to any:**

Candidate Committee for or Election Fund of any Gubernatorial or Lieutenant Gubernatorial candidate
State Political Party Committee
County Political Party Committee

- 3. Report below all contributions solicited or made during the 18 months immediately preceding the commencement of negotiations or submission of a proposal to any:**

Municipal Political Party Committee
Legislative Leadership Committee

Full Legal Name of Recipient _____

Address of Recipient _____

Date of Contribution _____ Amount of Contribution _____

Type of Contribution (i.e. currency, check, loan, in-kind) _____

Contributor Name _____

Relationship of Contributor to the Vendor _____

**If this form is not being completed electronically, please attach additional contributions on separate page.
Click the "Add a Contribution" tab to enter additional contributions.**

Remove Contribution

Full Legal Name of Recipient _____

Address of Recipient _____

Date of Contribution _____ Amount of Contribution _____

Type of Contribution (i.e. currency, check, loan, in-kind) _____

Contributor Name _____

Relationship of Contributor to the Vendor _____

**If this form is not being completed electronically, please attach additional contributions on separate page.
Click the "Add a Contribution" tab to enter additional contributions.**

Remove Contribution

Full Legal Name of Recipient _____

Address of Recipient _____

Date of Contribution _____ Amount of Contribution _____

Type of Contribution (i.e. currency, check, loan, in-kind) _____

Contributor Name _____

Relationship of Contributor to the Vendor _____

**If this form is not being completed electronically, please attach additional contributions on separate page.
Click the "Add a Contribution" tab to enter additional contributions.**

Remove Contribution

Full Legal Name of Recipient _____
Address of Recipient _____
Date of Contribution _____ Amount of Contribution _____
Type of Contribution (i.e. currency, check, loan, in-kind) _____
Contributor Name _____
Relationship of Contributor to the Vendor _____

**If this form is not being completed electronically, please attach additional contributions on separate page.
Click the "Add a Contribution" tab to enter additional contributions.**

Remove Contribution

Full Legal Name of Recipient _____
Address of Recipient _____
Date of Contribution _____ Amount of Contribution _____
Type of Contribution (i.e. currency, check, loan, in-kind) _____
Contributor Name _____
Relationship of Contributor to the Vendor _____

**If this form is not being completed electronically, please attach additional contributions on separate page.
Click the "Add a Contribution" tab to enter additional contributions.**

Remove Contribution

Add a Contribution

☒ **Check this box only if no political contributions have been solicited or made by the business entity or any person or entity whose contributions are attributable to the business entity.**

Part 3: Certification (Check one box only)

- (A) ☒ I am certifying on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity as listed on Page 1 under **Part 1: Vendor Information**.
- (B) ☐ I am certifying on behalf of the business entity and all individuals and/or entities whose contributions are attributable to the business entity as listed on Page 1 under **Part 1: Vendor Information**, except for the individuals and/or entities who are submitting separate Certification and Disclosure forms which are included with this submittal.
- (C) ☐ I am certifying on behalf of the business entity only; any remaining persons or entities whose contributions are attributable to the business entity (as listed on Page 1) have completed separate Certification and Disclosure forms which are included with this submittal.
- (D) ☐ I am certifying as an individual or entity whose contributions are attributable to the business entity.

I hereby certify as follows:

- I have read the Information and Instructions accompanying this form prior to completing the certification on behalf of the business entity.**
- All reportable contributions made by or attributable to the business entity have been listed above.**

3. The business entity has not knowingly solicited or made any contribution of money, pledge of contribution, including in-kind contributions, that would bar the award of a contract to the business entity unless otherwise disclosed above:

- a) Within the 18 months immediately preceding the commencement of negotiations or submission of a proposal for the contract or agreement to:
- (i) A candidate committee or election fund of any candidate for the public office of Governor or Lieutenant Governor or to a campaign committee or election fund of holder of public office of Governor or Lieutenant Governor; OR
 - (ii) Any State, County or Municipal political party committee; OR
 - (iii) Any Legislative Leadership committee.
- b) During the term of office of the current Governor or Lieutenant Governor to:
- (i) A candidate committee or election fund of a holder of the public office of Governor or Lieutenant Governor; OR
 - (ii) Any State or County political party committee of the political party that nominated the sitting Governor or Lieutenant Governor in the last gubernatorial election.
- c) Within the 18 months immediately preceding the last day of the sitting Governor or Lieutenant Governor's first term of office to:
- (i) A candidate committee or election fund of the incumbent Governor or Lieutenant Governor; OR
 - (ii) Any State or County political party committee of the political party that nominated the sitting Governor or Lieutenant Governor in the last gubernatorial election.

4. During the term of the contract/agreement the business entity has a continuing responsibility to report, by submitting a new Certification and Disclosure form, any contribution it solicits or makes to:

- (a) Any candidate committee or election fund of any candidate or holder of the public office of Governor or Lieutenant Governor; OR
- (b) Any State, County or Municipal political party committee; OR
- (c) Any Legislative Leadership committee.

The business entity further acknowledges that contributions solicited or made during the term of the contract/agreement may be determined to be a material breach of the contract/agreement.

5. During the two-year certification period the business entity will report any changes in its ownership structure (including the appointment of an officer within a corporation) by submitting a new Certification and Disclosure form indicating the new owner(s) and reporting said owner(s) contributions.

I certify that the foregoing statements in Parts 1, 2 and 3 are true. I am aware that if any of the statements are willfully false, I may be subject to punishment.

Signed Name C. Rist Print Name Caroline Rist

Title/Position Vice President Compliance Date January 12, 2023

Procedure for Submitting Form(s)

The contracting State Agency should submit this form to the Chapter 51 Review Unit when it has been required as part of a contracting process. The contracting State Agency should submit a copy of the completed and signed form(s), to the Chapter 51 Unit and retain the original for their records.

The business entity should return this form to the contracting State Agency. The business entity can submit this form directly to the Chapter 51 Review Unit only when it -

- Is approaching its two-year certification expiration date and wishes to renew certification;
- Had a change in its ownership structure; OR
- Made any contributions during the period in which its last two-year certification was in effect, or during the term of a contract with a State Agency.

Forms should be submitted either electronically to: cd134@treas.nj.gov , or regular mail at: Chapter 51 Review Unit, P.O. Box 230, 33 West State Street, Trenton, NJ 08625.

03/30/20

Taxpayer Identification# [REDACTED]
N.J.S.A. 47:1A-1, N.J.S.A. 1A-1.1 Personal identifying information

Dear Business Representative:

Congratulations! You are now registered with the New Jersey Division of Revenue.

Use the Taxpayer Identification Number listed above on all correspondence with the Divisions of Revenue and Taxation, as well as with the Department of Labor (if the business is subject to unemployment withholdings). Your tax returns and payments will be filed under this number, and you will be able to access information about your account by referencing it.

Additionally, please note that State law requires all contractors and subcontractors with Public agencies to provide proof of their registration with the Division of Revenue. The law also amended Section 92 of the Casino Control Act, which deals with the casino service industry.

We have attached a Proof of Registration Certificate for your use. To comply with the law, if you are currently under contract or entering into a contract with a State agency, you must provide a copy of the certificate to the contracting agency.

If you have any questions or require more information, feel free to call our Registration Hotline at (609)292-9292.

I wish you continued success in your business endeavors.

Sincerely,



James J. Fruscione
Director
New Jersey Division of Revenue

**STATE OF NEW JERSEY
BUSINESS REGISTRATION CERTIFICATE**

DEPARTMENT OF TREASURY/
DIVISION OF REVENUE
PO BOX 252
TRENTON, N J 08646-0252

TAXPAYER NAME:
22ND CENTURY TECHNOLOGIES, INC.

ADDRESS:
220 DAVIDSON AVE STE 1008
SOMERSET NJ 08873-4002
EFFECTIVE DATE:

04/22/97

TRADE NAME:

SEQUENCE NUMBER:
0085738

ISSUANCE DATE:
03/30/20



Director
New Jersey Division of Revenue

FORM-BRC

This Certificate is NOT assignable or transferable. It must be conspicuously displayed at above address.

**STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE AND ENTERPRISE SERVICES
LONG FORM STANDING WITH CHARTER DOCUMENTS**

**22ND CENTURY TECHNOLOGIES, INC.
0100700406**

I, the Treasurer of the State of New Jersey, do hereby certify that the above-named New Jersey Domestic For-Profit Corporation was registered by this office on March 24, 1997.

As of the date of this certificate, said business continues as an active business in good standing in the State of New Jersey, and its Annual Reports are current.

I further certify that the registered agent and office are:

*KULPREET SINGH
220 DAVIDSON AVENUE
SUITE 118
SOMERSET, NJ 08873*

I further certify that as of the date of this certificate, the following amendments and changes are on file in this office:

<i>CHANGE OF AGENT AND OFFICE</i>	<i>06/01/1999</i>
<i>CHANGE OF REGISTERED OFFICE</i>	<i>09/18/2000</i>
<i>CHANGE OF AGENT AND OFFICE</i>	<i>10/23/2001</i>
<i>CHANGE OF AGENT AND OFFICE</i>	<i>01/09/2007</i>
<i>CHANGE OF AGENT AND OFFICE</i>	<i>01/10/2012</i>
<i>CHANGE OF AGENT AND OFFICE</i>	<i>03/02/2018</i>
<i>Annual Report Filing with address change</i>	<i>03/02/2018</i>

**STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY
DIVISION OF REVENUE AND ENTERPRISE SERVICES
LONG FORM STANDING WITH CHARTER DOCUMENTS**

22ND CENTURY TECHNOLOGIES, INC.
0100700406



*IN TESTIMONY WHEREOF, I have
hereunto set my hand and affixed
my Official Seal at Trenton, this
25th day of October, 2022*

A handwritten signature in black ink, appearing to read "Elizabeth Maher Muoio".

*Elizabeth Maher Muoio
State Treasurer*

Certificate Number : 6137048840

Verify this certificate online at

https://www1.state.nj.us/TYTR_StandingCert/JSP/Verify_Cert.jsp

**STATE OF NEW JERSEY
PARTICIPATING ADDENDUM
Pursuant to
NASPO ValuePoint Contract for Temporary Employment Related Services
LEAD STATE CONTRACT 20-00000-21-00021AA, Solicitation #20-00000-21-00021**

This Participating Addendum is made by and between, 22nd Century Technologies, Inc., whose address is 220 Davidson Avenue Suite, Somerset, NJ 08873 ("Contractor"), and the State of New Jersey, Department of the Treasury, Division of Purchase and Property ("State") whose address is 33 West State Street, 8th Floor, P.O. Box 039, Trenton, New Jersey 08625, on behalf of the State of New Jersey and all "Authorized Purchasers", as defined below. For clarification of references throughout this document, the term "State," in any form, refers to the State and any Authorized Purchaser, unless otherwise indicated. Capitalized terms used but not defined shall have the meaning ascribed to them in the Master Agreement.

WHEREAS, pursuant to N.J.S.A. 52:34-6.2, the Director of the Division of Purchase and Property ("Director"), within the New Jersey Department of the Treasury ("Division") "may enter into cooperative purchasing agreements with one or more states for the purchase of goods and services;" and

WHEREAS, the State of New Mexico ("Lead State") and Contractor have entered into Master Agreement # 20-00000-21-00021AA in accordance with the State of New Mexico Solicitation for Temporary Employment Related Services; and

WHEREAS, under the Rehabilitation Facilities Set Aside Act, N.J.S.A. 30:6-23 et seq., and the implementing regulations set forth in N.J.A.C. 10:99-1.1 et seq., certain commodities and services have been set aside for purchase from approved rehabilitation facilities and the State is required to procure such commodities and services from the Central Non-Profit Agency, ACCSES NJ, Inc., CNA Services (the "CAN"); and

WHEREAS, N.J.A.C. 10:99-5.1 prohibits the State from purchasing approved set-aside commodities and services unless granted a formal waiver from the CNA; and

WHEREAS, the CNA has granted the State a formal waiver with respect to temporary staffing services, attached hereto as Exhibit E, pursuant to which the State may procure such services under this Participating Addendum, if CNA cannot provide acceptable candidates to fill a position within the North Region of the State of New Jersey (comprised of Bergen, Essex, Hudson, Morris, Passaic, Somerset, Union, and Warren Counties) within eight (8) business hours of receiving a request from the State; and

WHEREAS, the Director has determined that entering into a Participating Addendum with Contractor is the most cost effective method of procuring these products and services, and that it is in the best interest of the State to enter into a Participating Addendum with Contractor; and

WHEREAS, the parties seek to enter into this Participating Addendum to memorialize the terms of their contractual relationship;

NOW THEREFORE, for good and valuable consideration, receipt of which hereby acknowledged, the parties to this Participating Addendum hereby agree as follows:

1.0 Term and Extension Option; Order of Precedence; Entire Agreement:

- A. The term of this Participating Addendum shall be effective from the Effective Date, which is the last date signed below, and shall continue for a period ending on the Termination Date of the Master Agreement or when this Participating Addendum is terminated in accordance with the Master Agreement or this Participating Addendum, whichever shall occur first.
- B. The entire agreement, and all rights and obligations between the parties, shall consist of the following documents (which shall be collectively referred to as the "Participating Addendum"):
 1. This cover packet to the Participating Addendum;
 2. The State of New Jersey Standard Terms and Conditions, attached hereto as Exhibit A;
 3. The Master Agreement, including its attachments and exhibits, attached hereto as Exhibit B;
 4. The Solicitation, incorporated herein by reference as Exhibit C;

5. The Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State, incorporated herein by reference as Exhibit D; and
6. Future order specific documents, in the following order:
 - a. A Contractor supplied scope of work as applicable, approved in writing by the Authorized Purchaser;
 - b. A Purchase Order issued by an Authorized Purchaser against the Participating Addendum;

The documents comprising the Participating Addendum shall be read to be consistent and complimentary. In the event of any conflict between the terms of the documents comprising the Participating Addendum, the conflict shall be resolved by giving priority to the documents in the order listed above.

- C. The Participating Addendum sets forth the entire agreement between the parties and supersedes all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof.
- D. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Agreement, shall not be added to or incorporated into this Participating Addendum or the Master Agreement by any subsequent purchase order, scope of work document or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected.
- E. Amendments – This Participating Addendum may not be amended except in a writing signed by both parties.

2.0 Scope of Services:

- A. The scope of products and services that may be purchased by Authorized Purchasers shall be those products and service offerings awarded under the Master Agreement. Notwithstanding the foregoing, Information Technology Professional Services are outside the scope and shall not be procured under this Participating Addendum.
- B. Any restrictions or limitations regarding the Executive Branch use of this Participating Addendum will be set forth in the Method of Operation, as may be amended from time to time and posted on the State's website.
- C. Financing, leasing, and renting is not permitted under this Participating Addendum for State agencies. Authorized Purchasers may finance their purchase, if permitted under law. If financing is through a lease agreement, that agreement is separate from this Participating Addendum and is between the Contractor and the respective Authorized Purchaser only.

3.0 Definitions

- A. "Authorized Purchasers" under this Participating Addendum shall mean:
 1. Any government agency, department, office, instrumentality, division, unit or other entity of the State;
 2. Any county, borough, city, municipality, town, township, special purpose district, or other political subdivision of the State;
 3. Quasi-state agencies as defined in N.J.S.A. 52:27B-56.1 as any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member;
 4. School districts per N.J.S.A. 52:25-16.1;
 5. Volunteer fire departments, volunteer first aid squads and rescue squads per N.J.S.A. 52:25-16.2; and
 6. Independent institutions of higher education per N.J.S.A. 52:25-16.5;
 7. County colleges per N.J.S.A. 18A:64A-25.9;
 8. State colleges per N.J.S.A. 18A:64-60; or
 9. Any legal successor in interest to any entity above.

Each Authorized Purchaser is responsible for the full cost of purchases made under this Participating Addendum.

- B. "Intrastate Cooperative Purchasing Participants" shall mean political subdivisions, including any county, borough, city, municipality, town, township, special purpose district, volunteer fire departments and first aid squads, and independent institutions of higher education and school districts pursuant to N.J.S.A. 52:25-16.1 *et seq.*, State and county colleges pursuant to N.J.S.A. 18A:64-60 and 18A:64A-25.9, quasi-State agencies and independent authorities pursuant to N.J.S.A. 52:27B-56.1, and other New Jersey public entities having statutory authority to utilize select State contracts issued by the Division.

4.0 Modifications to the Terms of the Master Agreement

- A. Section 5.2, Payment, of the Master Agreement No. 20-00000-21-00021AA is hereby revised to reflect that the State shall make all payments to 22nd Century under the provisions of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 *et seq.*, as stated in Paragraph 6.5 of the State's Standard Terms and Conditions (attached hereto as Exhibit A).
- B. The service area for the State of New Jersey will be divided into the following three zones.
1. The North Region is comprised of the following counties: Bergen, Essex, Hudson, Morris, Passaic, Somerset, Sussex, Union, and Warren.
 2. The Central Region is comprised of the following counties: Burlington, Hunterdon, Mercer, Middlesex, and Monmouth.
 3. The South Region is comprised of the following counties: Atlantic, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem.
- C. 22nd Century is required to use the CNA as a sub-contractor in the manner set forth below:
1. The CNA will be the primary vendor in the North Region and shall have a minimum of eight (8) business hours in order to provide acceptable candidates to fill the position. If eight (8) hours expire without the CNA providing the requesting using agency(ies) with acceptable candidates, the job request will be opened to all participating vendors.
 2. For any work that CNA provides to the State in any region of the State (North, Central, or South), CNA is permitted to add a surcharge of up to 15% at the time of invoicing for temporary employees provided by the CNA. This surcharge will be clearly indicated at the time of ordering.

5.0 Miscellaneous

- A. No Waiver - No term or provision of this Participating Addendum shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or any subsequent breach, except as may be expressly provided in the waiver or consent.
- B. Dispute Resolution - The State and Contractor will attempt to resolve any dispute through face-to-face negotiation with persons fully authorized to resolve the dispute or through non-binding mediation utilizing a mediator agreed to by the parties, rather than through litigation. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 *et seq.*, may begin until either such persons conclude, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely.
- C. Arbitration or Mediation - Any provision regarding arbitration or binding mediation within the Master Agreement is deleted in its entirety.
- D. Pursuant to N.J.A.C. 17:12-1B.2, notwithstanding anything to the contrary in the Master Agreement, under no circumstances will the State indemnify Contractor and any such provision in the Master Agreement shall be of no force and effect.
- E. Notwithstanding anything to the contrary in the Master Agreement, the State shall not be responsible for the Contractor's attorney fees and/or expenses.
- F. Notwithstanding anything to the contrary in the Master Agreement, the State does not agree to auto-renewal of maintenance, technical support, service fees, subscription fees or any other product or service requiring periodic renewal.

G. Quarterly Sales Reporting And Supplier Convenience Fee

1. Quarterly Sales Reporting - The Contractor shall submit a Sales Report documenting all sales made under the Participating Addendum. The Sales Report shall be submitted directly to Periscope using the **NJSTART** system no later than thirty (30) calendar days after the end of each calendar quarter. The calendar quarters will end March 31, June 30, September 30, and December 31. The Sales Report must contain the following information:
 - Complete and accurate details of all sales, credits, returns, refunds, and the like for the reporting quarter;
 - Purchasing entity;
 - Total of Supplier Convenience Fee amount due for the reporting quarter;
 - Such other information as the State may reasonably request; and
 - If no sales were made to the State during the reporting quarter, then a report shall be submitted showing zero sales and zero Supplier Convenience Fee due.
2. Supplier Convenience Fee - The Contractor shall remit the Supplier Convenience Fee in the amount of one percent (1%) of all Purchases made under the Participating Addendum.
3. Remittance of the Supplier Convenience Fee - On a quarterly basis, the Contractor shall remit the Supplier Convenience Fee directly to Periscope Holdings, Inc. (Periscope) no later than thirty (30) days after the end of each calendar quarter. The calendar quarters will end March 31, June 30, September 30, and December 31. Failure to remit the Supplier Convenience Fee timely and accurately may result in Contractor's goods and/or services being made ineligible for purchase through the **NJSTART** Marketplace.
4. Quarterly Sales Reporting and remittance of the Supplier Convenience Fee shall begin on the first calendar quarter starting after the effective date of the Participating Addendum.
5. Retention and Inspection of Records and Audit - The Contractor shall keep records of all sales made to Using Agencies and Intrastate Cooperative Purchasing Participants in sufficient detail to enable the State to determine the Supplier Convenience Fee payable by the Contractor. The State and/or Periscope may examine and audit, at its own expense, Contractor's sales records and Sales Reports for completeness and accuracy. If such examination reveals underpayment of the Supplier Convenience Fee, the Contractor shall immediately pay to Periscope the amount of deficiency. If the examination reveals an underpayment of 5% or more, then the Contractor shall reimburse the State and/or Periscope for the cost of the audit.
6. Catalog Enablement - The Contractor shall cooperate with the State and/or Periscope as requested to upload catalog items and pricing consistent with the awarded Participating Addendum to the **NJSTART** Marketplace module within thirty days (30) of the Participating Addendum award.

H. Delivery Guarantees - In the event delivery of goods or services is not made within the number of days stipulated, the State shall be authorized to obtain the product or service from any available source.

6.0 The State of New Jersey Mandatory Certification Requirements

The following are the State of New Jersey standard procurement forms and requirements that Contractor agrees to fulfill prior to the Effective Date. Some Authorized Purchasers may have additional requirements when placing an order and Contractor shall comply with same as necessary.

- A. [Ownership Disclosure](#) (N.J.S.A. 52:25-24.2);
- B. [Disclosure of Investment Activities in Iran](#) (N.J.S.A. 52:32-55 et. seq.);
- C. [Disclosure of Investigations and Actions Involving Bidder Form](#);
- D. [MacBride Principles](#) (N.J.S.A. 52:34-12.2);
- E. [Source Disclosure Certification](#) (N.J.S.A. 52:34-13.2);
- F. [Completed Contractor Certification and Disclosure of Political Contributions](#) (N.J.S.A. 19:44A-20:13 et. seq.);
- G. [Vendor Certification](#) (P.L. 2005, c.271);
- H. New Jersey Business Registration (N.J.S.A. 52:32-44);
- I. Proof of insurance as specified herein;
- J. [Proof of compliance with New Jersey Affirmative Action requirements](#) (N.J.A.C. 17:27-1.1 et. seq.):
 - New Jersey Form AA-302 Affirmative Action Employee Information Report; or
 - New Jersey Affirmative Action Certificate; or
 - Federal Affirmative Action Approval Letter.
- K. [Disclosure of Prohibited Activities in Russia / Belarus Form](#)

7.0 Primary Contacts

Any notice between the parties provided for in this Participating Addendum, or elsewhere in the Master Agreement shall be in writing, and shall be sent both via regular certified mail return receipt requested and via email to the addresses provided. The Parties should give prompt notice to each other if the appropriate person or address changes. The primary contacts for this Participating Addendum are as follows:

State of New Jersey – Department of the Treasury – Division of Purchase and Property	
Name	Jennifer Loughran
Title	Procurement Specialist
Address	33 West State Street, 8 th Floor, PO Box 230 Trenton, New Jersey 08625-0230
Telephone	609-943-4634
Fax	
Email	Jennifer.Loughran@treas.nj.gov

State of New Jersey – Agency Name	
Name	Each Using Agencies Fiscal Officer
Title	State Contract Manager
Address	
Telephone	
Fax	
Email	

22nd Century Technologies Inc.	
Name	Sandeep Singh
Title	Business Head- Operations & Client Relations
Address	500 College Road East Princeton, NJ 08540
Telephone	(703) 286-7655
Fax	(732) 537-0888
Email	sandeeps@tscti.com

IN WITNESS WHEREOF, The Contractor and the State have caused this Participating Addendum to be executed by their authorized representatives and agree that this Participating Addendum may be executed in counterparts, each original signed page to become part of the original document.

22nd Century Technologies, Inc.



Caroline Rist

Digitally signed by Caroline Rist
Date: 2023.01.05 15:11:10 -05'00'

Signature

January 5, 2023

Date

Caroline Rist, Vice President, Compliance

Print Name and Title

The State of New Jersey

Department of the Treasury - Division of Purchase and Property

DocuSigned by:



Amy F. Davis, Acting Director

January 17, 2023

Date

EXHIBITS

EXHIBIT A - The State of New Jersey Standard Terms and Conditions

EXHIBIT B - The Master Agreement, including its attachments and exhibits

EXHIBIT C - The Solicitation

EXHIBIT D - The Contractor's response to the Solicitation

EXHIBIT E – ACCSES NJ Waiver

EXHIBIT A - The State of New Jersey Standard Terms and Conditions



State of New Jersey Standard Terms and Conditions

(Revised September 1, 2022)

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

1.0 STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT

The following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. The State's terms and conditions shall prevail over any conflicts set forth in a Contractor's Quote or Proposal.

2.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

The statutes, laws, regulations or codes cited herein are available for review at the [New Jersey State Library](#), 185 West State Street, Trenton, New Jersey 08625.

2.1 BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the Contractor and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the Contractor who shall provide it to the State.

The contractor shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The contractor shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 *et seq.*) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <https://www.state.nj.us/treasury/revenue/busregcert.shtml>.

2.2 OWNERSHIP DISCLOSURE

Pursuant to N.J.S.A. 52:25-24.2, in the event the Contractor is a corporation, partnership or limited liability company, the Contractor must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote. A Contractor's failure to submit the completed and signed form prior to or with its Quote will result in the Contractor being ineligible for a Contract award, unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote.

In the alternative, a Contractor with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

2.3 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

Pursuant to N.J.S.A. 52:32-58, the Contractor must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Contractor is unable to so certify, the Contractor shall provide a detailed and precise description of such activities as directed on the form. A Contractor's failure to submit the completed and signed form will preclude the award of a Contract to said Contractor.

2.4 ANTI-DISCRIMINATION

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 *et seq.* and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Constructions

Contracts (Exhibit B and Exhibit C - Executive Order 151 Requirements) as appropriate.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

2.5 AFFIRMATIVE ACTION

In accordance with N.J.A.C. 17:27-1.1, prior to award, the Contractor and subcontractor must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Contractors or subcontractors not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at https://www.state.nj.us/treasury/contract_compliance/.

2.6 AMERICANS WITH DISABILITIES ACT

The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.

2.7 MACBRIDE PRINCIPLES

The Contractor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

2.8 PAY TO PLAY PROHIBITIONS

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), The State shall not enter into a Contract to procure services or any material, supplies or equipment, or to acquire, sell, or lease any land or building from any Business Entity, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership committee during certain specified time periods. It shall be a breach of the terms of the contract for the business entity to:

- A. Make or solicit a contribution in violation of the statute;
- B. Knowingly conceal or misrepresent a contribution given or received;
- C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
- E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

Prior to awarding any Contract or agreement to any Business Entity, the Business Entity proposed as the intended Contractor of the Contract shall submit the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, certifying that no contributions prohibited by either Chapter 51 or Executive Order No. 117 have been made by the Business Entity and reporting all qualifying contributions made by the Business Entity or any person or entity whose contributions are attributable to the Business Entity. The required form and instructions, available for review on the Division's website at <https://www.state.nj.us/treasury/purchase/forms.shtml>, shall be provided to the intended Contractor for completion and submission to the Division with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended Contractor shall submit to the Division, in care of the Division Procurement Specialist, the Certification and Disclosure(s) within five (5) business days of the State's request. The Certification and Disclosure(s) may be executed electronically by typing the name of the authorized signatory in the "Signature" block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form. Failure to submit the required forms will preclude award of a Contract under this Bid Solicitation, as well as future Contract opportunities; and

Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the Contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Division's website at <https://www.state.nj.us/treasury/purchase/forms.shtml>, shall be provided to the intended Contractor with the Notice of Intent to Award.

2.9 POLITICAL CONTRIBUTION DISCLOSURE

The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one (1) or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file

can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

2.10 STANDARDS PROHIBITING CONFLICTS OF INTEREST

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

- A. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;
- B. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards, now known as the State Ethics Commission;
- C. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, now known as the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;
- D. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;
- E. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and
- F. The provisions cited above in paragraphs 2.8A through 2.8E shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards, now known as the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

2.11 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION

The Treasurer has established a business ethics guide to be followed by a Contractor in dealings with the State. The guide can be found at: <https://www.nj.gov/treasury/purchase/pdf/BusinessEthicsGuide.pdf>.

2.12 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

2.13 COMPLIANCE - LAWS

The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

2.14 COMPLIANCE - STATE LAWS

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

2.15 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

2.16 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS

The Contractor should submit the Disclosure of Investigations and Other Actions Form which provides a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If a Contractor does not submit the form with the Quote, the Contractor must comply within seven (7) business days of the State's request or the State may deem the Quote non-responsive.

2.17 DISCLOSURE OF PROHIBITED ACTIVITIES WITH RUSSIA OR BELARUS

Pursuant to P.L. 2022, c. 3, a person or entity seeking to enter into, renew, amend or extend a contract for the provision of goods or services shall certify that it is not identified on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Activities in Russia or Belarus. If the Contractor is unable to so certify because the person or entity, its parents, subsidiaries, or affiliates has engaged in prohibited activities, the Contractor shall provide a detailed and precise description of such activities. A Contractor's failure to submit a certification will preclude the award, renewal, amendment or extension of a Contract to said Contractor.

3.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**3.1 COMPLIANCE - CODES**

The contractor must comply with New Jersey Uniform Construction Code and the latest National Electrical Code 70®, B.O.C.A. Basic Building code, Occupational Safety and Health Administration and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

3.2 PREVAILING WAGE ACT

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The Contractor's signature on [the proposal] is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by [the proposal] has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the Contractor's signature on the proposal is also his/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by [the proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

3.3 PUBLIC WORKS CONTRACTOR REGISTRATION ACT

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance.

3.4 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

- A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- B. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- C. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- A. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- B. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:
 1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
 2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
 3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
 4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

3.5 BUILDING SERVICE

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11-56.59. The prevailing wage shall be adjusted annually during the term of the contract.

3.6 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

3.7 SERVICE PERFORMANCE WITHIN U.S.

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

3.8 BUY AMERICAN

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States, whenever available, and the contractor shall be required to so certify.

3.9 DOMESTIC MATERIALS

Pursuant to N.J.S.A. 52:33-2 et seq., if the contract is for the construction, alteration or repair of any public work, the contractor and all subcontractors shall use only domestic materials in the performance of the work unless otherwise noted in the specifications.

3.10 DIANE B. ALLEN EQUAL PAY ACT

Pursuant to N.J.S.A. 34:11-56.14 and N.J.A.C. 12:10-1.1 et seq., a contractor performing “qualifying services” or “public work” to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

3.11 EMPLOYEE MISCLASSIFICATION

In accordance with [Governor Murphy's Executive Order #25](#) and the [Task Force's July 2019 Report](#), employers are required to properly classify their employees. Workers are presumed to be employees and not independent contractors, unless the employer can demonstrate all three factors of the “ABC Test” below:

- A. Such individual has been and will continue to be free from control or direction of the performance of such service, but under his or her contract of service and in fact; and
- B. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all places of business of the enterprise for which such service is performed; and
- C. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

This test has been adopted by New Jersey under its Wage & Hour, Wage Payment and Unemployment Insurance Laws to determine whether a worker is properly classified. Under N.J.S.A. 34:1A-1.17-1.19, the Department of Labor and Workforce Development has the authority to investigate potential violations of these laws and issue penalties and stop work order to employers found to be in violation of the laws.

4.0 INDEMNIFICATION AND INSURANCE

4.1 INDEMNIFICATION

The contractor's liability to the State and its employees in third party suits shall be as follows:

- A. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;
- B. The contractor's indemnification and liability under subsection (A) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and
- C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

4.2 INSURANCE

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the contractor's insurer cannot provide 30 days written notice, then it will become the obligation of the contractor to provide the same. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the State at: ccau.certificate@treas.nj.gov

The insurance to be provided by the contractor shall be as follows:

- A. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as “Additional Insureds” and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;
- B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State must be named as an “Additional Insured” and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;
- C. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

1. \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
2. \$1,000,000 DISEASE EACH EMPLOYEE; and
3. \$1,000,000 DISEASE AGGREGATE LIMIT.

This \$1,000,000 amount may be raised when deemed necessary by the Director;

In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections A, B, and B. above may be amended for certain commodities when deemed in the best interests of the State by the Director.

5.0 TERMS GOVERNING ALL CONTRACTS

5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR

The contractor's status shall be that of any independent contractor and not as an employee of the State.

5.2 RESERVED

5.3 CONTRACT TERM AND EXTENSION OPTION

If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions of the original contract shall apply unless more favorable terms for the State have been negotiated.

5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and
- B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

Any changes or modifications to the terms of this Contract shall be valid only when they have been reduced to writing and signed by the Contractor and the Director.

5.5 CHANGE IN LAW

If, after award, a change in applicable law or regulation occurs which affects the Contract, the parties may amend the Contract, including pricing, in order to provide equitable relief for the party disadvantaged by the change in law. The parties shall negotiate in good faith, however if agreement is not possible after reasonable efforts, the Director shall make a prompt decision as to an equitable adjustment, taking all relevant information into account, and shall notify the Contractor of the final adjusted contract price.

5.6 SUSPENSION OF WORK

The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

- A. For Convenience:
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;
- B. For Cause:
 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor

- with an opportunity to respond; and
- 2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.
- C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and
- D. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

5.8 SUBCONTRACTING

The Contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws. Nothing contained in any of the contract documents, shall be construed as creating any contractual relationship between any subcontractor and the State.

5.9 RESERVED

5.10 MERGERS, ACQUISITIONS AND ASSIGNMENTS

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR

The contractor hereby certifies that:

- A. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;
- B. All equipment supplied to the State and operated by electrical current is UL listed where applicable;
- C. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;
- D. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
- E. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
- F. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and
- G. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

5.12 DELIVERY REQUIREMENTS

- A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
- B. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice;
- C. Items delivered must be strictly in accordance with the contract; and
- D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

5.13 APPLICABLE LAW AND JURISDICTION

This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

5.14 CONTRACT AMENDMENT

Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.

5.15 MAINTENANCE OF RECORDS

Pursuant to N.J.A.C. 17:44-2.2, the contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)

The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor:

- A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
- B. It shall advise the Attorney General of New Jersey:
 1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and
 2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
- D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

5.17 NEWS RELEASES

The Contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this Contract without the prior written consent of the Director.

5.18 ADVERTISING

The Contractor shall not use the State's name, logos, images, or any data or results arising from this Contract as a part of any commercial advertising without first obtaining the prior written consent of the Director.

5.19 ORGAN DONATION

As required by N.J.S.A. 52:32-33.1, the State encourages the contractor to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.

5.20 LICENSES AND PERMITS

The Contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this Contract. Notwithstanding the requirements of the Bid Solicitation, the Contractor shall supply the State Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to this Contract award. All costs associated with any such licenses, permits, and authorizations must be considered by the Contractor in its Quote.

5.21 CLAIMS AND REMEDIES

- A. All claims asserted against the State by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.
- B. Nothing in this Contract shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.
- C. In the event that the Contractor fails to comply with any material Contract requirements, the Director may take steps to terminate this Contract in accordance with the SSTC, authorize the delivery of Contract items by any available means, with the difference between the price paid and the defaulting Contractor's price either being deducted from any monies due the defaulting Contractor or being an obligation owed the State by the defaulting Contractor, as provided for in the State administrative code, or take any other action or seek any other remedies

available at law or in equity.

5.22 ACCESSIBILITY COMPLIANCE

The Contractor acknowledges that the State may be required to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. The Contractor agrees that any information that it provides to the State in the form of a Voluntary Product Accessibility Template (VPAT) about the accessibility of the Software is accurate to a commercially reasonable standard and the Contractor agrees to provide the State with technical information available to support such VPAT documentation in the event that the State relied on any of Contractor's VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. In addition, Contractor shall defend any claims against the State that the Software does not meet the accessibility standards set forth in the VPAT provided by Provider in order to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794 and will indemnify the State with regard to any claim made against the State with regard to any judgment or settlement resulting from those claims to the extent the Provider's Software provided under this Contract was not accessible in the same manner as or to the degree set forth in the Contractor's statements or information about accessibility as set forth in the then-current version of an applicable VPAT.

5.23 CONFIDENTIALITY

- A. The obligations of the State under this provision are subject to the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena;
- B. By virtue of this Contract, the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this Contract. Contractor's Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure Vendor Intellectual Property ("Contractor Confidential Information"). Notwithstanding the previous sentence, the terms and pricing of this Contract are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena;
- C. The State's Confidential Information shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not);
- D. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;
- E. The State agrees to hold Contractor's Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;
- F. In the event that the State receives a request for Contractor Confidential Information related to this Contract pursuant to a court order, subpoena, or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such order of law. Contractor shall take any action it deems appropriate to protect its documents and/or information;
- G. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such order of law. The State shall take any action it deems appropriate to protect its documents and/or information; and
- H. Notwithstanding the requirements of nondisclosure described in this Section, either party may release the other party's Confidential Information:
 - (i) if directed to do so by a court or arbitrator of competent jurisdiction; or
 - (ii) pursuant to a lawfully issued subpoena or other lawful document request:
 - (a) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in Section 5.23(F), or if Contractor is unsuccessful in defending its rights as described in Section 5.23(F); or
 - (b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 5.23(G), or if the State is unsuccessful in defending its rights as described in Section 5.23(G).

6.0 TERMS RELATING TO PRICE AND PAYMENT

6.1 PRICE FLUCTUATION DURING CONTRACT

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract. In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

In an exceptional situation the State may consider a price adjustment. Requests for price adjustments must include justification and

documentation.

6.2 TAX CHARGES

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

6.3 PAYMENT TO VENDORS

- A. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price;
- B. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the Bill of Lading, and/or other documentation to confirm shipment and receipt of contracted goods must be received by the using agency prior to payment. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work and must be in strict accordance with the firm, fixed prices submitted for each task or subtask. When applicable, invoices should reference the appropriate task or subtask or price line number from the contractor's proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;
- C. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls; and
- D. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Office of Diversity and Inclusion.
- E. The Contractor shall have sole responsibility for all payments due any Subcontractor

6.4 OPTIONAL PAYMENT METHOD: P-CARD

The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 NEW JERSEY PROMPT PAYMENT ACT

The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice. Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

6.6 AVAILABILITY OF FUNDS

The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

7.0 TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth in this Section of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

7.1 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made the Contractor shall:

- (1) Include qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

- (4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
- (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

7.2 DOMESTIC PREFERENCE FOR PROCUREMENTS

Pursuant to 2 CFR 200.322, where appropriate, the State has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). If subawards are to be made the Contractor shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7.3 PROCUREMENT OF RECOVERED MATERIALS

Where applicable, in the performance of contract, pursuant to 2 CFR 200.323, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

To the extent that the scope of work or specifications in the contract requires the contractor to provide recovered materials the scope of work or specifications are modified to require that as follows.

- i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 2. Meeting contract performance requirements; or
 3. At a reasonable price.
- ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

7.4 EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equalopportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." See, 2 CFR Part 200, Appendix II, para. C.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) 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, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

7.5 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. Additionally, contractors are required to pay wages not less than once a week.

7.6 COPELAND ANTI-KICK-BACK ACT

Where applicable, the Contractor must comply with Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

- a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

7.7 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The unauthorized user shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7.8 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7.9 CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED

Where applicable, Contract and subgrants of amounts in excess of \$150,000, must comply with the following:

Clean Air Act

- 7.9.1.1 The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- 7.9.1.2 The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 7.9.1.3 The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

7.10 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.

- (3) This certification is a material representation of fact relied upon by the State or authorized user. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or authorized user, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7.11 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

7.12 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in *Public Law 115–232*, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

EXHIBIT A(A) - GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.A.C. 17:27 et seq.

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- Letter of Federal Affirmative Action Plan Approval;
- Certificate of Employee Information Report; or
- Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at http://www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase and Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase and Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

EXHIBIT A(B) - CONSTRUCTION CONTRACTS**MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE**N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)N.J.S.A. 10:5-39 et seq. (P.L. 1983, c. 197)N.J.A.C. 17:27-1.1 et seq.

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of \$250,000 to guarantee equal employment opportunity to veterans.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- (A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.
- (B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:
 - (1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

- (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
 - (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
 - (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
 - (5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
 - (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
 - (i) The contractor or subcontractor shall interview the referred minority or women worker.
 - (ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.
 - (iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
 - (iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.
 - (7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.
- (C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.

- (D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXHIBIT A(C) - EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <https://newjersey.usnlx.com/>;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.

EXHIBIT B - The Master Agreement, including its attachments and exhibits



**State of New Mexico
General Services Department
State Purchasing Division**

Master Agreement Cover Page

Awarded Vendor:

0000084862

22nd Century Technologies

8251 Greensboro Drive, Suite 900

McLean, VA 46204

Isha Sharma, Contract Manager

Email: sledprxxxxxxx@xxxxx.xxm

Telephone No.: (888) 998-7284

Agreement Number: **20-00000-21-00021AA**

Payment Terms: **Net 30**

F.O.B.: **Destination**

Delivery: **Per Master Agreement**

Ship To:

**All State of New Mexico agencies, commissions,
institutions, political subdivisions and local
public bodies allowed by law.**

Procurement Specialist: **Natalie Martinez** *MM*

Telephone No.: **(505) 690-5977**

Email: **Natalie.Martinez1@state.nm.us**

Invoice:

As Requested by User Agency

Title: Temporary Employment Services

Term: August 15, 2022 – August 14, 2024

The attached Master Agreement is made subject to the “terms and conditions” as indicated.

22nd Century Technologies has been awarded the following service categories:

Administrative Support including Office, Clerical and Sales

Industrial/Commercial Workers

Health Clinical

Health Non Clinical

Information Technology

Professional Services (non IT)



Master Agreement No. 20-00000-21-00021AA

THIS AGREEMENT for Temporary Employment Services is entered into by and between the **State of New Mexico, General Services Department** (hereinafter the “Lead State” or a “Participating Entity” and **22nd Century Technologies, Inc.** (hereinafter the “Contractor”).

Contractor Information:

22nd Century Technologies, Inc.
Isha Sharma, Contracts Manager
8251 Greensboro Drive, Suite 900
McLean VA 46204
sledprxxxxxx@xxxxx.xxx
(888) 998-87284

NASPO ValuePoint Master Agreement Terms and Conditions

1. Master Agreement Order of Precedence

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

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

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

2. Definitions

Administrative Support (Including Office and Clerical) Occupations in which workers are responsible for day-to-day operations such as internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. May include but is not limited to bookkeepers, messengers, clerk-typists, stenographers, court transcribers, hearing reporters, statistical clerks, dispatchers, license distributors, payroll clerks, office machine and computer operators, legal assistants, cashiers, and toll collectors.

Award means, in the context of this Request for Proposals and all its attendant documents, that point at

which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.

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

Fully Loaded Labor Rate means the proposed maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.

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

Master Agreement means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.

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

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

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

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.

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

Price Agreement means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.

Procuring Agency means all agencies, commissions, institutions, political subdivisions and local public

bodies allowed by law to entertain procurements.

Project means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved, and project acceptance is given by the project executive sponsor.

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

Staff means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors' company.

State Agency means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. "State agency" includes the Purchasing Division of the General Services Department and the State Purchasing Agent but does not include local public bodies.

State Purchasing Agent means the Director of the State Purchasing Division of the General Services Department for the State of New Mexico.

Subcontractor means a business agreeing to perform part or all the obligations of the awarded Contractor. This does not include those persons provided to Purchasing Entities under the awarded contracts to fulfill temporary services.

NASPO ValuePoint Program Provisions

I. Term of Master Agreement

- 1.1 The initial term** of the Contract will be two (2) years with the option, upon mutual written agreement by all parties, for three (3) additional renewal periods of one (1) year each.
- 1.2 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.
- 1.3 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-up competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-up 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.

II. Order of Precedence

- 2.1 Order.** Any Order placed under this Master Agreement will consist of the following documents:

- 2.1.1 A Participating Entity's Participating Addendum ("PA");
 - 2.1.2 NASPO ValuePoint Master Agreement, including all attachments thereto;
 - 2.1.3 A Purchase Order or Scope of Work/Specifications issued against the Master Agreement;
 - 2.1.4 The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
 - 2.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 2.2 **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.
- 2.3 **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.

III. Participants and Scope

- 3.1 **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.
- 3.2 **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.
- 3.3 **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.
- 3.4 **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.

- 3.5 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.
- 3.6 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.
- 3.7 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.
- 3.8 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.
- 3.9 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.
- 3.10 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.

IV. NASPO ValuePoint Provisions

- 4.1 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.
- 4.2 Administrative Fees**

4.2.1 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.

4.2.2 State Imposed Fees. Some states may require an additional fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee 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.

4.3 NASPO ValuePoint Summary and Detailed Usage Reports

4.3.1 Sales Data Reporting. In accordance with this section, Contractor 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.

4.3.2 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.

4.3.3 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.

- 4.3.4 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.
- 4.3.5 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.

4.4 NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review

- 4.4.1 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.
- 4.4.2 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.
- 4.4.3 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.

4.4.4 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.

4.4.5 Most Favored Customer. Contractor shall, within thirty (30) days of their effective date, to 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 Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

4.5 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 vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years] after 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.

4.6 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.

4.7 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.

V. Pricing, Payment & Leasing

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

5.1.1 All prices and rates must be guaranteed for the initial term of the Master Agreement.

5.1.2 Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least sixty (60) days prior to the effective date.

5.1.3 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.

5.1.4 No retroactive adjustments to prices or rates will be allowed.

5.2 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 entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum 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.

5.3 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.

VI. Ordering

6.1 Order Numbers. Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.

6.2 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.

6.3 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.

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

6.5 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.

6.5.1 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.

- 6.5.2 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.
- 6.5.3 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.
- 6.5.4 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.
- 6.5.5 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.
- 6.6 **Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:
 - 6.6.1 The services or supplies being delivered;
 - 6.6.2 A shipping address and other delivery requirements, if any;
 - 6.6.3 A billing address;
 - 6.6.4 Purchasing Entity contact information;
 - 6.6.5 Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
 - 6.6.6 A not-to-exceed total for the products or services being ordered; and
 - 6.6.7 The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.
- 6.7 **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.
- 6.8 **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.

VII. Shipping and Delivery

- 7.1 **Shipping Terms.** All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.

7.1.1 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.

7.2 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.

7.3 Inside Deliveries. To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to 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.

7.4 Packaging. Reserved

VIII. Inspection and Acceptance

8.1 Laws and Regulations. Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.

8.2 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.

8.3 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.

8.3.1 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.

8.3.2 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.

8.4 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.

- 8.5 Acceptance Testing.** Purchasing Entity may establish a process, in keeping with industry standards, to ascertaining whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.
- 8.5.1** 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.
- 8.5.2** 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.
- 8.5.3** 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.
- 8.5.4** Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.
- 8.5.5** No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

IX. Warranty

- 9.1 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.
- 9.2 Warranty.** Reserved
- 9.3 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.
- 9.4 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.
- 9.5 Warranty Period Start Date.** The warranty period will begin upon Acceptance, as set forth in Section IX.

X. Product Title

- 10.1 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.

- 10.2 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.
- 10.3 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"). The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.

XI. Indemnification

- 11.1 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.
- 11.2 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").
- 11.2.1** 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:
- 11.2.1.1** provided by the Contractor or the Contractor's subsidiaries or affiliates;
 - 11.2.1.2** specified by the Contractor to work with the Product;
 - 11.2.1.3** 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
 - 11.2.1.4** reasonably expected to be used in combination with the Product.
- 11.2.2** 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.

- 11.2.3** 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.
- 11.2.4** 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.

XII. Insurance

- 12.1 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.
- 12.2 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.
- 12.3 Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:
 - 12.3.1** 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;
 - 12.3.2** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- 12.4 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.
- 12.5 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.

- 12.6 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.
- 12.7 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.
- 12.8 Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XIII. General Provisions

13.1 Records Administration and Audit

- 13.1.1** 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.
- 13.1.2** 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.
- 13.1.3** 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.

13.2 Confidentiality, Non-Disclosure, and Injunctive Relief

13.2.1 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.

13.2.1.1 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").

13.2.1.2 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.

13.2.1.3 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.

13.2.2 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.

13.2.2.1 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.

13.2.2.2 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.

13.2.2.3 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.

13.2.2.4 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.

13.2.3 Injunctive Relief. Contractor acknowledges that Contractor's breach of Section 13.2 would cause irreparable injury to the Purchasing Entity that cannot be inadequately 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.

13.2.4 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.

13.2.5 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 identify of any entity seeking access to the Confidential Information described in this subsection.

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

13.3 Assignment/Subcontracts

13.3.1 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.

13.3.2 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.

- 13.4 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 Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. 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.
- 13.5 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 hold itself out as agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order.
- 13.6 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.
- 13.7 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.
- 13.8 Defaults and Remedies**
- 13.8.1** The occurrence of any of the following events will be an event of default under this Master Agreement:
- 13.8.1.1** Nonperformance of contractual requirements;
 - 13.8.1.2** A material breach of any term or condition of this Master Agreement;
 - 13.8.1.3** 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;
 - 13.8.1.4** 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
 - 13.8.1.5** Any default specified in another section of this Master Agreement.

13.8.2 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.

13.8.3 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:

13.8.3.1 Any remedy provided by law;

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

13.8.3.3 Assessment of liquidated damages as provided in this Master Agreement;

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

13.8.3.5 Suspension of Contractor's performance; and

13.8.3.6 Withholding of payment until the default is remedied.

13.8.4 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.

13.9 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.

13.10 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.

13.11 No Waiver of Sovereign Immunity

13.11.1 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.

13.11.2 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.

13.12 Governing Law and Venue

13.12.1 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.

13.12.2 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.

13.12.3 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.

13.13 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.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement, which will take effect on the last signature date of the required approval authorities below. Each of the signatories, below, may execute this Agreement by hard copy original, facsimile, digital or electronic signature, any of which shall be deemed to be a true and original signature hereunder.

By: *Isha Sharma*
Isha Sharma, Contracts Manager
22nd Century Technologies, Inc.

Date: 8/19/2022

The records of the Taxation and Revenue Department reflect that Contractor is registered with the Taxation and Revenue Department of the State to pay gross receipts and compensating taxes:

N.J.S.A. 47:1A-1, N.J.S.A. 1A-1.1 Personal identifying information
CRS ID Number: ~~N.J.S.A. 47:1A-1, N.J.S.A. 1A-1.1 Personal identifying information~~

NOTE: Taxation and Revenue is only verifying the registration and will not confirm or deny taxability statements contained in this contract.

By: *Ann Marie Lucero*
Taxation and Revenue Department

Date: 8/26/2022

This Agreement has been approved by the State Purchasing Agent of New Mexico:

By: *Valerie Paulk*
Purchasing Agent
State of New Mexico

Date 8/26/2022

X This Agreement is signed on behalf of the State Purchasing Agent

Temporary Employment Services
Master Agreement 20-00000-21-00021AA
Attachment A:
Scope of Work

Contractor(s) agrees to provide **Temporary Employment Services** relating to Administrative Support (Including Office and Clerical), Commercial/Industrial Workers, and Clinical and Non-Clinical Healthcare Staffing Services, and/or Information Technology Professional Services as defined. Contractor(s) shall be independent contractors and not employees of the State of New Mexico or Participating Entities. Contractor's staff, including temporary assigned individuals shall also not be considered employees of the Participating Entities.

These services are as needed and upon request from Procuring Agencies. Contractor(s) will be responsible for hiring and firing temporary employees, paying all applicable taxes, workers' compensation, benefits, etc., for the candidates who are **not** employees of the individual participating entities. Candidates will not be provided employee benefits from the State agencies or political subdivisions.

The Lead State will not guarantee any minimum level of usage for any resulting contract(s) under this RFP.

1. Temporary Employment Services

- A. Contractor will notify the Procuring Agency on availability within four (4) hours after a request is made for services that will commence within five (5) working days following the request;
- B. Contractor will notify the Procuring Agency on availability within two (2) days after a request is made for services that will commence later than five (5) working days following the request;
- C. Contractor will confirm with the Procuring Agency the arrival of its candidate by telephone within one-half (1/2) hour after scheduled arrival time or as determined by the Procuring Agency and the Contractor by mutual agreement.
- D. Contractor is responsible to communicate with its candidate the Procuring Agency's requirements regarding hours of work, duration, location, expectations, dress code and other information concerning the assignment.
- E. All temporarily assigned individuals will be appropriately dressed for the assignment and shall maintain a professional demeanor. Dress code policy is established by the individual agencies. Temporary candidate must dress according to the requirements of the Procuring Agency requesting the assignment.
- F. Temporarily assigned individuals should be available for the entire length of the assignment; however, if a replacement is required, a qualified replacement must be provided within twenty-four (24) hours of notification, including weekends and holidays.
- G. The Procuring Agency reserves the right to reduce the length of the temporary assignment and will provide the Contractor with as much notification as possible.

2. Work Hours

- A. The exact work hours for temporarily assigned personnel will be determined by the Procuring Agency. Generally, work hours begin at 8:00 a.m. and end at 5:00 p.m. Monday through Friday excluding officially observed holidays. Any non-working time as the result of early dismissal, due to weather or any other situation as determined by the Procuring Agency are also excluded. Temporarily assigned personnel will work no more than eight (8) hours per day, excluding one (1) hour for lunch; or a total of forty (40) hours per week.

- B. Temporarily assigned individuals will not be paid for their lunch break.
- C. Overtime worked is at the discretion of the Procuring Agency and must be approved in advanced and in writing. Overtime will not be authorized or paid unless prior written authorization is obtained from appropriate management staff.
- D. Agencies have the right to request temporarily assigned individuals for holiday, evening/night, weekend, or shift work as needed.
- E. Hours may vary per Procuring Agency.
- F. The Procuring Agency reserves the right to request a replacement of any individual. If for any reason a replacement is required within the first eight (8) hours of service, there will be no charge to the Procuring Agency. If at any time beyond the initial eight (8) hours of service the temporarily assigned individual is determined to be unsatisfactory, the Contractor agrees to issue a credit invoice to the Procuring Agency for the total charges from the point the Procuring Agency notifies the Contractor to request a replacement.
- G. The Contractor agrees to replace an unsatisfactory individual within one (1) business day; however, the Procuring Agency has the option to contact a different Contractor for the service.
- H. The Procuring Agency shall be the sole judge as to whether a temporarily assigned individual is satisfactory and is fulfilling the Procuring Agency's requirements.

3. Listing of Position Classifications & Pay Rate

Each Procuring Agency will provide a listing of position classifications to the Contractor; however, the listing is not meant to be all-inclusive. Individual states or agencies may request other temporary positions by way of providing the Contractor(s) with the employee pay rate, position classification/title and description of duties.

4. Placement

- A. Agencies may refer a specific individual as a candidate to be recruited by the Contractor to perform specific services needed or may request the Contractor to recruit and provide a specific temporary candidate. The Procuring Agency will not pay a placement or conversion fee for individuals who are a direct referral from the Procuring Agency.
- B. Upon a request for service from the Procuring Agency, the Contractor will provide expedient temporary employment services. An e-mail, facsimile, or telephone call from the Procuring Agency will constitute a request for service.
- C. The Procuring Agency reserves the right to interview the candidate to determine their qualifications for the required position (this does not negate the Contractor's responsibility of qualifying candidate(s)).
- D. The Procuring Agency may reject and/or remove any candidate who does not meet the requested experience or is deficient in the performance of the assignment.
- E. Procuring Agencies may select Contractor(s) within their geographic region based on the preference of the Procuring Agency.
- F. Multiple Contractors may be contacted to fill the same position.

5. Contractor's Responsibilities

- A. The Contractor is responsible to obtain the information as described in the Scope of Work and any other information necessary to determine what job category satisfies the service request.
- B. Contractor shall supply sufficient, competent, reliable, and properly licensed or certified or both personnel to provide adequate and satisfactory services as required under this Contract. In cases

where special licenses, accreditations, certifications, or permits are required by State, Federal and/or Local law, statute, or regulation for an employee to perform services of specified job descriptions, Contractor shall provide current copies of such licenses, accreditations, certifications and permits upon Client Agency's request. Contractor shall maintain all applicable licenses, accreditations, certifications and permits during the term of this Contract. Contractor shall immediately notify the Client Agency by written notice in the event any of its employees' licenses, accreditations, certifications, or permits are revoked, expired, or suspended.

- C. The Contractor will inform the Procuring Agency point of contact of the proposed job classification and applicable rate to obtain authorization to proceed with the service request.
- D. Placing candidates out of applicable job classification is considered a breach of contract. Periodic checks of requests and assignments will be performed by the Procuring Agency to ensure this does not occur.
- E. The Contractor is responsible for conducting appropriate background and reference checks on potential candidates prior to any assignments and should be prepared to conduct more extensive background investigations when required by the Procuring Agency. Upon request, Contractor must provide, to the Procuring Agencies, the compliance of the background and reference checks. Failure to provide this information will be considered a violation of the contract and may result in rejection of the candidate and possibly jeopardize future placements by offending Contractor.
- F. Contractor will be responsible for liability insurance, federal and state payroll requirements including but not limited to insurance coverage for any candidate sent to the Procuring Agency, payroll taxes, payroll reports, workers' compensation, benefits, hiring and firing etc., for the candidates.
- G. The Contractor is responsible for conducting periodic quality assurance checks with the Procuring Agency's point of contact to verify that the Procuring Agency's requirements are being fulfilled by the candidate. At a minimum, these checks should be completed at the end of the first week of any assignment. Procuring Agencies may request quality assurance checks at any interval during the term of the candidate's placement.
- H. Candidates may be hired as a permanent employee of the State or Procuring Agency if the Procuring Agencies and hiring processes have been complied with and if the candidate elects to accept employment with the State or Procuring Agency. Such occurrence will create no further obligation (financial or otherwise) on the part of the Procuring Agency.
- I. The Procuring Agency will not be responsible for the Contractor's candidate who voluntarily leaves the Contractor's employment or engages in employment with another company.
- J. The Contractor agrees to ensure candidates agree to be bound by the Participating State's security regulations, policies, and standards as required by the Procuring Agency (e.g., Department of Corrections). This will vary based on the individual Procuring Agency's requirements.
- K. Contractor shall ensure adequate backup documentation (such as candidate timesheets) are attached to invoice or billing requests. The timesheet should include the following:
 - a. Name of the Procuring Agency;
 - b. Name of the temporarily assigned individual;
 - c. Dates worked;
 - d. Beginning and ending time;
 - e. Number of actual regular hours worked each day; and
 - f. If applicable, number of overtime hours worked each day
 - g. Written pre-approval of overtime hours.
 - h. Time sheet signed by authorized representative of the Procuring Agency.

- L. The Contractor is responsible and may be held financially liable for the negligent acts of its candidates.

6. **Bonding**

- A. The Contractor shall have the ability to bond candidates as directed by the Procuring Agency.
- B. The fee for this service will be borne by the Procuring Agency.
Selection of the bonding insurer is at the Contractor's discretion; however, each insurance policy shall be:
Issued by insurance companies authorized to do business in the Participating State or eligible surplus lines insurers acceptable to and having agents in the State upon whom service of process may be made.

7. **Travel**

- A. Reimbursement for travel will be at the discretion of the Procuring agency and shall not be subject to the Contractor's markup.
- B. In the event a candidate's duties require travel, the reimbursable travel costs shall follow the Procuring Agencies travel reimbursement policies. Travel authorizations must be given before travel occurs per Procuring Agency's internal policies.
- C. Travel expenses submitted for reimbursement must follow Procuring Agency's internal policies.
- D. Valid travel reimbursements will be reimbursed at the Procuring Agencies current travel rate.
- E. The candidate and the Procuring Agency's contact person must sign the travel expense form.
- F. The form must be submitted with the Contractor's invoice for services with the travel expense as a separate line item on the invoice in order to be reimbursed by the Procuring Agency.
- G. The type of position requiring travel will vary based on the individual Procuring Agency's requirements.

8. **Equipment, Property and Damages**

- A. The Contractor shall be responsible for the proper maintenance and custody of any personal tangible property owned and real property furnished by the Procuring Agency for the use in connection with the performance of the contract.
- B. The Contractor will reimburse the Procuring Agency for such property's loss or damage caused by the Contractor's assigned individual, with the exception of normal wear and tear.
- C. The equipment used may include computers, copy machines, phones, printers, etc. Equipment may vary depending on the candidate assignments.

9. **Procuring Agency's Responsibilities**

- A. Prior to contacting the Contractor (s), the Procuring Agency is responsible to define details of the request to include, but not be limited to:
 - a. Number of individuals needed;
 - b. Job duties;
 - c. Equipment to be used;
 - d. Knowledge, skills and education and/or experience;
 - e. Computer software to be used;
 - f. Hours of work;
 - g. Expected length of assignment;
 - h. Job related attire;
 - i. Position location;
 - j. Procuring Agency contact person; and

- k. Other pertinent job-related information
- B. Depending on the amount of detail required, it is recommended the Procuring Agency submit this information in writing via e-mail or facsimile to reduce the possibility of an inappropriate temporary assignment.

10. Background checks

- A. The Procuring Agency is responsible for requesting additional background investigations beyond normal references prior to the temporary assignment
- B. Should an additional background check be required due to the nature of the assignment, the Procuring Agency may be responsible for the cost of the additional checks
- C. It is reasonable to expect employment eligibility and references will be required for all candidates; background checks for referrals by the Procuring Agency will be at the discretion of the Procuring Agency.
- D. Standard checks which would include employment eligibility and reference checks shall be at the cost of the Contractor (s).
- E. Other background checks will be at the discretion of each requesting Procuring Agency.
- F. Procuring Agencies reserve the right to request and conduct pre-employment background checks and drug testing prior to the potential candidates starting date. Procuring Agencies also reserve the right to require other tests as negotiated in their Participating Addendum.
- G. Procuring Agencies will limit their background checks, drug testing, and other testing requirements to the same as required of their own permanent full-time employees holding the same or similar positions to be filled by the candidate.

CATEGORY AWARDED	Contractor's Administrative Service Fee
1. Administrative Support (Including Office and Clerical)	3%
2. Commercial/Industrial Workers	3%
3. Healthcare Staffing Services	
a. Clinical	a. 3%
b. Non-Clinical	b. 3%
4. Information Technology	3%
5. Professional Services (other than IT)	3%



Certificate Of Completion

Envelope Id: 36F9210F09624B1383DC1E026A530952	Status: Completed
Subject: 20-00000-21-00021AA 22nd Century TES Master Agreement.docx, 20-00000-21-00021A...	
Source Envelope:	
Document Pages: 28	Signatures: 3
Certificate Pages: 5	Initials: 1
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Enabled	Natalie Martinez
Time Zone: (UTC-07:00) Mountain Time (US & Canada)	13 Bataan Blvd
	Santa Fe, NM 87508
	xxxxxxx.xxxxxxxx@xxxxx.xx.xx
	IP Address: [Redacted] Security and Privacy Controls

Record Tracking

Status: Original	Holder: Natalie Martinez	Location: DocuSign
8/18/2022 8:38:38 AM	xxxxxxx.xxxxxxxx@xxxxx.xx.xx	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: GSD	Location: DocuSign

Signer Events	Signature	Timestamp
Natalie Martinez		Sent: 8/18/2022 9:06:07 AM
xxxxxxx.xxxxxxxx@xxxxx.xx.xx		Viewed: 8/18/2022 9:06:21 AM
New Mexico General Services		Signed: 8/18/2022 9:06:27 AM
Security Level: Email, Account Authentication (None)	Signature Adoption: Pre-selected Style	
	Using IP Address: [Redacted] Security and Privacy Controls	

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Isha Sharma		Sent: 8/18/2022 9:06:28 AM
xxxxxxxxxxxxxx@xxxxx.xxx		Viewed: 8/19/2022 10:08:52 AM
Contracts Manager		Signed: 8/19/2022 10:33:12 AM
22nd Century Technologies, Inc.	Signature Adoption: Pre-selected Style	
Security Level: Email, Account Authentication (None)	Using IP Address: [Redacted] Security and Privacy Controls	

Electronic Record and Signature Disclosure:
Accepted: 8/19/2022 10:08:52 AM
ID: daa9e5b2-9c94-4e59-b54a-c8b11e3c5890

Ann Marie Lucero		Sent: 8/19/2022 10:33:14 AM
xxxxxxxxx.xxxxxx@xxxxx.xx.xx		Viewed: 8/19/2022 2:52:21 PM
Tax Examiner Supervisor		Signed: 8/26/2022 8:07:08 AM
State of New Mexico, Dept of Information Technology	Signature Adoption: Pre-selected Style	
Signing Group: 33300 - CRS Verification	Using IP Address: [Redacted] Security and Privacy Controls	
Security Level: Email, Account Authentication (None)		

Electronic Record and Signature Disclosure:
Accepted: 6/2/2020 2:28:54 PM
ID: 4e14c1ed-cee7-47c4-9f77-dc41a9cef910

Valerie Paulk		Sent: 8/26/2022 8:07:10 AM
xxxxxxx.xxxxx@xxxxx.xx.xx		Viewed: 8/26/2022 8:07:46 AM
Signed of Behalf of State Purchasing Agent		Signed: 8/26/2022 8:11:53 AM
New Mexico General Services	Signature Adoption: Pre-selected Style	
Security Level: Email, Account Authentication (None)	Using IP Address: [Redacted] Security and Privacy Controls	

Electronic Record and Signature Disclosure:

Signer Events	Signature	Timestamp
Accepted: 5/29/2020 9:40:59 AM ID: f12ca6d0-7cba-4de4-b58f-8180244887ff		
In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	8/18/2022 9:06:07 AM
Certified Delivered	Security Checked	8/26/2022 8:07:46 AM
Signing Complete	Security Checked	8/26/2022 8:11:53 AM
Completed	Security Checked	8/26/2022 8:11:53 AM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: xxx@xxx

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at xxx@xxx and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at xxx@xxx and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to xxx and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.

EXHIBIT C - The Solicitation



**The State of New Mexico
General Services Department/State Purchasing Division**



Request for Proposals

New Mexico Solicitation Number 20-00000-21-00021

**NASPO ValuePoint RFP for
Temporary Employment Services**

RFP Issuance Date: December 21, 2021

RFP Due Date: January 31, 2022, no later than 3:00 pm MT

ELECTRONIC PROPOSAL SUBMISSION ONLY

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RFP Administrative Information

RFP Title:	Temporary Employment Services
RFP Project Description: (See Section 1.1)	The State of New Mexico, in conjunction with NASPO ValuePoint, is seeking Contractor(s) to provide Temporary Employment Services
RFP Lead: (See Section 1.2)	Name: Natalie Martinez Address: State Purchasing Division 1100 St. Francis Dr., Room 2016 Santa Fe, NM 87505 Telephone: 505-690-5977 Email: natalie.martinez1@state.nm.us
RFP Release Date: (See Section 2.1)	December 21, 2021
Pre-Proposal Conference: Pre-Proposal Conference Location: (See Section 2.1.3)	December 30, 2021, 10AM (Mountain Time) Via Teams Meeting: Join on your computer or mobile app Click here to join the meeting Or call in (audio only) +1 505-312-4308,,887022173# United States, Albuquerque Phone Conference ID: 887 022 173#
Deadline To Submit Questions: (See Sections 2.1 and 2.1.4)	January 10, 2022, 5:00PM (Mountain Time) All questions, including those about Terms and Conditions, must be submitted through eProNM. Questions must be submitted by the question deadline date.
Question & Answers Published: (See Section 2.1)	January 17, 2022 (this date is approximate and determined by the number of questions received)
Proposal Submission Due Date and Time: (See Section 2.1.6)	January 31, 2022 (3:00PM Mountain Time)
Submit sealed proposal: MANUAL PROPOSALS ARE NOT ACCEPTABLE. ONLY ELECTRONIC SUBMITTALS WILL BE ACCEPTED PRIOR TO THE CLOSING DATE AND TIME. Submit electronically ONLY via eProNM: (See Section 4)	Electronic Submission: https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico

Initial Term of Contract and Renewals: (See Attachment A, Section 3)	The initial term of the Contract will be two (2) years with the option, upon mutual written agreement, for three (3) additional renewal periods of one (1) year each. Upon mutual agreement, the contract may be extended or amended.
TAKE NOTE OF THE 0.25% NASPO VALUEPOINT ADMINISTRATIVE FEE DETAILED IN <u>ATTACHMENT A</u> OF THE NASPO VALUEPOINT STANDARD TERMS AND CONDITIONS, WHICH MUST BE INCORPORATED INTO YOUR BASE PRICE. OTHER STATES MAY NEGOTIATE ADDITIONAL ADMINISTRATIVE FEES IN THEIR PARTICIPATING ADDENDA FOLLOWING AWARD OF A MASTER AGREEMENT.	

SECTION 1: NASPO Value Point Solicitation - General Information

1.1. Purpose

The State of New Mexico, General Services Department/State Purchasing Division (Lead State) is requesting proposals for *Temporary Employment Services* in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The purpose of this Request for Proposal (RFP) is to establish **Master Agreements** with qualified Offerors to provide **Temporary Employment Services** relating, but not limited, to: **Administrative Support (including Office, Clerical, and Sales), Commercial/Industrial Workers, Healthcare Staffing Services, Information Technologies, and Professional Services**, as defined within the scope of this RFP for all Participating States. Offerors must have the capability to provide Temporary Employment Services to all Participating States throughout the United States (including Alaska, Hawaii, and the District of Columbia). No individual state awards will be considered.

Awarded Offerors shall be independent contractors and not employees of the State of New Mexico or Participating Entities. The Awarded Offeror's staff, including temporary assigned individuals, shall also not be considered employees of the Participating Entities. **This RFP and resulting contracts are intended for Temporary Employment Services only and not intended for job placement services.**

The objective of this RFP is to obtain best value, and in some cases achieve more favorable pricing, than are obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities.

The successful Offeror(s) shall provide Procuring Agencies with Temporary Employment Services as described in the **Scope of Work (Attachment B)** of this RFP. The **Master Agreement(s)** resulting from this procurement may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the individual state procurement director and compliance with local statutory and regulatory provisions.

The initial term of the **Master Agreement** shall be for two (2) years with renewal provisions as outlined in **Section II.2.1** of the **NASPO ValuePoint Master Agreement Terms and Conditions (Attachment A)**.

It is anticipated that this RFP may result in **Master Agreement** awards to multiple contractors, a single contractor, or by individual categories in the Lead State's discretion. Offeror may provide all categories, or individual categories. Offeror must specifically identify each category being proposed in their response.

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

and value consistent with state requirements.

This will be a new **Master Agreement** for the State of New Mexico and NASPO ValuePoint that will replace the current Temporary Employment Services (**50-000-15-00058**) Master Agreements.

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

The State of New Mexico General Services Department, State Purchasing Division is the Lead State and issuing office for this document and all subsequent addenda relating to it. The reference number for the transaction is Solicitation #**20-00000-21-00021**. This solicitation number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

The Lead State Contract Administrator identified below is the **Single Point of Contact** during this procurement process. Offerors and interested parties shall direct to the Lead State Contract Administrator all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, requests for brand approval, change, clarification, and protests, the award process, and any other questions that may arise related to this solicitation and the resulting **Master Agreement**. The Lead State Contract Administrator/Procurement Manager designated by the State of New Mexico, General Services Department, State Purchasing Division is:

Natalie Martinez, Lead State Administrator
 State of New Mexico, General Services Department/State Purchasing Division
Natalie.Martinez1@state.nm.us
 Phone: 505-690-5977

1.3. Definitions

This section contains definitions of terms used throughout this procurement document, including appropriate abbreviations:

- A. **“Administrative Support (Including Office and Clerical)”** Occupations in which workers are responsible for day-to-day operations such as internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. May include but is not limited to bookkeepers, messengers, clerk-typists, stenographers, court transcribers, hearing reporters, statistical clerks, dispatchers, license distributors, payroll clerks, office machine and computer operators, legal assistants, cashiers, and toll collectors.
- B. **“Agency”** means the State Purchasing Division of the General Services Department or that State Agency sponsoring this Procurement.
- C. **“Award”** means, in the context of this Request for Proposals and all its attendant documents, that point at which the final required signature on the contract(s) resulting from the procurement has been affixed to the contract(s) thus making it fully executed.
- D. **“Business Hours”** means 8:00 AM thru 5:00 PM MST/MDT, whichever is in effect on the date given.
- E. **“Close of Business”** means 5:00 PM Mountain Standard or Daylight Time, whichever is in use at that time.
- F. **“Confidential”** means confidential financial information concerning Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act §§57-

3-A-1 through 57-3A-7, NMSA 1978, See also NMAC 1.4.1.45. The following items may **not** be labelled as confidential: Offeror's submitted Cost response, Staff/Personnel Resumes/Bios (excluding personal information such as personal telephone numbers and/or home addresses), and other submitted data that is **not** confidential financial information or that qualifies under the Uniform Trade Secrets Act.

- G. **"Contractor"** means any business having a contract with a state agency or local public body.
- H. **"Determination"** means the written documentation of a decision of a procurement officer including findings of fact required to support a decision. A determination becomes part of the procurement file to which it pertains.
- I. **"Desirable"** – the terms "may," "can," "should," "preferably," or "prefers" identify a desirable or discretionary item or factor.
- J. **"Electronic Submission"** means a successful submittal of Offeror's proposal in the eProNM system, in such cases where eProNM submissions are accepted.
- K. **"Electronic Version/Copy"** means a digital form consisting of text, images or both readable on computers or other electronic devices that includes all content that the Original and Hard Copy proposals contain.
- L. **"Evaluation Committee"** means a body appointed to perform the evaluation of Offerors' proposals.
- M. **"Evaluation Committee Report"** means a report prepared by the Lead State Administrator and the Evaluation Committee to support the Committee's recommendation for contract award. It will contain scores and written evaluations of all responsive Offeror proposals.
- N.
- O. **"Finalist"** means an Offeror who meets all the mandatory specifications of this Request for Proposals and whose score on evaluation factors is sufficiently high to merit further consideration by the Evaluation Committee.
- P. **"Fully Loaded Labor Rate"** means the proposed maximum hourly rates that include travel, per diem, fringe benefits and any overhead costs for contractor personnel, as well as subcontractor personnel if appropriate.
- Q. **"IT"** means Information Technology.
- R. **"Lead State Administrator"** means the Procurement Manager designated by the lead state to solicit and administer the Temporary Employment Services portfolio.
- S. **"Mandatory"** – the terms "must," "shall" "will," "is required," or "are required," identify a mandatory item or factor. Failure to meet a mandatory item or factor may result in the rejection of the Offeror's proposal.
- T. **"Minor Irregularities"** means anything in the proposal that does not affect the price, quality and/or quantity, or any other mandatory requirement. These may include but are not limited to corrections of deficiencies or clarification of ambiguities that, in the judgment of the Lead State, do not require a comprehensive proposal rewrite or do not affect price, quantity or quality.
- U. **"Multiple Source Award"** means an award of an indefinite quantity contract for one or more similar services, items of tangible personal property or construction to more than one Offeror.
- V. **"Offeror"** is any person, corporation, or partnership who chooses to submit a proposal.
- W. **"Price Agreement"** means a definite quantity contract or indefinite quantity contract which requires the contractor to furnish items of tangible personal property, services or construction to a state agency or a local public body which issues a purchase order, if the purchase order is within the quantity limitations of the contract, if any.
- X. **"Procurement Manager"** means any person or designee authorized by a state agency or local

public body to enter into or administer contracts and make written determinations with respect thereto.

- Y. **“Procuring Agency”** means all agencies, commissions, institutions, political subdivisions and local public bodies allowed by law to entertain procurements.
- Z. **“Project”** means a temporary process undertaken to solve a well-defined goal or objective with clearly defined start and end times, a set of clearly defined tasks, and a budget. The project terminates once the project scope is achieved, and project acceptance is given by the project executive sponsor.
- AA. **“Redacted”** means a version/copy of the Offeror’s proposal with the information considered proprietary or confidential (as defined by §§57-3A-1 to 57-3A-7, NMSA 1978 and NMAC 1.4.1.45 and summarized herein and outlined in **Section 3.14** of this RFP) blacked-out BUT NOT omitted or removed.
- BB. **“Request for Proposals (RFP)”** means all documents, including those attached or incorporated by reference, used for soliciting proposals.
- CC. **“Responsible Offeror”** means an Offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that his financial resources, production or service facilities, personnel, service reputation and experience are adequate to make satisfactory delivery of the services, or items of tangible personal property described in the proposal.
- DD. **“Responsive Offer”** means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for proposals include, but are not limited to price, quality, quantity or delivery requirements.
- EE. **“Sealed”** means, in terms of a non-electronic submission, that the proposal is enclosed in a package which is completely fastened in such a way that nothing can be added or removed. Open packages submitted will not be accepted except for packages that may have been damaged by the delivery service itself. The State reserves the right, however, to accept or reject packages where there may have been damage done by the delivery service itself. Whether a package has been damaged by the delivery service or left unfastened and should or should not be accepted is a determination to be made by the Lead State Administrator. By submitting a proposal, the Offeror agrees to and concurs with this process and accepts the determination of the Lead State Administrator in such cases.
- FF. **“SPD”** means State Purchasing Division of the New Mexico State General Services Department.
- GG. **“Staff”** means any individual who is a full-time, part-time, or an independently contracted employee with the Offerors’ company.
- HH. **“State (the State)”** means the State of New Mexico.
- II. **“State Agency”** means any department, commission, council, board, committee, institution, legislative body, agency, government corporation, educational institution or official of the executive, legislative or judicial branch of the government of this state. “State agency” includes the Purchasing Division of the General Services Department and the State Purchasing Agent but does not include local public bodies.
- JJ. **“State Purchasing Agent”** means the Director of the State Purchasing Division of the General Services Department.
- KK. **“Statement of Concurrence”** means an affirmative statement from the Offeror to the required specification agreeing to comply and concur with the stated requirement(s). This statement shall be included in the Offeror’s proposal. (E.g., “We concur,” “Understands and

Complies,” “Comply,” “Will Comply if Applicable,” etc.)

LL. **“Subcontractor”** means a business agreeing to perform part or all the obligations of the awarded Contractor. This does not include those persons provided to Purchasing Entities under the awarded contracts to fulfill temporary services.

MM. **“Unredacted”** means a version/copy of the proposal containing all complete information; including any that the Offeror would otherwise consider confidential, such copy for use only for the purposes of evaluation.

1.4. Procurement Library

A **Procurement Library** has been established. Offerors are encouraged to review the material contained in the **Procurement Library** by selecting the link provided in the electronic version of this document through your own internet connection. The library contains information listed below:

- Electronic version of RFP, Questions & Answers, RFP Amendments, etc.
- [Active Procurements | NM GSD \(state.nm.us\)](https://state.nm.us/active-procurements)

NASPO ValuePoint Website: [Solicitation Information - NASPO ValuePoint](https://www.naspo.org/solicitation-information)

1.5. NASPO ValuePoint Background Information

NASPO ValuePoint is the cooperative contracting arm of the National Association of State Procurement Officials (NASPO). NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia, and the territories of the United States. NASPO ValuePoint facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and Political Subdivisions (i.e. colleges, school districts, counties, cities etc.) and other eligible entities (i.e. Non-Profit Organizations, etc.) for all States, the District of Columbia, and territories of the United States. For more information, consult the NASPO website(<http://www.naspo.org>) and the NASPO ValuePoint website (<http://www.naspovaluepoint.org>).

1.6. Participating States

In addition to the Lead State conducting this solicitation, the following Participating States have requested to be named in this RFP as potential users of the resulting Master Agreement: **Hawaii, Maine, New Jersey, South Dakota**. Other entities may become Participating Entities after award of the Master Agreement. Some States may have included special or unique terms and conditions for their state that will govern their state Participating Addendum. These terms and conditions are being provided as a courtesy to Offerors to indicate which additional terms and conditions may be incorporated into the state Participating Addendum after award of the Master Agreement. The Lead State will not address questions or concerns or negotiate other States’ terms and conditions. The Participating States shall negotiate these terms and conditions directly with the supplier. State-specific terms and conditions are included in **Attachments J**.

1.7. Historical Data and Anticipated Usage

Between February 2017 and April 2021, this contract was used to procure a total of \$184.61

million worth of services. Anticipated usage for this contract, taken from information provided by states who have indicated an interest in participating (listed in **Attachment I**) is approximately \$83,767,657.00. No minimum or maximum level of sales volume is guaranteed or implied.

SECTION 2: Solicitation Requirements, Information, and Instructions to Offerors

This section of the RFP contains the **Schedule of Events**, the descriptions of each event, and the conditions governing this procurement. **Schedule of Events**

The Lead State Administrator will make every effort to adhere to the following schedule:

Action	Responsible Party	Due Dates
1. Issue RFP	Lead State	December 21, 2021
2. Acknowledgement of Receipt	Potential Offerors	December 30, 2021
3. Pre-Proposal Conference	Lead State	December 30, 2021
4. Deadline to submit Questions	Potential Offerors	January 10, 2022
5. Response to Written Questions	Lead State Administrator	January 18, 2022
6. <i>Submission of Proposal Due Date</i>	<i>Potential Offerors</i>	<i>January 31, 2022 No later than 3:00 pm MST/MDT</i>
7. Proposal Evaluation and Award	Evaluation Committee	<i>January 31 – February 14, 2022</i>
8. Finalize Contractual Agreements	Lead State/Finalist Offerors	February/March 2022
9. Contract Awards	Lead State/ Finalist Offerors	March 2022 Upon approval
10. Protest Deadline	Lead State	+15 days

*Dates indicated in Events 7-10 are estimates only and may be subject to change without necessitating an amendment to the RFP.

All times are Mountain Time unless indicated otherwise.

1.2. Explanation of Events

The following items describe the activities listed in the **Schedule of Events** shown above.

2.2.1 Issuance of RFP

This RFP is being issued by the New Mexico General Services Department/State Purchasing Division in conjunction with NASPO ValuePoint Cooperative Purchasing Program (NASPO ValuePoint) on the date listed above in the Schedule of Events.

2.2.2 Acknowledgement of Receipt Form Due

Potential Offerors may e-mail the **Acknowledgement of Receipt Form** (**APPENDIX A**),

to the Lead State Administrator at Natalie.Martinezx@xxxxxx.xx.xx to have their organization placed on the procurement Distribution List. The form must be returned to the Lead State Administrator by 3:00 pm MST/ MDT on the date indicated in **Section 2.1 Schedule of Events**.

The procurement distribution list will be used for the distribution of written responses to questions, and/or any amendments to the RFP. Failure to return the **Acknowledgement of Receipt Form** does not prohibit potential Offerors from submitting a response to this RFP. However, by not returning the **Acknowledgement of Receipt Form**, the potential Offeror's representative shall not be included on the distribution list and will be solely responsible for obtaining from the **Procurement Library (Section 1.4)** responses to written questions and any amendments to the RFP.

2.2.3 Pre-Proposal Conference

A pre-proposal conference will be held as indicated in **Section 2.1 Schedule of Events**, beginning at 10:00 a.m. MST/MDT via MicroSoft Teams ([Click here to join the meeting](#))

Potential Offeror(s) are encouraged to submit written questions to the Lead State Administrator in advance of the conference (see **Section 1.2**). The identity of the organization submitting the question(s) will not be revealed. Additional written questions may be submitted at the Pre-proposal Conference. All questions answered during the Pre-Proposal Conference will be considered **unofficial** until they are posted in writing. All written questions will be addressed in writing on the date listed in **Section 2.1 Schedule of Events**. A public log will be kept of the names of potential Offeror(s) that attended the pre-proposal conference.

Attendance at the pre-proposal conference is highly recommended but is not a prerequisite for submission of a proposal.

2.2.4 Deadline to Submit Written Questions

Any inquiries or requests regarding this procurement must be submitted, in writing, to the Lead State Contract Administrator, by the date and time noted in **Section 2.1 Schedule of Events**, in order to be considered. Written questions must be submitted **via** eProNM, New Mexico's electronic procurement system:

<https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico>

(See **Section 1.2. Lead State, Solicitation Number and Lead State Contract Administrator**)

Other state employees or Evaluation Committee members do not have the authority to respond to any inquiries on behalf of the Lead State.

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

2.2.5 Response to Written Questions

Written responses to the written questions will be provided via e-mail, on or before the date indicated in **Section 2.1 Schedule of Events**, to all potential Offerors who timely submitted an **Acknowledgement of Receipt Form (Section 2.1.2 and APPENDIX A)**.

An electronic version of the Questions and Answers will also be posted to: [Active Procurements | NM GSD \(state.nm.us\)](#)

2.2.6 Proposal Due Date

Proposals must be received by the posted due date and time as described in the **Schedule of Events, Section 2.1** of this RFP. Proposals received after the deadline will be late and ineligible for consideration.

2.2.7 Evaluation and Award

The Lead State Administrator is required to verify each of the proposals submitted complies with the mandatory requirements before submitting the proposals to the evaluation committee for review. The Lead State Administrator will provide the Evaluation Committee with the evaluation criteria for scoring the proposals. The evaluation criteria are taken directly from the RFP.

Adhering to the **Schedule of Events** is important; however, there are times that the dates listed in the **Schedule of Events** may be subject to change.

SECTION 3: General Requirement

3.1. Acceptance of Conditions Governing the Procurement

Potential Offerors must indicate their acceptance of the Conditions Governing the Procurement section, by signing the **Letter of Transmittal (APPENDIX B)**. Submission of a proposal constitutes acceptance of the Evaluation Factors contained in **Section 5** of this RFP.

3.2. RFP Addenda

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

The Lead State accepts no responsibility for a prospective Offeror not receiving solicitation documents and/or revisions to the solicitation. It is the responsibility of the prospective Offeror to monitor the New Mexico's eProcurement System or website to obtain RFP addenda or other information relating to the RFP.

[Active Procurements | NM GSD \(state.nm.us\)](#)

3.3. Incurring Cost

Any cost incurred by the potential Offeror in preparation, transmittal, and/or presentation of any

proposal or material submitted in response to this RFP shall be borne solely by the prime contractor responsibility.

Any contractual agreement that may result from this RFP shall specify that the prime contractor is solely responsible for fulfillment of all requirements of the contractual agreement with a Procuring Agency which may derive from this RFP. **The Procuring Agency entering into a contractual agreement with a vendor will make payments to only the prime contractor.**

3.4. Subcontractors/Consent

The use of subcontractors is allowed. The prime contractor shall be wholly responsible for the entire performance of the contractual agreement whether or not subcontractors are used. Additionally, the prime contractor must receive approval, in writing, from the Participating Entity awarding any resultant contract, before any subcontractor is used during the term of this agreement. Accordingly, offerors must provide a list of proposed subcontractors (if any) with their offer.

3.5. Amended Proposals

An Offeror may submit an amended proposal before the deadline for receipt of proposals. Such amended proposals must be complete replacements for a previously submitted proposal and must be clearly identified as such in the transmittal letter. The Lead State personnel will not merge, collate, or assemble proposal materials.

3.6. Firm Offers

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

3.7. Cancellation of Procurement

This RFP may be canceled at any time up until the time of award of the **Master Agreement(s)** if the Lead State determines such action to be in the collective best interests of Participating States.

3.8. Sufficient Appropriation

Any resulting awards of **Master Agreements** under this solicitation will not obligate funds. Orders placed against resulting **Master Agreements** may be terminated by participating entities if sufficient funds do not exist. Such terminations will be effected via written notice.

3.9. Legal Review

The Lead State requires that all Offerors agree to be bound by the general requirements contained in this RFP. Any Offeror's concerns must be promptly submitted in writing to the attention of the Lead State Administrator.

3.10. Governing Laws and Regulations

This procurement is conducted by the Lead State Purchasing Division in accordance with the Lead State Procurement Code.

This procurement shall be governed by the regulations and laws of the Lead State. Venue for any administrative or judicial action relating to this procurement, evaluation, and award shall be in New Mexico. The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in **Section 14.12** of the NASPO ValuePoint Master Agreement Terms and Conditions in **Attachment A**.

3.11. Basis for Proposal

Only information supplied, in writing, by the Lead State through the Lead State Administrator or in this RFP should be used as the basis for the preparation of Offeror proposals.

3.12. Contract Terms and Conditions

The contract between a Procuring Agency and a contractor will follow the format specified by the Lead State and contain the terms and conditions set forth in the NASPO ValuePoint Master Agreement Terms and Conditions and, for New Mexico Procuring Agencies, the Lead State Participating Addendum. However, the Procuring Agency reserves the right to negotiate provisions in addition to those contained in this RFP with any Offeror. The contents of this RFP, as revised and/or supplemented, and selected portions of the successful Offeror's proposal may be incorporated into and become part of any resultant contract.

The Lead State discourages exceptions from the contract terms and conditions as set forth in the Master Agreement. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Lead State (and the evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose specific alternative language. The Lead State may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Master Agreement are not acceptable to the Lead State and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as a successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an explicit agreement by the Offeror that the contractual terms and conditions contained herein are accepted by the Offeror.

3.13. Offeror's Terms and Conditions

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Agency. See **Sections 3.16 and 3.17** for requirements.

3.14. Confidential Information

Offerors should be aware that marking any portion of a Proposal as “confidential,” “proprietary” or “trade secret” may exclude it from evaluation or consideration for award. In the event that a limited amount of confidential and proprietary information is deemed necessary by the Offeror to respond to solicitation, any such information must be included in unredacted portion of the Offeror’s proposal response clearly marked as “CONFIDENTIAL AND PROPRIETARY INFORMATION”. Do not incorporate confidential and proprietary information throughout the proposal response. Rather, provide a reference in the proposal response directing the reader to the CONFIDENTIAL AND PROPRIETARY INFORMATION section. Elements of the proposal that define the contractual requirements, such as approaches to the statement of work, prices, and schedule, may not be marked as confidential and proprietary. Proposals not complying with these instructions for identification and segregation of confidential and proprietary information may be rejected.

Information included in the CONFIDENTIAL AND PROPRIETARY INFORMATION section of an Offeror’s proposal is not automatically accepted and protected. All information identified in the CONFIDENTIAL AND PROPRIETARY INFORMATION section will be subject to review by the Lead State in accordance with the procedures prescribed by the Lead State’s open records statute, freedom of information act, or similar law.

- A. Proposals will be kept confidential until negotiations and the award are completed by the Agency. At that time, all proposals and documents pertaining to the proposals will be open to the public, *except* for material that is **clearly marked** proprietary or confidential. The Lead State Administrator will not disclose or make public any pages of a proposal on which the potential Offeror has stamped or imprinted "proprietary" or "confidential" subject to the following requirements:
- B. An additional but separate, redacted version of the offeror’s proposal, as outlined and identified in Section 4.2.1.i, shall be submitted containing the blacked-out proprietary or confidential information, in order to facilitate eventual public inspection of the non-confidential version of the Offer’s proposal.

Confidential data is restricted to confidential financial information concerning the Offeror’s organization and data that qualifies as a trade secret in accordance with the Uniform Trade Secrets Act, NMSA 1978 § 57-3A-1 to 57-3A-7.

PLEASE NOTE: The price of products offered, or the cost of services proposed **shall not be designated** as proprietary or confidential information.

If a request is received for disclosure of data for which an Offeror has made a written request for

confidentiality, the Lead State Administrator shall examine the Offeror's request and make a written determination that specifies which portions of the proposal should be disclosed. Unless the Offeror takes legal action to prevent the disclosure, the proposal will be so disclosed. The proposal shall be open to public inspection subject to any continuing prohibition on the disclosure of confidential information.

3.15. No Obligation

This RFP in no manner obligates the State of New Mexico or any of its Agencies to the use of any Offeror's services until a valid written contract is awarded and approved by appropriate authorities.

3.16. Right to Accept All or Portion of Proposal

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

3.17. Contract Deviations

Any additional terms and conditions, which may be the subject of negotiation (such terms and conditions having been proposed during the procurement process, that is, the RFP process prior to selection as successful Offeror), will be discussed only between the Lead State and the Offeror selected and shall not be deemed an opportunity to amend the Offeror's proposal.

3.18. Offeror Qualifications

The Evaluation Committee may make such investigations as necessary to determine the ability of the potential Offeror to adhere to the requirements specified within this RFP. The Evaluation Committee will reject the proposal of any potential Offeror who is not a Responsible Offeror or fails to submit a responsive offer as defined in NMSA 1978, § 13-1-83 and 13-1-85.

3.19. Right to Waive Minor Irregularities

The Lead State and the Evaluation Committee reserve the right to waive minor irregularities in the proposal. The Lead State and the Evaluation Committee also reserve the right to waive mandatory requirements provided that all of the otherwise responsive proposals failed to meet the same mandatory requirements and the failure to do so does not otherwise materially affect the procurement. This right is at the sole discretion of the Lead State and the Evaluation Committee.

3.20. Change in Contractor Representatives and Key Personnel

The Lead State reserves the right to require a change in contractor representatives if the assigned representative(s) is (are) not, in the opinion of the Lead State, adequately meeting the needs of the Procuring Agencies.

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

3.21. Notice of Penalties

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

3.22. Right to Publish

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

3.23. Ownership or Disposition of Proposals and other Materials submitted

All documents submitted in response to the RFP shall become property of the State of New Mexico.

3.24. Confidentiality

Any Confidential Information provided to the Contractor by the Procuring Agency or, developed by the Contractor based on information provided by the Procuring Agency in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Procuring Agency.

Upon termination of this Agreement, Contractor shall deliver all Confidential Information in its possession to the Procuring Agency within thirty (30) Business Days of such termination. Contractor acknowledges that failure to deliver such Confidential Information to the Procuring Agency will result in direct, special and incidental damages.

The Contractor(s) agrees to protect the confidentiality of all confidential information and not to publish or disclose such information to any third party without the Lead State / Procuring Agency written permission.

3.25. Electronic mail address required

A large part of the communication regarding this procurement will be conducted by electronic mail (e-mail). Offeror must have a valid e-mail address to receive this correspondence.

3.26. Use of Electronic Versions of this RFP

This RFP is being made available by electronic means. In the event of conflict between a version of the RFP in the Offeror's possession and the version maintained by the Procuring Agency Lead State, the Offeror acknowledges that the version maintained by the Procuring Agency Lead State shall govern. Please refer to:

http://www.generalservices.state.nm.us/statepurchasing/ITBs_RFPs_and_Bid_Tabulation.aspx.

3.27. Certification of Non-Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency.

SECTION 4: Response Format and Organization

4.1 Proposal Submission Instructions

At this time, only **electronic** proposal submissions will be allowed. **Do not** submit hard copies until further notice.

ALL PROPOSALS MUST BE RECEIVED BY THE LEAD STATE ADMINISTRATOR OR DESIGNEE NO LATER THAN 3:00 PM MST/MDT ON THE DATE INDICATED IN **SECTION 2.1 SCHEDULE OF EVENTS. NO LATE PROPOSAL CAN BE ACCEPTED.**

The date and time of receipt will be recorded on each proposal. Proposals will be time-stamped in the system when the Offeror clicks “OK” after “Review and Submit.” Such electronic submissions will be considered sealed in accordance with statute.

Proposals must be submitted electronically through the Lead State’s eProNM electronic procurement system. Refer to Section 4.2 for instructions. Proposals submitted by facsimile, or other electronic means other than through the Lead electronic e-procurement system, will not be accepted.

A log will be kept of the names of all Offeror organizations that submitted proposals. Pursuant to §13-1-116, NMSA 1978, the contents of proposals shall not be disclosed to competing potential Offerors during the negotiation process. The negotiation process is deemed to be in effect until the contract is awarded pursuant to this Request for Proposals. Awarded in this context means the final required state agency signature on the contract(s) resulting from the procurement has been obtained.

4.2 Proposal Content, Format Requirements, and Electronic Responses (Lead’s E-procurement System eProNM)

Proposals in response to this RFP must be submitted through State Purchasing’s electronic procurement system ONLY:

(<https://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfNewMexico>),

The Offeror need only submit one single electronic copy of each portion of its proposal (Technical and Cost) as outlined below. *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit.* Separate the proposals as described below into separate electronic files for submission.

Proposals must be submitted in the manner outlined below. Technical and Cost portions of Offerors proposal **must** be submitted in separate uploads as indicated below in this section, and **must** be prominently identified as “Technical Proposal,” or “Cost Proposal,” on the front page of each upload

1. **Technical Proposals** – One (1) ELECTRONIC upload must be organized in accordance with **Section 4.4 Proposal Format and Organization**. All information for the Technical Proposal **must be combined into a single file/document for uploading.** *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must*

be the least number of uploads necessary to fall under the 50mb limit. The Technical Proposals **SHALL NOT** contain any cost information.

- i. **Confidential Information:** If Offeror's proposal contains confidential information, as defined in **Section 1.3.H** and detailed in **Section 3.14**, Offeror **must** submit **two (2) separate ELECTRONIC technical files:**
 - One (1) ELECTRONIC version of the requisite proposals identified above as **unredacted** (def. **Section 1.3.MM**) versions for evaluation purposes; and
 - One (1) **redacted** (def. **Section 1.3.BB**) ELECTRONIC for the public file, in order to facilitate eventual public inspection of the non-confidential version of Offeror's proposal. Redacted versions **must** be clearly marked as "REDACTED" or "CONFIDENTIAL" on the first page of the electronic file.
2. **Cost Proposals** – One (1) ELECTRONIC upload of the proposal containing **ONLY** the Cost Proposal. All information for the cost proposal **must be combined into a single file/document for uploading.** *EXCEPTION: Single electronic files that exceed 50mb may be submitted as multiple uploads, which must be the least number of uploads necessary to fall under the 50mb limit*

For technical support issues contact (505) 795-1894 or (505) 795-1076

The ELECTRONIC proposal submission **must be fully uploaded** in SPD's eProNM system by the submission deadline in **Section 2.1**.

*It is the Offeror's responsibility to ensure all documents are completely uploaded and submitted electronically via the eProNM system by the deadline set forth in this RFP. The eProNM system will automatically cease uploading data at the date and time of the deadline. Please ensure that you, as the Offeror, allow adequate time for large uploads and to fully complete your submittal by the deadline. A submission that is not both: (1) fully complete; and (2) received, via the eProNM system by the deadline, will be deemed late. Further, a submission that is not fully complete and received via the eProNM system by the deadline because the response was captured, blocked, filtered, quarantined, or otherwise prevented from reaching the proper destination server by any anti-virus or other security software will be deemed late. In accordance with statute and rule, **NO LATE OFFER CAN BE ACCEPTED.***

Any proposal that does not adhere to the requirements of this **Section 4 Response Format and Organization** may be deemed non-responsive and rejected on that basis.

4.3 Confidential or Proprietary Information

Offerors should be aware that marking any portion of a Proposal as "confidential", "proprietary" or "trade secret" may exclude it from evaluation or consideration for award. In the event that a limited amount of confidential and proprietary information is deemed necessary

by the Offeror to respond to this solicitation, any such information must be included as indicated above. Do not incorporate confidential and proprietary information throughout the proposal response. Rather, provide one unredacted version for evaluation purposes and one redacted version (information blacked out and not omitted or removed) for the public file. Elements of the proposal that define the contractual requirements, such as approaches to the statement of work, prices, and schedule, may not be marked as confidential and proprietary. Proposals not complying with these instructions for identification and segregation of confidential and proprietary information **may be rejected** and deemed non-responsive.

4.4 Proposal Format and Organization

All proposals must be submitted as follows:

Organization of files/envelopes for electronic copy proposals

Direct reference to pre-prepared or promotional material may be used if referenced and clearly marked. Promotional material must be minimal. The proposal must be organized and indexed in the following format and must contain, at a minimum, all listed items in the sequence indicated.

4.4.1. Technical Proposal – DO NOT INCLUDE ANY COST IN THE TECHNICAL PROPOSAL.

- A. Signed Campaign Contribution Disclosure Form
- B. Signed Letter of Transmittal
- C. Table of Contents
- D. Response to Specifications (**except Cost information which shall be included ONLY in Cost Proposal**)
 - a. Business Requirements
 - i. Company Profile
 - ii. Business Profile
 - 1. Customer Service/Service Delivery Strategy
 - 2. Candidate Qualifications
 - 3. Government Relations
 - iii. Protection of Sensitive Information
 - b. Technical Requirements
 - i. Scope of Work
- E. Response to Contract Terms and Conditions (from Section 3.12)
- F. Offeror's Additional Terms and Conditions (from Section 3.13)
- H. Other Supporting Material

4.4.2 Cost Proposal:

Completed **Cost Response Form (Attachment C)**

Within each section of the proposal, Offerors should address the items in the order indicated above. All forms provided in this RFP must be thoroughly completed and included in the appropriate section of the proposal. **Any and all discussion of proposed costs, rates or expenses must occur ONLY in the Cost Proposal.**

A Proposal Summary may be included in Offeror's Technical Proposal to provide the Evaluation Committee with an overview of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Offeror's proposal. **DO NOT INCLUDE COST INFORMATION IN THE PROPOSAL SUMMARY.**

SECTION 5: Evaluation and Award

5.1 Right to Waive Minor Irregularities

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

Clarifications not amounting to proposal revisions may, in the Lead State's sole discretion, be conducted with Offerors who submit Proposals for the purpose of determining if a proposal is responsive and reasonably susceptible to being selected for Award. The Lead State Administrator may communicate with an Offeror to clarify uncertainties or eliminate confusion concerning the contents of a proposal. Clarifications are those communications that do not result in a material change to the proposal.

The Lead State reserves the right to Award on receipt of initial proposals (as clarified) without an opportunity for discussion, so Offerors are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Offerors shall be accorded fair and equal treatment with respect to any opportunity for clarification(s). In conducting discussions regarding clarification(s), there shall be no disclosure of any information derived from proposals submitted by competing vendors.

Unless otherwise specified in this RFP, the apparently successful Offeror(s) may be required to submit for the most current reported period and a reasonable number of previous years (in order of preference): an audited statement; a financial statement reviewed by a certified public accountant; a third-party prepared financial statement if an audited or reviewed statement is not available; or another financial statement prepared in the routine course of the Offeror's business, to assist the Lead State in making its determination of Offeror responsibility in the context of the categories and geographical scope being proposed.

5.2 Discussions with Offerors

The Lead State may initiate discussions with Offerors who submit responsive or potentially responsive proposals for the purpose of clarifying aspects of the proposals. However, proposals may be accepted and evaluated without such discussion, so Offerors are encouraged to submit their most favorable proposal at the time established for receipt of proposals. Discussions **SHALL NOT** be initiated by the Offerors. In conducting discussions, there shall be no disclosure of any information

derived from proposals submitted by competing Offerors.

Offerors shall submit additional information to the lead State Contract Administrator as needed or requested during discussions.

5.3 Evaluation Point Summary

The following is a summary of evaluation factors with point values assigned to each. These weighted factors will be used in the evaluation of individual potential Offeror proposals by sub-category.

5.4 Evaluation Factors	
• Signed Letter of Transmittal (APPENDIX B)	Pass/Fail
• Signed Campaign Contribution Disclosure Form (APPENDIX C)	Pass/Fail
Evaluation Factors (correspond to Section 6.7 and 6.8)	Points Available
6.7 Business Requirements	
6.7.1 Company Profile	Pass/Fail
6.7.2 Business Profile	
1) Customer Service/Service Delivery Strategy	125
2) Candidate Qualifications	120
3) Government Relations	35
6.7.3 Protection of Sensitive Information	70
6.8 Technical Requirements	
Attachment A, Scope of Work	350
7.0 Price and Cost	
Attachment C, Price and Rate	300
TOTAL	1000 points

Table 1: Evaluation Point Summary

5.4 Evaluation Factors

5.4.1 Signed Letter of Transmittal (**APPENDIX B**)

Pass/Fail only. No points assigned.

5.4.2 Signed Campaign Contribution Disclosure Form (**APPENDIX C**)

Pass/Fail only. No points assigned.

5.4.3 Company Profile

Pass/Fail only. No points assigned.

5.4.4 Business Profile

Points will be awarded based on the quality, organization, and effectiveness of the information presented. Points will also be awarded based on the completeness and relevance of the Offeror's response – including but not limited to proposed approach, technology architecture, use of tools

and methods – to the technical specifications and requirements of this RFP. Offerors must include evaluation criteria based on **Section 6.7**.

5.4.5 Protection of Sensitive Information

Points will be awarded based on the quality, completeness, and relevance of the Offeror’s response – including but not limited to their company’s compliance with HIPAA requirements, **Section 6.7**.

5.4.6 Technical Requirements- Scope of Work

Points will be awarded based on the quality, completeness, and relevance of the Offeror’s response – including but not limited to proposed approach, technology architecture, use of tools and methods – to the technical specifications and requirements of this RFP, **Section 6.8**.

5.4.7 Cost (Attachment C)

The Lead State will use a weighted average formula. The points assigned to each Offeror’s Administrative Service Fee Category will be based on the lowest Administrative Service Fee for each Category proposed. The Offeror with the lowest proposed Administrative Service Fee for each Category will receive 100% of the available cost points for that Category. All other Offerors will receive a portion of the total cost points based on what percentage higher their proposed Administrative Service Fee is than the Lowest Proposed Administrative Service Fee. The formula to compute **each** Category is:

Lowest Responsive
Administrative Service Fee

This Offeror’s
Administrative Service Fee

X Available Points (300 pts)

5.5 Evaluation Process

5.5.1 Initial Review

All Offeror proposals will be reviewed for compliance with the requirements and specifications stated within the RFP. Proposals deemed non-responsive will be eliminated from further consideration.

The Lead State Administrator may contact the Offeror for clarification of the response.

5.5.2 Responsive Proposals

All responsive proposals will be evaluated on the factors in **Section 5**, which have been assigned a point value in **Section 5**. Of these responsive proposals, in accordance with 13-1-117 NMSA 1978, the responsible Offerors whose proposals are most advantageous to the State taking into consideration the Evaluation Factors in **Section 5** will be recommended for award (as specified in **Section 5.11**). Please note, however, that a serious deficiency in the response to any one

factor may be grounds for rejection regardless of overall score.

5.5.3 Non-Cost Factors Evaluation

Each evaluation team member will independently evaluate the Offeror's Non-Cost Factor responses and assign points as indicated in the Evaluation Point Summary Table. Each evaluator's non-cost factor points will then be averaged and added to Offeror's cost points to determine Offeror's total evaluation score.

5.6 Clarification

The Lead State Administrator may contact the Offeror for clarification of the response as specified in **Section 5.2**.

5.7 Other Source

The Evaluation Committee may use other sources to perform the evaluation as specified in **Section 3.18**.

5.8 Award of Master Agreement(s)

Award shall be made to the offeror(s) whose proposal is the most advantageous to the State of New Mexico and NASPO ValuePoint, taking into consideration price and the other evaluation factors set forth in this request for proposals. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate State approval.

5.9 Finalize Contractual Agreements

Any Contractual agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per Schedule of Events or as soon thereafter as possible. This date is subject to change at the discretion of the Lead State. In the event mutually agreeable terms cannot be reached with the apparent most advantageous Offeror in the time specified, the Lead State reserves the right to finalize a contractual agreement with the next most advantageous Offeror(s) without undertaking a new procurement process.

5.10 Contract Awards

After review and approval of the Evaluation Committee Report and the signed contractual agreement, the Lead State will award as per the schedule in **Section 2.1 Schedule of Events** or as soon as possible thereafter. This date is subject to change at the discretion of the Lead State.

Any Master Agreement(s) resulting from this RFP will be finalized with the most advantageous Offeror(s) as per **Section 2.1, Schedule of Events**, or as soon thereafter as possible. The most advantageous proposal may or may not have received the most points. The award is subject to appropriate Department and State approval.

5.11 Post Award Formalization of the Master Agreement

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

award. In any event, the Lead State reserves the right to accept contract or pricing changes that are more favorable to the Lead State.

If no **Master Agreement** is reached with the apparent awardee, the Lead State may negotiate with other Offeror(s) without undertaking a new procurement process or make no award under this RFP.

5.12 Protest

Any protest by an Offeror must be timely and in conformance with Section 13-1-172 NMSA 1978 and applicable procurement regulations. The 15-calendar day protest period shall begin on the day following the award of contracts and will end at 5:00 P.M. Mountain Time on the 15th day. Protests must be written and must include the name and address of the protestor and the request for proposal number. The written protest must also contain a statement of the grounds for protest including appropriate supporting exhibits and it must specify the ruling requested from the party listed below. **ALL** protests must be delivered to the State Purchasing Agent:

Mark Hayden
State Purchasing Agent
Mark.Haydex@xxxxx.xx.us

Protests received after the deadline will not be accepted.

SECTION 6: Administrative and Technical Response Requirements

6.1 Mandatory Minimum Administrative Proposal Requirements

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

6.1.1 Campaign Contribution Disclosure Form

Offeror must complete, sign, and return the Campaign Contribution Disclosure Form, below, as a part of their proposal. This requirement applies regardless of whether a covered contribution was made or not made for the positions of Governor and Lieutenant Governor or other identified official. **Failure to complete and return the signed unaltered form will result in disqualification.**



Appendix C
Campaign Contributic

6.1.2 Acknowledgement of Receipt Form

Offeror's must submit the Acknowledge of Receipt Form no later than the time and date indicated on the Schedule of Events.



Appendix A
Acknowledgement c

6.2 NASPO ValuePoint Master Agreement Acceptance

NASPO ValuePoint Master Agreement(s) resulting from this RFP will constitute the final agreement except for negotiated terms and conditions specific to a Participating Entity's Participating Addendum.

The Master Agreement will include, but not be limited to, the **NASPO ValuePoint Standard Terms and Conditions** in **Attachment A**, the **Scope of Work** in **Attachment B** and selected portions of the Offerors Proposal.

This section highlights particular terms and conditions of **NASPO ValuePoint Master Agreement Terms and Conditions**. Offerors will be bound to all the terms and conditions when executing a **Master Agreement** as shown in **Attachment A**.

6.2.1 Letter of Transmittal

Offeror's proposal must be accompanied by the Letter of Transmittal, APPENDIX B, which must be completed and signed by an individual person authorized to obligate the company acknowledging that they have read and understand all of the terms and conditions as shown in the Master Agreement Attachment A.



Appendix B Letter
of Transmittal.docx

6.3 Insurance

To be eligible for award, the Offeror agrees to acquire insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state at the prescribed levels set forth in **Section 13** of the **NASPO ValuePoint Master Agreement Terms and Conditions**.

6.4 NASPO ValuePoint Administrative Fee and Reporting Requirements

To be eligible for award, the Offeror agrees to pay a NASPO ValuePoint administrative fee as specified in **Section 5.2** of the **NASPO ValuePoint Master Agreement Terms and Conditions**. Moreover, specific summary and detailed usage reporting requirements are prescribed by **Section 5.3** of **NASPO ValuePoint Master Agreement Terms and Conditions**.

Offerors shall, within 15 days of **Master Agreement** execution, identify the person responsible for providing the mandatory usage reports. (This information must be kept current during the contract period).

6.5 **Lead State Terms and Conditions**

Refer to **Attachment J, Participating States’ Terms and Conditions** for the Lead State Special Terms and Conditions that apply to this solicitation. Offeror shall indicate by signing the **Letter of Transmittal** that they have read and understand all of the requirements shown in the Lead State Terms and Conditions.

6.6 **Participating State Terms and Conditions**

In addition to the Lead State conducting this solicitation, the following Participating States have requested to be named in this RFP as potential users of the resulting Master Agreement: Hawaii, Maine, New Jersey South Dakota. Other entities may become Participating Entities after award of the **Master Agreement**. Some States may have included special or unique terms and conditions for their state that will govern their state Participating Addendum. These terms and conditions are being provided as a courtesy to proposers to indicate which additional terms and conditions may be incorporated into the state Participating Addendum after award of the **Master Agreement**. The Lead State will not address questions or concerns or negotiate other States’ terms and conditions. The Participating States shall negotiate these terms and conditions directly with the supplier. State-specific terms and conditions are included in **Attachment J**.

6.7 **Business Requirements**

This section contains technical requirements pertaining to the **Temporary Employment Services**. Other sections of this RFP contain additional requirements that must be met in order to be considered responsive. Offerors must identify in their response how their company meets (or exceeds) all requirements listed in **Section 6** of this RFP solicitation.

6.7.1 **Company Profile**

Provide a **detailed response** for the following information specific to your company

1) Company History	
<u>Required Information</u>	<u>Offeror’s Response</u>
a) Company was formed at least three years ago	
b) Hours of operation must be at least 8:00 am to 5:00 pm Monday through Friday	
c) Provide a minimum of three business references for similar contracts that include contact name, title, email, and phone number. These references should be able to thoroughly describe the experience, expertise, and knowledge provided by the offeror. These references will be verified by the Lead State Administrator.	

6.7.2 **Business Profile**

1) Customer Service / Service Delivery Strategy	
a) Describe how conflict identification and resolution will be handled. How do you respond to client complaints and service delivery issues?	
b) How will you service your clients' accounts? Describe in detail how your company profiles your clients' needs for temporary services.	
c) Describe your company's national capabilities to satisfy clients' needs for temporary services and how you manage those accounts in various geographical areas	
d) Affirm that you can provide the services throughout the United States (including Alaska, Hawaii, and the District of Columbia).	
e) Indicate where you offer services in the territories of the United States.	
f) How do you assess customer satisfaction? How do you measure customer satisfaction? What are your quality assurance measures and how are they handled in your organization?	
g) Describe in detail what steps your company takes to understand the business needs of their customer.	
h) Describe your company's performance monitoring for the company.	

2) Candidate Qualifications	
a) Describe your company's plan and methodology for quality assurance and evaluation of the proposed services. How are the most qualified candidates identified for your customers? Describe your company's performance monitoring for the candidates.	
b) Describe your company's general methodology for recruiting qualified staff tailored to the needs of the customer. Has your company encountered challenges with recruiting qualified staff? If so, how have those challenges been addressed?	
c) What is your company's policy in regards to unsatisfactory candidates?	
d) Identify how temporary staffing will be assigned under the contract. Policies and responses must include the following: skill testing and screening mechanisms, including a description of reference and/or background	

checks solicited for each applicant and the manner in which job assignments/job matching will be determined. Describe how your company accommodates pre-employment screening requirements that may be specific to the Procuring Agency. (This may be negotiated with Awarded Offeror(s) to ensure consistency at entry level positions; additional requirements will be at the Procuring Agency's discretion)	
e) What is your company's timeframe for placements of candidates for new customers?	
f) Describe any benefits and incentive programs, as well as skill enhancement opportunities which are available to assignable staff.	
g) What steps does your company take to retain qualified assignable temporary staff?	

3) Government Relations	
a) Describe the experience your company has with regards to placements of candidates within government entities.	
b) Describe your company's experience providing services in states where preferences exist for agencies that employ a minimum percentage of persons with disabilities.	

6.7.3 Protection of Sensitive Information

Required Information	Offeror's Response
a) What measures do you take to protect sensitive customer (procuring agency) information?	
b) Describe how your company trains and ensures that the candidates placed with a procuring agency adhere to all privacy and confidential State specific confidentiality requirements regarding confidential information as defined in Section 1.3 Definitions, including HIPAA as it applies to any category of service you are proposing.	

6.8 Technical Requirements

6.8.1 Scope of Work

Unless otherwise instructed, Offerors should respond in the form of a thorough written narrative which demonstrates how they will meet or exceed the requirements of each section in the **Scope of Work, Attachment B**. The narratives, including any required supporting materials, will be

evaluated and awarded points as indicated in **Section 5**.

APPENDIX C

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled pursuant to Section [13-1-181](#) NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section [13-1-182](#) NMSA 1978 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the

payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

“Family member” means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor;

“Pendency of the procurement process” means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

“Prospective contractor” means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract.

“Representative of a prospective contractor” means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any: Governor of New Mexico

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature

Date

Title (position)

--OR--

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Signature

Date

Title (Position)

APPENDIX A

ACKNOWLEDGEMENT OF RECEIPT FORM

Temporary Employment Services
RFP# 20-00000-21-00021

This Acknowledgement of Receipt Form should be signed and submitted no later than December 30, 2021. Only potential Offerors who elect to return this form will receive copies of all submitted questions and the written responses to those questions, as well as any RFP amendments, if any are issued.

In acknowledgement of receipt of this Request for Proposal, the undersigned agrees that he or she has received a complete copy of the RFP, beginning with the title page, and ending with APPENDIX J.

The name and address below will be used for all correspondence related to the Request for Proposal.

ORGANIZATION:

CONTACT NAME:

TITLE: _____ PHONE NO.: _____

E-MAIL: _____

ADDRESS: _____

CITY: _____ STATE: _____ ZIP CODE: _____

Submit Acknowledgement of Receipt Form to:

To: Natalie Martinez, Procurement Manager

E-mail: Natalie.Martinez1@state.nm.us

Subject Line: Temporary Employment Services

APPENDIX B

Letter of Transmittal Form

**ITEMS #1 to #4 EACH MUST BE COMPLETED IN FULL (pursuant to Section II.C.30).
FAILURE TO RESPOND TO ALL FOUR (4) ITEMS WILL RESULT IN THE
DISQUALIFICATION OF OFFEROR'S PROPOSAL! DO NOT LEAVE ANY ITEM BLANK!
(N/A, None, Does not apply, etc. are acceptable responses.)**

RFP#: 20-00000-21-00021

1. Identify the following information for the submitting organization:

Offeror Name	
Mailing Address	
Telephone	
FED ID#	
NM CRS#	

2. Identify the individual(s) authorized by the organization to (A) contractually obligate, (B) negotiate, and/or (C) clarify/respond to queries on behalf of this Offeror:

	A Contractually Obligate	B Negotiate*	C Clarify/Respond to Queries*
Name			
Title			
E-mail			
Telephone			

* If the individual identified in Column A also performs the functions identified in Columns B & C, then no response is required for those Columns. If separate individuals perform the functions in Columns B and/or C, they must be identified.

3. Use of subcontractors (Select one):

____ No subcontractors will be used in the performance of any resultant contract, OR
____ The following subcontractors will be used in the performance of any resultant contract:

(Attach extra sheets, as needed)

4. Describe any relationship with any entity (such as a State Agency, reseller, etc. that is not a subcontractors listed in #3 above), if any, which will be used in the performance of any resultant contract. (N/A, None, Does not apply, etc. are acceptable responses to this item.)

(Attach extra sheets, as needed)

By signing the form below, the Authorized Signatory attests to the accuracy and veracity of the information provided on this form, and explicitly acknowledges the following:

- On behalf of the submitting-organization identified in item #1, above, I accept the Conditions Governing the Procurement, as required in Section II.C.1. of this RFP;
- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP; and
- I acknowledge receipt of any and all amendments to this RFP, if any.

_____, 20_____
Authorized Signature and Date (*Must be signed by the individual identified in item #2.A, above.*)

SECTION 7: Price and Cost Proposal

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

Offeror must submit cost, as required by **Attachment C, Cost Sheet**. Offeror's Administrative Service Fee (based on a percentage) must include all anticipated charges, including but not limited to, cost of materials and product, travel expenses, transaction fees, overhead, profits, and other costs or expenses incidental to the Offeror's performance excluding the **Fully Loaded Labor Rate**.

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

7.1 Price and Rate Guarantee Period

All Administrative Service Fees offered shall be guaranteed for the initial term of the **Master Agreement**. Any request for fee adjustment following the initial **Master Agreement** term, is detailed in **Section 5** of the **Master Agreement**. All Offeror's Administrative Service Fees (based on a percentage) are not to exceed a maximum rate (ceiling). Rate may be negotiated at a lower price depending on the category requested. All Offeror's Administrative Service fees are to be represented by a single Percentage and not a range.



Attachment A - NASPO ValuePoint Master Agreement Terms and Conditions



NASPO ValuePoint
Terms and Conditions



ATTACHMENT A

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) limited liability company. 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 (Enter Number of Years) years. The term of this Master Agreement may be amended beyond the initial term for (Enter Number of Renewals) 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.
- 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 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 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 Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org>. All sales made under this Master Agreement must be reported as cumulative totals by state. Contractor must submit a report for each quarter, including quarters during which a Contractor has no sales, in which case this will be indicated in the Reporting Tool. Reports must be submitted no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

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

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

5.3.4 Executive Summary. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint

Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

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

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, to 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 Agreements or whose terms provide for adjustments to

future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

- 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 vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than [two years] after 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 for the initial term of the Master Agreement.
- 6.1.2** Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least (Enter the Number of Days) days prior to the effective date.
- 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 entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum 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.** To the extent applicable, all deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to 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 ascertaining 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.

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 Acceptance, as set forth in Section IX.

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"). 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.
- 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 inadequately 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 identify 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 Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. 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 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.

Attachment B: Scope of Work

This RFP is soliciting proposals from Temporary Employment Companies to provide services relating to Administrative Support (Including Office and Clerical), Commercial/Industrial Workers, and Healthcare Staffing Services, Information Technology, and Professional Services as defined within the scope of this RFP. Awarded Offerors shall be independent contractors and not employees of the State of New Mexico or Participating Entities. The Awarded Offeror's staff, including temporary assigned individuals shall also not be considered employees of the Participating Entities.

These services are as needed and upon request from Procuring Agencies. Contractor(s) will be responsible for hiring and firing temporary employees, paying all applicable taxes, workers' compensation, benefits, etc., for the candidates who are **not** employees of the individual participating entities. Candidates will not be provided employee benefits from the State agencies or political subdivisions.

The Lead State will not guarantee any minimum level of usage for any resulting contract(s) under this RFP.

Offerors Instructions

Offerors shall respond in the form of a **detailed narrative** describing how your company meets or exceeds each specification 1-10, unless otherwise instructed. Marketing materials, links and statement of concurrence will not be accepted as a response to these requirements and may be rejected.

1. Temporary Employment Services

- A. Contractor will notify the Procuring Agency on availability within four (4) hours after a request is made for services that will commence within five (5) working days following the request;
- B. Contractor will notify the Procuring Agency on availability within two (2) days after a request is made for services that will commence later than five (5) working days following the request;
- C. Contractor will confirm with the Procuring Agency the arrival of its candidate by telephone within one-half (1/2) hour after scheduled arrival time or as determined by the Procuring Agency and the Contractor by mutual agreement.
- D. Contractor is responsible to communicate with its candidate the Procuring Agency's requirements regarding hours of work, duration, location, expectations, dress code and other information concerning the assignment.
- E. All temporarily assigned individuals will be appropriately dressed for the assignment and shall maintain a professional demeanor. Dress code policy is established by the individual agencies. Temporary candidate must dress according to the requirements of the Procuring Agency requesting the assignment.
- F. Temporarily assigned individuals should be available for the entire length of the assignment; however, if a replacement is required, a qualified replacement must be provided within twenty-four (24) hours of notification, including weekends and holidays.

- G. The Procuring Agency reserves the right to reduce the length of the temporary assignment and will provide the Contractor with as much notification as possible.

2. Work Hours

- A. The exact work hours for temporarily assigned personnel will be determined by the Procuring Agency. Generally, work hours begin at 8:00 a.m. and end at 5:00 p.m. Monday through Friday excluding officially observed holidays. Any non-working time as the result of early dismissal, due to weather or any other situation as determined by the Procuring Agency are also excluded. Temporarily assigned personnel will work no more than eight (8) hours per day, excluding one (1) hour for lunch; or a total of forty (40) hours per week.
- B. Temporarily assigned individuals will not be paid for their lunch break.
- C. Overtime worked is at the discretion of the Procuring Agency and must be approved in advanced and in writing. Overtime will not be authorized or paid unless prior written authorization is obtained from appropriate management staff.
- D. Agencies have the right to request temporarily assigned individuals for holiday, evening/night, weekend, or shift work as needed.
- E. Hours may vary per Procuring Agency.
- F. The Procuring Agency reserves the right to request a replacement of any individual. If for any reason a replacement is required within the first eight (8) hours of service, there will be no charge to the Procuring Agency. If at any time beyond the initial eight (8) hours of service the temporarily assigned individual is determined to be unsatisfactory, the Contractor agrees to issue a credit invoice to the Procuring Agency for the total charges from the point the Procuring Agency notifies the Contractor to request a replacement.
- G. The Contractor agrees to replace an unsatisfactory individual within one (1) business day; however, the Procuring Agency has the option to contact a different Contractor for the service.
- H. The Procuring Agency shall be the sole judge as to whether a temporarily assigned individual is satisfactory and is fulfilling the Procuring Agency's requirements.

3. Listing of Position Classifications & Pay Rate

Each Procuring Agency will provide a listing of position classifications to the Contractor; however, the listing is not meant to be all-inclusive. Individual states or agencies may request other temporary positions by way of providing the Contractor(s) with the employee pay rate, position classification/title and description of duties. Offeror shall describe the process their company currently has in place to provide requested services, as well as providing additional positions/services that fit the needs of the Procuring Agency.

4. Placement

Offeror shall describe how their company will provide assistance for Procuring Agencies with the placement of any candidate(s). At a minimum, include problem (conflict) and resolutions and the following items below:

- A. Agencies may refer a specific individual as a candidate to be recruited by the Contractor to perform specific services needed or may request the Contractor to recruit and provide a

specific temporary candidate. The Procuring Agency will not pay a placement or conversion fee for individuals who are a direct referral from the Procuring Agency.

- B. Upon a request for service from the Procuring Agency, the Contractor will provide expedient temporary employment services. An e-mail, facsimile, or telephone call from the Procuring Agency will constitute a request for service.
- C. The Procuring Agency reserves the right to interview the candidate to determine their qualifications for the required position (this does not negate the Contractor's responsibility of qualifying candidate(s)).
- D. The Procuring Agency may reject and/or remove any candidate who does not meet the requested experience or is deficient in the performance of the assignment.
- E. Procuring Agencies may select Contractor(s) within their geographic region based on the preference of the Procuring Agency.
- F. Multiple Contractors may be contacted to fill the same position.

5. Contractor's Responsibilities

- A. The Contractor is responsible to obtain the information as described in the Scope of Work and any other information necessary to determine what job category satisfies the service request.
- B. Contractor shall supply sufficient, competent, reliable, and properly licensed or certified or both personnel to provide adequate and satisfactory services as required under this Contract. In cases where special licenses, accreditations, certifications, or permits are required by State, Federal and/or Local law, statute, or regulation for an employee to perform services of specified job descriptions, Contractor shall provide current copies of such licenses, accreditations, certifications and permits upon Client Agency's request. Contractor shall maintain all applicable licenses, accreditations, certifications and permits during the term of this Contract. Contractor shall immediately notify the Client Agency by written notice in the event any of its employees' licenses, accreditations, certifications, or permits are revoked, expired, or suspended.
- C. The Contractor will inform the Procuring Agency point of contact of the proposed job classification and applicable rate to obtain authorization to proceed with the service request.
- D. Placing candidates out of applicable job classification is considered a breach of contract. Periodic checks of requests and assignments will be performed by the Procuring Agency to ensure this does not occur.
- E. The Contractor is responsible for conducting appropriate background and reference checks on potential candidates prior to any assignments and should be prepared to conduct more extensive background investigations when required by the Procuring Agency. Upon request, Contractor must provide, to the Procuring Agencies, the compliance of the background and reference checks. Failure to provide this information will be considered a violation of the contract and may result in rejection of the candidate and possibly jeopardize future placements by offending Contractor.
- F. Contractor will be responsible for liability insurance, federal and state payroll requirements including but not limited to insurance coverage for any candidate sent to the Procuring Agency, payroll taxes, payroll reports, workers' compensation, benefits, hiring and firing etc., for the candidates.

- G. The Contractor is responsible for conducting periodic quality assurance checks with the Procuring Agency's point of contact to verify that the Procuring Agency's requirements are being fulfilled by the candidate. At a minimum, these checks should be completed at the end of the first week of any assignment. Procuring Agencies may request quality assurance checks at any interval during the term of the candidate's placement.
- H. Candidates may be hired as a permanent employee of the State or Procuring Agency if the Procuring Agencies and hiring processes have been complied with and if the candidate elects to accept employment with the State or Procuring Agency. Such occurrence will create no further obligation (financial or otherwise) on the part of the Procuring Agency.
- I. The Procuring Agency will not be responsible for the Contractor's candidate who voluntarily leaves the Contractor's employment or engages in employment with another company.
- J. The Contractor agrees to ensure candidates agree to be bound by the Participating State's security regulations, policies, and standards as required by the Procuring Agency (e.g., Department of Corrections). This will vary based on the individual Procuring Agency's requirements.
- K. Contractor shall ensure adequate backup documentation (such as candidate timesheets) are attached to invoice or billing requests. The timesheet should include the following:
 - a. Name of the Procuring Agency;
 - b. Name of the temporarily assigned individual;
 - c. Dates worked;
 - d. Beginning and ending time;
 - e. Number of actual regular hours worked each day; and
 - f. If applicable, number of overtime hours worked each day
 - g. Written pre-approval of overtime hours.
 - h. Time sheet signed by authorized representative of the Procuring Agency.
- L. The Contractor is responsible and may be held financially liable for the negligent acts of its candidates.

6. Bonding

- A. The Contractor shall have the ability to bond candidates as directed by the Procuring Agency.
- B. The fee for this service will be borne by the Procuring Agency.
Selection of the bonding insurer is at the Contractor's discretion; however, each insurance policy shall be:
 - Issued by insurance companies authorized to do business in the Participating State or eligible surplus lines insurers acceptable to and having agents in the State upon whom service of process may be made.

7. Travel

- A. Reimbursement for travel will be at the discretion of the Procuring agency and shall not be subject to the Contractor's markup.
- B. In the event a candidate's duties require travel, the reimbursable travel costs shall follow the Procuring Agencies travel reimbursement policies. Travel authorizations must be given before travel occurs per Procuring Agency's internal policies.

- C. Travel expenses submitted for reimbursement must follow Procuring Agency's internal policies.
- D. Valid travel reimbursements will be reimbursed at the Procuring Agencies current travel rate.
- E. The candidate and the Procuring Agency's contact person must sign the travel expense form.
- F. The form must be submitted with the Contractor's invoice for services with the travel expense as a separate line item on the invoice in order to be reimbursed by the Procuring Agency.
- G. The type of position requiring travel will vary based on the individual Procuring Agency's requirements.

8. Equipment, Property and Damages

- A. The Contractor shall be responsible for the proper maintenance and custody of any personal tangible property owned and real property furnished by the Procuring Agency for the use in connection with the performance of the contract.
- B. The Contractor will reimburse the Procuring Agency for such property's loss or damage caused by the Contractor' assigned individual, with the exception of normal wear and tear.
- C. The equipment used may include computers, copy machines, phones, printers, etc. Equipment may vary depending on the candidate assignments.

9. Procuring Agency's Responsibilities

- A. Prior to contacting the Contractor (s), the Procuring Agency is responsible to define details of the request to include, but not be limited to:
 - a. Number of individuals needed;
 - b. Job duties;
 - c. Equipment to be used;
 - d. Knowledge, skills and education and/or experience;
 - e. Computer software to be used;
 - f. Hours of work;
 - g. Expected length of assignment;
 - h. Job related attire;
 - i. Position location;
 - j. Procuring Agency contact person; and
 - k. Other pertinent job-related information
- B. Depending on the amount of detail required, it is recommended the Procuring Agency submit this information in writing via e-mail or facsimile to reduce the possibility of an inappropriate temporary assignment.

10. Background checks

- A. The Procuring Agency is responsible for requesting additional background investigations beyond normal references prior to the temporary assignment
- B. Should an additional background check be required due to the nature of the

assignment, the Procuring Agency may be responsible for the cost of the additional checks

- C. It is reasonable to expect employment eligibility and references will be required for all candidates; background checks for referrals by the Procuring Agency will be at the discretion of the Procuring Agency.
- D. Standard checks which would include employment eligibility and reference checks shall be at the cost of the Contractor (s).
- E. Other background checks will be at the discretion of each requesting Procuring Agency.
- F. Procuring Agencies reserve the right to request and conduct pre-employment background checks and drug testing prior to the potential candidates starting date. Procuring Agencies also reserve the right to require other tests as negotiated in their Participating Addendum.
- G. Procuring Agencies will limit their background checks, drug testing, and other testing requirements to the same as required of their own permanent full-time employees holding the same or similar positions to be filled by the candidate.

Attachment C: Cost Sheet

Temporary Employment Services will be based on the Offeror's Administrative Service Fee (based on a percentage) for each category of Temporary Employment Services. Offeror's Administrative Service Fee is a not to exceed maximum percentage fee; however, the Offeror's Administrative Service Fee may be negotiated at a lower percentage. The Offeror's Administrative Service Fee may be tied to the Producers Price Index (PPI) but must not be more than the PPI.

The Awarded Offeror's Administrative Service Fee shall remain firm for the duration of the NASPO Value Point Master Agreements including all optional renewals.

Each of the Temporary Employment Services must have an Offeror's Administrative Service Fee for all Participating Entities.

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

COST RESPONSE FORM

COST SHEET

<u>CATEGORY</u>	<u>OFFEROR'S ADMINISTRATIVE SERVICE Fee * (based on a percentage for all Participating States throughout the United States)</u>
1. Administrative Support (Including Office and Clerical)	%
2. Commercial/Industrial Workers	%
3. Healthcare Staffing Services	
a. Clinical	a. %
b. Non-Clinical	b. %
4. Information Technology	%
5. Professional Services (other than IT)	%

*The Offeror's Administrative Service Fee is the amount (based on a percentage) the Offeror charges for the fulfillment of a position excluding the fully loaded labor rate as defined in this RFP. If the Offeror is not responding to all Categories listed above, insert NA (not applicable).

Offeror's Administrative Service Fee is a not to exceed maximum percentage; however, the Offeror's Administrative Service Fee submitted in Offeror's proposal may be negotiated at a lower percentage.

Attachment D: Intentionally left blank

Attachment E: Intentionally Left Blank

Attachment F: Detailed Sales Report and Data Format



Detailed Reporting
Template (Excel).xlsx

Portfolio Year Quarter Vendor Name Vendor Contract Number Customer Name Customer Number Customer Type Customer Address Customer City Customer State Customer Zip Order Type Order Number Invoice Number Invoice Date PO Number PO Date Ship Date Category Product Number Product Description List Price Unit Price Quantity Total Price Distributor

Attachment G: Offeror's Questions

Question #	RFP Reference (page and RFP section)	Offeror's Question	Response (New Mexico's Response)
Example	Page 22, Section 4, Response Format and Organization; 4.1 Proposal Submission Instructions	Can the RFP be submitted to the P.O. Box #?	As stated in the RFP, page 22, Section 4.1 <i>You may mail or drop off hard copies to the address below on or before the due date and time.</i>
1			
2			
3			
4			
5			
6			
7			
8			
9			

Attachment H: Master Agreement

The **Master Agreement** will include, but not be limited to, the **NASPO ValuePoint Standard Terms and Conditions** in **Attachment A**, definitions specific to the Scope of Work, the **Scope of Work (Attachment B)** and selected portions of the Offeror's Proposal, and Offeror's Cost Form.

The Participating Addendum for the State of New Mexico will include the Lead State's Terms and Conditions outlined within this RFP.

Attachment I: Participating States

- Hawaii
- Maine
- New Jersey
- South Dakota

Attachment J: Participating States' Additional Terms and Conditions



HI State-specific
terms and conditions



State of New Jersey
Standard Terms and C

GENERAL CONDITIONS

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GENERAL CONDITIONS

1. Coordination of Services by the STATE. The head of the purchasing agency ("HOPA") (which term includes the designee of the HOPA) shall coordinate the services to be provided by the CONTRACTOR in order to complete the performance required in the Contract. The CONTRACTOR shall maintain communications with HOPA at all stages of the CONTRACTOR'S work, and submit to HOPA for resolution any questions which may arise as to the performance of this Contract. "Purchasing agency" as used in these General Conditions means and includes any governmental body which is authorized under chapter 103D, HRS, or its implementing rules and procedures, or by way of delegation, to enter into contracts for the procurement of goods or services or both.
2. Relationship of Parties: Independent Contractor Status and Responsibilities, Including Tax Responsibilities.
 - a. In the performance of services required under this Contract, the CONTRACTOR is an "independent contractor," with the authority and responsibility to control and direct the performance and details of the work and services required under this Contract; however, the STATE shall have a general right to inspect work in progress to determine whether, in the STATE'S opinion, the services are being performed by the CONTRACTOR in compliance with this Contract. Unless otherwise provided by special condition, it is understood that the STATE does not agree to use the CONTRACTOR exclusively, and that the CONTRACTOR is free to contract to provide services to other individuals or entities while under contract with the STATE.
 - b. The CONTRACTOR and the CONTRACTOR'S employees and agents are not by reason of this Contract, agents or employees of the State for any purpose, and the CONTRACTOR and the CONTRACTOR'S employees and agents shall not be entitled to claim or receive from the State any vacation, sick leave, retirement, workers' compensation, unemployment insurance, or other benefits provided to state employees.
 - c. The CONTRACTOR shall be responsible for the accuracy, completeness, and adequacy of the CONTRACTOR'S performance under this Contract. Furthermore, the CONTRACTOR intentionally, voluntarily, and knowingly assumes the sole and entire liability to the CONTRACTOR'S employees and agents, and to any individual not a party to this Contract, for all loss, damage, or injury caused by the CONTRACTOR, or the CONTRACTOR'S employees or agents in the course of their employment.
 - d. The CONTRACTOR shall be responsible for payment of all applicable federal, state, and county taxes and fees which may become due and owing by the CONTRACTOR by reason of this Contract, including but not limited to (i) income taxes, (ii) employment related fees, assessments, and taxes, and (iii) general excise taxes. The CONTRACTOR also is responsible for obtaining all licenses, permits, and certificates that may be required in order to perform this Contract.
 - e. The CONTRACTOR shall obtain a general excise tax license from the Department of Taxation, State of Hawaii, in accordance with section 237-9, HRS, and shall comply with all requirements thereof. The CONTRACTOR shall obtain a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of the Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid and submit the same to the STATE prior to commencing any performance under this Contract. The CONTRACTOR shall also be solely responsible for meeting all requirements necessary to obtain the tax clearance certificate required for final payment under sections 103-53 and 103D-328, HRS, and paragraph 17 of these General Conditions.
 - f. The CONTRACTOR is responsible for securing all employee-related insurance coverage for the CONTRACTOR and the CONTRACTOR'S employees and agents that is or may be required by law, and for payment of all premiums, costs, and other liabilities associated with securing the insurance coverage.

- g. The CONTRACTOR shall obtain a certificate of compliance issued by the Department of Labor and Industrial Relations, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- h. The CONTRACTOR shall obtain a certificate of good standing issued by the Department of Commerce and Consumer Affairs, State of Hawaii, in accordance with section 103D-310, HRS, and section 3-122-112, HAR, that is current within six months of the date of issuance.
- i. In lieu of the above certificates from the Department of Taxation, Labor and Industrial Relations, and Commerce and Consumer Affairs, the CONTRACTOR may submit proof of compliance through the State Procurement Office's designated certification process.

3. Personnel Requirements.

- a. The CONTRACTOR shall secure, at the CONTRACTOR'S own expense, all personnel required to perform this Contract.
- b. The CONTRACTOR shall ensure that the CONTRACTOR'S employees or agents are experienced and fully qualified to engage in the activities and perform the services required under this Contract, and that all applicable licensing and operating requirements imposed or required under federal, state, or county law, and all applicable accreditation and other standards of quality generally accepted in the field of the activities of such employees and agents are complied with and satisfied.

4. Nondiscrimination. No person performing work under this Contract, including any subcontractor, employee, or agent of the CONTRACTOR, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.

5. Conflicts of Interest. The CONTRACTOR represents that neither the CONTRACTOR, nor any employee or agent of the CONTRACTOR, presently has any interest, and promises that no such interest, direct or indirect, shall be acquired, that would or might conflict in any manner or degree with the CONTRACTOR'S performance under this Contract.

6. Subcontracts and Assignments. The CONTRACTOR shall not assign or subcontract any of the CONTRACTOR'S duties, obligations, or interests under this Contract and no such assignment or subcontract shall be effective unless (i) the CONTRACTOR obtains the prior written consent of the STATE, and (ii) the CONTRACTOR'S assignee or subcontractor submits to the STATE a tax clearance certificate from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR'S assignee or subcontractor have been paid. Additionally, no assignment by the CONTRACTOR of the CONTRACTOR'S right to compensation under this Contract shall be effective unless and until the assignment is approved by the Comptroller of the State of Hawaii, as provided in section 40-58, HRS.

- a. Recognition of a successor in interest. When in the best interest of the State, a successor in interest may be recognized in an assignment contract in which the STATE, the CONTRACTOR and the assignee or transferee (hereinafter referred to as the "Assignee") agree that:

- (1) The Assignee assumes all of the CONTRACTOR'S obligations;
- (2) The CONTRACTOR remains liable for all obligations under this Contract but waives all rights under this Contract as against the STATE; and
- (3) The CONTRACTOR shall continue to furnish, and the Assignee shall also furnish, all required bonds.

- b. Change of name. When the CONTRACTOR asks to change the name in which it holds this Contract with the STATE, the procurement officer of the purchasing agency (hereinafter referred to as the "Agency procurement officer") shall, upon receipt of a document acceptable or satisfactory to the

Agency procurement officer indicating such change of name (for example, an amendment to the CONTRACTOR'S articles of incorporation), enter into an amendment to this Contract with the CONTRACTOR to effect such a change of name. The amendment to this Contract changing the CONTRACTOR'S name shall specifically indicate that no other terms and conditions of this Contract are thereby changed.

- c. Reports. All assignment contracts and amendments to this Contract effecting changes of the CONTRACTOR'S name or novations hereunder shall be reported to the chief procurement officer (CPO) as defined in section 103D-203(a), HRS, within thirty days of the date that the assignment contract or amendment becomes effective.
 - d. Actions affecting more than one purchasing agency. Notwithstanding the provisions of subparagraphs 6a through 6c herein, when the CONTRACTOR holds contracts with more than one purchasing agency of the State, the assignment contracts and the novation and change of name amendments herein authorized shall be processed only through the CPO's office.
7. Indemnification and Defense. The CONTRACTOR shall defend, indemnify, and hold harmless the State of Hawaii, the contracting agency, and their officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys' fees, and all claims, suits, and demands therefore, arising out of or resulting from the acts or omissions of the CONTRACTOR or the CONTRACTOR'S employees, officers, agents, or subcontractors under this Contract. The provisions of this paragraph shall remain in full force and effect notwithstanding the expiration or early termination of this Contract.
 8. Cost of Litigation. In case the STATE shall, without any fault on its part, be made a party to any litigation commenced by or against the CONTRACTOR in connection with this Contract, the CONTRACTOR shall pay all costs and expenses incurred by or imposed on the STATE, including attorneys' fees.
 9. Liquidated Damages. When the CONTRACTOR is given notice of delay or nonperformance as specified in paragraph 13 (Termination for Default) and fails to cure in the time specified, it is agreed the CONTRACTOR shall pay to the STATE the amount, if any, set forth in this Contract per calendar day from the date set for cure until either (i) the STATE reasonably obtains similar goods or services, or both, if the CONTRACTOR is terminated for default, or (ii) until the CONTRACTOR provides the goods or services, or both, if the CONTRACTOR is not terminated for default. To the extent that the CONTRACTOR'S delay or nonperformance is excused under paragraph 13d (Excuse for Nonperformance or Delay Performance), liquidated damages shall not be assessable against the CONTRACTOR. The CONTRACTOR remains liable for damages caused other than by delay.
 10. STATE'S Right of Offset. The STATE may offset against any monies or other obligations the STATE owes to the CONTRACTOR under this Contract, any amounts owed to the State of Hawaii by the CONTRACTOR under this Contract or any other contracts, or pursuant to any law or other obligation owed to the State of Hawaii by the CONTRACTOR, including, without limitation, the payment of any taxes or levies of any kind or nature. The STATE will notify the CONTRACTOR in writing of any offset and the nature of such offset. For purposes of this paragraph, amounts owed to the State of Hawaii shall not include debts or obligations which have been liquidated, agreed to by the CONTRACTOR, and are covered by an installment payment or other settlement plan approved by the State of Hawaii, provided, however, that the CONTRACTOR shall be entitled to such exclusion only to the extent that the CONTRACTOR is current with, and not delinquent on, any payments or obligations owed to the State of Hawaii under such payment or other settlement plan.
 11. Disputes. Disputes shall be resolved in accordance with section 103D-703, HRS, and chapter 3-126, Hawaii Administrative Rules ("HAR"), as the same may be amended from time to time.
 12. Suspension of Contract. The STATE reserves the right at any time and for any reason to suspend this Contract for any reasonable period, upon written notice to the CONTRACTOR in accordance with the provisions herein.
 - a. Order to stop performance. The Agency procurement officer may, by written order to the CONTRACTOR, at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the performance called for by this Contract. This order shall be for a specified

period not exceeding sixty (60) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop performance order issued pursuant to this section. Stop performance orders shall include, as appropriate: (1) A clear description of the work to be suspended; (2) Instructions as to the issuance of further orders by the CONTRACTOR for material or services; (3) Guidance as to action to be taken on subcontracts; and (4) Other instructions and suggestions to the CONTRACTOR for minimizing costs. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and suspend all performance under this Contract at the time stated, provided, however, the CONTRACTOR shall take all reasonable steps to minimize the occurrence of costs allocable to the performance covered by the order during the period of performance stoppage. Before the stop performance order expires, or within any further period to which the parties shall have agreed, the Agency procurement officer shall either:

- (1) Cancel the stop performance order; or
 - (2) Terminate the performance covered by such order as provided in the termination for default provision or the termination for convenience provision of this Contract.
- b. Cancellation or expiration of the order. If a stop performance order issued under this section is cancelled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume performance. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the Contract shall be modified in writing accordingly, if:
- (1) The stop performance order results in an increase in the time required for, or in the CONTRACTOR'S cost properly allocable to, the performance of any part of this Contract; and
 - (2) The CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the period of performance stoppage; provided that, if the Agency procurement officer decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this Contract.
- c. Termination of stopped performance. If a stop performance order is not cancelled and the performance covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop performance order shall be allowable by adjustment or otherwise.
- d. Adjustment of price. Any adjustment in contract price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

13. Termination for Default.

- a. Default. If the CONTRACTOR refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract, or any extension thereof, otherwise fails to timely satisfy the Contract provisions, or commits any other substantial breach of this Contract, the Agency procurement officer may notify the CONTRACTOR in writing of the delay or non-performance and if not cured in ten (10) days or any longer time specified in writing by the Agency procurement officer, such officer may terminate the CONTRACTOR'S right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency procurement officer may procure similar goods or services in a manner and upon the terms deemed appropriate by the Agency procurement officer. The CONTRACTOR shall continue performance of the Contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
- b. CONTRACTOR'S duties. Notwithstanding termination of the Contract and subject to any directions from the Agency procurement officer, the CONTRACTOR shall take timely, reasonable, and

necessary action to protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest.

- c. Compensation. Payment for completed goods and services delivered and accepted by the STATE shall be at the price set forth in the Contract. Payment for the protection and preservation of property shall be in an amount agreed upon by the CONTRACTOR and the Agency procurement officer. If the parties fail to agree, the Agency procurement officer shall set an amount subject to the CONTRACTOR'S rights under chapter 3-126, HAR. The STATE may withhold from amounts due the CONTRACTOR such sums as the Agency procurement officer deems to be necessary to protect the STATE against loss because of outstanding liens or claims and to reimburse the STATE for the excess costs expected to be incurred by the STATE in procuring similar goods and services.
- d. Excuse for nonperformance or delayed performance. The CONTRACTOR shall not be in default by reason of any failure in performance of this Contract in accordance with its terms, including any failure by the CONTRACTOR to make progress in the prosecution of the performance hereunder which endangers such performance, if the CONTRACTOR has notified the Agency procurement officer within fifteen (15) days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of a public enemy; acts of the State and any other governmental body in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the CONTRACTOR shall not be deemed to be in default, unless the goods and services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the CONTRACTOR to meet the requirements of the Contract. Upon request of the CONTRACTOR, the Agency procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the CONTRACTOR'S progress and performance would have met the terms of the Contract, the delivery schedule shall be revised accordingly, subject to the rights of the STATE under this Contract. As used in this paragraph, the term "subcontractor" means subcontractor at any tier.
- e. Erroneous termination for default. If, after notice of termination of the CONTRACTOR'S right to proceed under this paragraph, it is determined for any reason that the CONTRACTOR was not in default under this paragraph, or that the delay was excusable under the provisions of subparagraph 13d, "Excuse for nonperformance or delayed performance," the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to paragraph 14.
- f. Additional rights and remedies. The rights and remedies provided in this paragraph are in addition to any other rights and remedies provided by law or under this Contract.

14. Termination for Convenience.

- a. Termination. The Agency procurement officer may, when the interests of the STATE so require, terminate this Contract in whole or in part, for the convenience of the STATE. The Agency procurement officer shall give written notice of the termination to the CONTRACTOR specifying the part of the Contract terminated and when termination becomes effective.
- b. CONTRACTOR'S obligations. The CONTRACTOR shall incur no further obligations in connection with the terminated performance and on the date(s) set in the notice of termination the CONTRACTOR will stop performance to the extent specified. The CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated performance. The CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated performance subject to the STATE'S approval. The Agency procurement officer may direct the CONTRACTOR to assign the CONTRACTOR'S right, title, and interest under terminated orders or subcontracts to the STATE. The CONTRACTOR must still complete the performance not terminated by the notice of termination and may incur obligations as necessary to do so.

- c. Right to goods and work product. The Agency procurement officer may require the CONTRACTOR to transfer title and deliver to the STATE in the manner and to the extent directed by the Agency procurement officer:

- (1) Any completed goods or work product; and
- (2) The partially completed goods and materials, parts, tools, dies, jigs, fixtures, plans, drawings, information, and contract rights (hereinafter called "manufacturing material") as the CONTRACTOR has specifically produced or specially acquired for the performance of the terminated part of this Contract.

The CONTRACTOR shall, upon direction of the Agency procurement officer, protect and preserve property in the possession of the CONTRACTOR in which the STATE has an interest. If the Agency procurement officer does not exercise this right, the CONTRACTOR shall use best efforts to sell such goods and manufacturing materials. Use of this paragraph in no way implies that the STATE has breached the Contract by exercise of the termination for convenience provision.

- d. Compensation.

- (1) The CONTRACTOR shall submit a termination claim specifying the amounts due because of the termination for convenience together with the cost or pricing data, submitted to the extent required by chapter 3-122, HAR, bearing on such claim. If the CONTRACTOR fails to file a termination claim within one year from the effective date of termination, the Agency procurement officer may pay the CONTRACTOR, if at all, an amount set in accordance with subparagraph 14d(3) below.
- (2) The Agency procurement officer and the CONTRACTOR may agree to a settlement provided the CONTRACTOR has filed a termination claim supported by cost or pricing data submitted as required and that the settlement does not exceed the total Contract price plus settlement costs reduced by payments previously made by the STATE, the proceeds of any sales of goods and manufacturing materials under subparagraph 14c, and the Contract price of the performance not terminated.
- (3) Absent complete agreement under subparagraph 14d(2) the Agency procurement officer shall pay the CONTRACTOR the following amounts, provided payments agreed to under subparagraph 14d(2) shall not duplicate payments under this subparagraph for the following:
 - (A) Contract prices for goods or services accepted under the Contract;
 - (B) Costs incurred in preparing to perform and performing the terminated portion of the performance plus a fair and reasonable profit on such portion of the performance, such profit shall not include anticipatory profit or consequential damages, less amounts paid or to be paid for accepted goods or services; provided, however, that if it appears that the CONTRACTOR would have sustained a loss if the entire Contract would have been completed, no profit shall be allowed or included and the amount of compensation shall be reduced to reflect the anticipated rate of loss;
 - (C) Costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to subparagraph 14b. These costs must not include costs paid in accordance with subparagraph 14d(3)(B);
 - (D) The reasonable settlement costs of the CONTRACTOR, including accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the Contract and for the termination of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to the terminated portion of this Contract. The total sum to be paid the CONTRACTOR under this subparagraph shall not exceed the

total Contract price plus the reasonable settlement costs of the CONTRACTOR reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph 14d(2), and the contract price of performance not terminated.

- (4) Costs claimed, agreed to, or established under subparagraphs 14d(2) and 14d(3) shall be in accordance with Chapter 3-123 (Cost Principles) of the Procurement Rules.

15. Claims Based on the Agency Procurement Officer's Actions or Omissions.

- a. Changes in scope. If any action or omission on the part of the Agency procurement officer (which term includes the designee of such officer for purposes of this paragraph 15) requiring performance changes within the scope of the Contract constitutes the basis for a claim by the CONTRACTOR for additional compensation, damages, or an extension of time for completion, the CONTRACTOR shall continue with performance of the Contract in compliance with the directions or orders of such officials, but by so doing, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, damages, or an extension of time for completion; provided:
- (1) Written notice required. The CONTRACTOR shall give written notice to the Agency procurement officer:
 - (A) Prior to the commencement of the performance involved, if at that time the CONTRACTOR knows of the occurrence of such action or omission;
 - (B) Within thirty (30) days after the CONTRACTOR knows of the occurrence of such action or omission, if the CONTRACTOR did not have such knowledge prior to the commencement of the performance; or
 - (C) Within such further time as may be allowed by the Agency procurement officer in writing.
 - (2) Notice content. This notice shall state that the CONTRACTOR regards the act or omission as a reason which may entitle the CONTRACTOR to additional compensation, damages, or an extension of time. The Agency procurement officer, upon receipt of such notice, may rescind such action, remedy such omission, or take such other steps as may be deemed advisable in the discretion of the Agency procurement officer;
 - (3) Basis must be explained. The notice required by subparagraph 15a(1) describes as clearly as practicable at the time the reasons why the CONTRACTOR believes that additional compensation, damages, or an extension of time may be remedies to which the CONTRACTOR is entitled; and
 - (4) Claim must be justified. The CONTRACTOR must maintain and, upon request, make available to the Agency procurement officer within a reasonable time, detailed records to the extent practicable, and other documentation and evidence satisfactory to the STATE, justifying the claimed additional costs or an extension of time in connection with such changes.
- b. CONTRACTOR not excused. Nothing herein contained, however, shall excuse the CONTRACTOR from compliance with any rules or laws precluding any state officers and CONTRACTOR from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the Contract.
- c. Price adjustment. Any adjustment in the price made pursuant to this paragraph shall be determined in accordance with the price adjustment provision of this Contract.

16. Costs and Expenses. Any reimbursement due the CONTRACTOR for per diem and transportation expenses under this Contract shall be subject to chapter 3-123 (Cost Principles), HAR, and the following guidelines:

- a. Reimbursement for air transportation shall be for actual cost or coach class air fare, whichever is less.
- b. Reimbursement for ground transportation costs shall not exceed the actual cost of renting an intermediate-sized vehicle.
- c. Unless prior written approval of the HOPA is obtained, reimbursement for subsistence allowance (i.e., hotel and meals, etc.) shall not exceed the applicable daily authorized rates for inter-island or out-of-state travel that are set forth in the current Governor's Executive Order authorizing adjustments in salaries and benefits for state officers and employees in the executive branch who are excluded from collective bargaining coverage.

17. Payment Procedures; Final Payment; Tax Clearance.

- a. Original invoices required. All payments under this Contract shall be made only upon submission by the CONTRACTOR of original invoices specifying the amount due and certifying that services requested under the Contract have been performed by the CONTRACTOR according to the Contract.
- b. Subject to available funds. Such payments are subject to availability of funds and allotment by the Director of Finance in accordance with chapter 37, HRS. Further, all payments shall be made in accordance with and subject to chapter 40, HRS.
- c. Prompt payment.
 - (1) Any money, other than retainage, paid to the CONTRACTOR shall be disbursed to subcontractors within ten (10) days after receipt of the money in accordance with the terms of the subcontract; provided that the subcontractor has met all the terms and conditions of the subcontract and there are no bona fide disputes; and
 - (2) Upon final payment to the CONTRACTOR, full payment to the subcontractor, including retainage, shall be made within ten (10) days after receipt of the money; provided that there are no bona fide disputes over the subcontractor's performance under the subcontract.
- d. Final payment. Final payment under this Contract shall be subject to sections 103-53 and 103D-328, HRS, which require a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid. Further, in accordance with section 3-122-112, HAR, CONTRACTOR shall provide a certificate affirming that the CONTRACTOR has remained in compliance with all applicable laws as required by this section.

18. Federal Funds. If this Contract is payable in whole or in part from federal funds, CONTRACTOR agrees that, as to the portion of the compensation under this Contract to be payable from federal funds, the CONTRACTOR shall be paid only from such funds received from the federal government, and shall not be paid from any other funds. Failure of the STATE to receive anticipated federal funds shall not be considered a breach by the STATE or an excuse for nonperformance by the CONTRACTOR.

19. Modifications of Contract.

- a. In writing. Any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract permitted by this Contract shall be made by written amendment to this Contract, signed by the CONTRACTOR and the STATE, provided that change orders shall be made in accordance with paragraph 20 herein.
- b. No oral modification. No oral modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract shall be permitted.

- c. Agency procurement officer. By written order, at any time, and without notice to any surety, the Agency procurement officer may unilaterally order of the CONTRACTOR:
 - (A) Changes in the work within the scope of the Contract; and
 - (B) Changes in the time of performance of the Contract that do not alter the scope of the Contract work.
 - d. Adjustments of price or time for performance. If any modification increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, an adjustment shall be made and this Contract modified in writing accordingly. Any adjustment in contract price made pursuant to this clause shall be determined, where applicable, in accordance with the price adjustment clause of this Contract or as negotiated.
 - e. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if written modification of the Contract is not made prior to final payment under this Contract.
 - f. Claims not barred. In the absence of a written contract modification, nothing in this clause shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under this Contract or for a breach of contract.
 - g. Head of the purchasing agency approval. If this is a professional services contract awarded pursuant to section 103D-303 or 103D-304, HRS, any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract which increases the amount payable to the CONTRACTOR by at least \$25,000.00 and ten per cent (10%) or more of the initial contract price, must receive the prior approval of the head of the purchasing agency.
 - h. Tax clearance. The STATE may, at its discretion, require the CONTRACTOR to submit to the STATE, prior to the STATE'S approval of any modification, alteration, amendment, change, or extension of any term, provision, or condition of this Contract, a tax clearance from the Director of Taxation, State of Hawaii, and the Internal Revenue Service, U.S. Department of Treasury, showing that all delinquent taxes, if any, levied or accrued under state law and the Internal Revenue Code of 1986, as amended, against the CONTRACTOR have been paid.
 - i. Sole source contracts. Amendments to sole source contracts that would change the original scope of the Contract may only be made with the approval of the CPO. Annual renewal of a sole source contract for services should not be submitted as an amendment.
20. Change Order. The Agency procurement officer may, by a written order signed only by the STATE, at any time, and without notice to any surety, and subject to all appropriate adjustments, make changes within the general scope of this Contract in any one or more of the following:
- (1) Drawings, designs, or specifications, if the goods or services to be furnished are to be specially provided to the STATE in accordance therewith;
 - (2) Method of delivery; or
 - (3) Place of delivery.
- a. Adjustments of price or time for performance. If any change order increases or decreases the CONTRACTOR'S cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, an adjustment shall be made and the Contract modified in writing accordingly. Any adjustment in the Contract price made pursuant to this provision shall be determined in accordance with the price adjustment provision of this Contract. Failure of the parties to agree to an adjustment shall not excuse the CONTRACTOR from proceeding with the Contract as changed, provided that the Agency procurement officer promptly and duly makes the provisional adjustments in payment or time for performance as may be reasonable. By

proceeding with the work, the CONTRACTOR shall not be deemed to have prejudiced any claim for additional compensation, or any extension of time for completion.

- b. Time period for claim. Within ten (10) days after receipt of a written change order under subparagraph 20a, unless the period is extended by the Agency procurement officer in writing, the CONTRACTOR shall respond with a claim for an adjustment. The requirement for a timely written response by CONTRACTOR cannot be waived and shall be a condition precedent to the assertion of a claim.
- c. Claim barred after final payment. No claim by the CONTRACTOR for an adjustment hereunder shall be allowed if a written response is not given prior to final payment under this Contract.
- d. Other claims not barred. In the absence of a change order, nothing in this paragraph 20 shall be deemed to restrict the CONTRACTOR'S right to pursue a claim under the Contract or for breach of contract.

21. Price Adjustment.

- a. Price adjustment. Any adjustment in the contract price pursuant to a provision in this Contract shall be made in one or more of the following ways:
 - (1) By agreement on a fixed price adjustment before commencement of the pertinent performance or as soon thereafter as practicable;
 - (2) By unit prices specified in the Contract or subsequently agreed upon;
 - (3) By the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as specified in the Contract or subsequently agreed upon;
 - (4) In such other manner as the parties may mutually agree; or
 - (5) In the absence of agreement between the parties, by a unilateral determination by the Agency procurement officer of the costs attributable to the event or situation covered by the provision, plus appropriate profit or fee, all as computed by the Agency procurement officer in accordance with generally accepted accounting principles and applicable sections of chapters 3-123 and 3-126, HAR.
- b. Submission of cost or pricing data. The CONTRACTOR shall provide cost or pricing data for any price adjustments subject to the provisions of chapter 3-122, HAR.

22. Variation in Quantity for Definite Quantity Contracts. Upon the agreement of the STATE and the CONTRACTOR, the quantity of goods or services, or both, if a definite quantity is specified in this Contract, may be increased by a maximum of ten per cent (10%); provided the unit prices will remain the same except for any price adjustments otherwise applicable; and the Agency procurement officer makes a written determination that such an increase will either be more economical than awarding another contract or that it would not be practical to award another contract.

23. Changes in Cost-Reimbursement Contract. If this Contract is a cost-reimbursement contract, the following provisions shall apply:

- a. The Agency procurement officer may at any time by written order, and without notice to the sureties, if any, make changes within the general scope of the Contract in any one or more of the following:
 - (1) Description of performance (Attachment 1);
 - (2) Time of performance (i.e., hours of the day, days of the week, etc.);
 - (3) Place of performance of services;

- (4) Drawings, designs, or specifications when the supplies to be furnished are to be specially manufactured for the STATE in accordance with the drawings, designs, or specifications;
 - (5) Method of shipment or packing of supplies; or
 - (6) Place of delivery.
- b. If any change causes an increase or decrease in the estimated cost of, or the time required for performance of, any part of the performance under this Contract, whether or not changed by the order, or otherwise affects any other terms and conditions of this Contract, the Agency procurement officer shall make an equitable adjustment in the (1) estimated cost, delivery or completion schedule, or both; (2) amount of any fixed fee; and (3) other affected terms and shall modify the Contract accordingly.
 - c. The CONTRACTOR must assert the CONTRACTOR'S rights to an adjustment under this provision within thirty (30) days from the day of receipt of the written order. However, if the Agency procurement officer decides that the facts justify it, the Agency procurement officer may receive and act upon a proposal submitted before final payment under the Contract.
 - d. Failure to agree to any adjustment shall be a dispute under paragraph 11 of this Contract. However, nothing in this provision shall excuse the CONTRACTOR from proceeding with the Contract as changed.
 - e. Notwithstanding the terms and conditions of subparagraphs 23a and 23b, the estimated cost of this Contract and, if this Contract is incrementally funded, the funds allotted for the performance of this Contract, shall not be increased or considered to be increased except by specific written modification of the Contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract.
24. Confidentiality of Material.
- a. All material given to or made available to the CONTRACTOR by virtue of this Contract, which is identified as proprietary or confidential information, will be safeguarded by the CONTRACTOR and shall not be disclosed to any individual or organization without the prior written approval of the STATE.
 - b. All information, data, or other material provided by the CONTRACTOR to the STATE shall be subject to the Uniform Information Practices Act, chapter 92F, HRS.
25. Publicity. The CONTRACTOR shall not refer to the STATE, or any office, agency, or officer thereof, or any state employee, including the HOPA, the CPO, the Agency procurement officer, or to the services or goods, or both, provided under this Contract, in any of the CONTRACTOR'S brochures, advertisements, or other publicity of the CONTRACTOR. All media contacts with the CONTRACTOR about the subject matter of this Contract shall be referred to the Agency procurement officer.
26. Ownership Rights and Copyright. The STATE shall have complete ownership of all material, both finished and unfinished, which is developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract, and all such material shall be considered "works made for hire." All such material shall be delivered to the STATE upon expiration or termination of this Contract. The STATE, in its sole discretion, shall have the exclusive right to copyright any product, concept, or material developed, prepared, assembled, or conceived by the CONTRACTOR pursuant to this Contract.
27. Liens and Warranties. Goods provided under this Contract shall be provided free of all liens and provided together with all applicable warranties, or with the warranties described in the Contract documents, whichever are greater.

28. Audit of Books and Records of the CONTRACTOR. The STATE may, at reasonable times and places, audit the books and records of the CONTRACTOR, prospective contractor, subcontractor, or prospective subcontractor which are related to:
- a. The cost or pricing data, and
 - b. A state contract, including subcontracts, other than a firm fixed-price contract.
29. Cost or Pricing Data. Cost or pricing data must be submitted to the Agency procurement officer and timely certified as accurate for contracts over \$100,000 unless the contract is for a multiple-term or as otherwise specified by the Agency procurement officer. Unless otherwise required by the Agency procurement officer, cost or pricing data submission is not required for contracts awarded pursuant to competitive sealed bid procedures.
- If certified cost or pricing data are subsequently found to have been inaccurate, incomplete, or noncurrent as of the date stated in the certificate, the STATE is entitled to an adjustment of the contract price, including profit or fee, to exclude any significant sum by which the price, including profit or fee, was increased because of the defective data. It is presumed that overstated cost or pricing data increased the contract price in the amount of the defect plus related overhead and profit or fee. Therefore, unless there is a clear indication that the defective data was not used or relied upon, the price will be reduced in such amount.
30. Audit of Cost or Pricing Data. When cost or pricing principles are applicable, the STATE may require an audit of cost or pricing data.
31. Records Retention.
- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
 - (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.
32. Antitrust Claims. The STATE and the CONTRACTOR recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, the CONTRACTOR hereby assigns to STATE any and all claims for overcharges as to goods and materials purchased in connection with this Contract, except as to overcharges which result from violations commencing after the price is established under this Contract and which are not passed on to the STATE under an escalation clause.
33. Patented Articles. The CONTRACTOR shall defend, indemnify, and hold harmless the STATE, and its officers, employees, and agents from and against all liability, loss, damage, cost, and expense, including all attorneys fees, and all claims, suits, and demands arising out of or resulting from any claims, demands, or actions by the patent holder for infringement or other improper or unauthorized use of any patented article, patented process, or patented appliance in connection with this Contract. The CONTRACTOR shall be solely responsible for correcting or curing to the satisfaction of the STATE any such infringement or improper or unauthorized use, including, without limitation: (a) furnishing at no cost to the STATE a substitute article, process, or appliance acceptable to the STATE, (b) paying royalties or other required payments to the patent holder, (c) obtaining proper authorizations or releases from the patent holder, and (d) furnishing such security to or making such arrangements with the patent holder as may be necessary to correct or cure any such infringement or improper or unauthorized use.

34. Governing Law. The validity of this Contract and any of its terms or provisions, as well as the rights and duties of the parties to this Contract, shall be governed by the laws of the State of Hawaii. Any action at law or in equity to enforce or interpret the provisions of this Contract shall be brought in a state court of competent jurisdiction in Honolulu, Hawaii.
35. Compliance with Laws. The CONTRACTOR shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the CONTRACTOR'S performance of this Contract.
36. Conflict Between General Conditions and Procurement Rules. In the event of a conflict between the General Conditions and the procurement rules, the procurement rules in effect on the date this Contract became effective shall control and are hereby incorporated by reference.
37. Entire Contract. This Contract sets forth all of the agreements, conditions, understandings, promises, warranties, and representations between the STATE and the CONTRACTOR relative to this Contract. This Contract supersedes all prior agreements, conditions, understandings, promises, warranties, and representations, which shall have no further force or effect. There are no agreements, conditions, understandings, promises, warranties, or representations, oral or written, express or implied, between the STATE and the CONTRACTOR other than as set forth or as referred to herein.
38. Severability. In the event that any provision of this Contract is declared invalid or unenforceable by a court, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms of this Contract.
39. Waiver. The failure of the STATE to insist upon the strict compliance with any term, provision, or condition of this Contract shall not constitute or be deemed to constitute a waiver or relinquishment of the STATE'S right to enforce the same in accordance with this Contract. The fact that the STATE specifically refers to one provision of the procurement rules or one section of the Hawaii Revised Statutes, and does not include other provisions or statutory sections in this Contract shall not constitute a waiver or relinquishment of the STATE'S rights or the CONTRACTOR'S obligations under the procurement rules or statutes.
40. Pollution Control. If during the performance of this Contract, the CONTRACTOR encounters a "release" or a "threatened release" of a reportable quantity of a "hazardous substance," "pollutant," or "contaminant" as those terms are defined in section 128D-1, HRS, the CONTRACTOR shall immediately notify the STATE and all other appropriate state, county, or federal agencies as required by law. The Contractor shall take all necessary actions, including stopping work, to avoid causing, contributing to, or making worse a release of a hazardous substance, pollutant, or contaminant, and shall promptly obey any orders the Environmental Protection Agency or the state Department of Health issues in response to the release. In the event there is an ensuing cease-work period, and the STATE determines that this Contract requires an adjustment of the time for performance, the Contract shall be modified in writing accordingly.
41. Campaign Contributions. The CONTRACTOR is hereby notified of the applicability of 11-355, HRS, which states that campaign contributions are prohibited from specified state or county government contractors during the terms of their contracts if the contractors are paid with funds appropriated by a legislative body.
42. Confidentiality of Personal Information.
- a. Definitions.
- "Personal information" means an individual's first name or first initial and last name in combination with any one or more of the following data elements, when either name or data elements are not encrypted:
- (1) Social security number;
 - (2) Driver's license number or Hawaii identification card number; or

- (3) Account number, credit or debit card number, access code, or password that would permit access to an individual's financial information.

Personal information does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records.

"Technological safeguards" means the technology and the policy and procedures for use of the technology to protect and control access to personal information.

b. Confidentiality of Material.

- (1) All material given to or made available to the CONTRACTOR by the STATE by virtue of this Contract which is identified as personal information, shall be safeguarded by the CONTRACTOR and shall not be disclosed without the prior written approval of the STATE.
- (2) CONTRACTOR agrees not to retain, use, or disclose personal information for any purpose other than as permitted or required by this Contract.
- (3) CONTRACTOR agrees to implement appropriate "technological safeguards" that are acceptable to the STATE to reduce the risk of unauthorized access to personal information.
- (4) CONTRACTOR shall report to the STATE in a prompt and complete manner any security breaches involving personal information.
- (5) CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR because of a use or disclosure of personal information by CONTRACTOR in violation of the requirements of this paragraph.
- (6) CONTRACTOR shall complete and retain a log of all disclosures made of personal information received from the STATE, or personal information created or received by CONTRACTOR on behalf of the STATE.

c. Security Awareness Training and Confidentiality Agreements.

- (1) CONTRACTOR certifies that all of its employees who will have access to the personal information have completed training on security awareness topics relating to protecting personal information.
- (2) CONTRACTOR certifies that confidentiality agreements have been signed by all of its employees who will have access to the personal information acknowledging that:
 - (A) The personal information collected, used, or maintained by the CONTRACTOR will be treated as confidential;
 - (B) Access to the personal information will be allowed only as necessary to perform the Contract; and
 - (C) Use of the personal information will be restricted to uses consistent with the services subject to this Contract.

d. Termination for Cause. In addition to any other remedies provided for by this Contract, if the STATE learns of a material breach by CONTRACTOR of this paragraph by CONTRACTOR, the STATE may at its sole discretion:

- (1) Provide an opportunity for the CONTRACTOR to cure the breach or end the violation; or
- (2) Immediately terminate this Contract.

In either instance, the CONTRACTOR and the STATE shall follow chapter 487N, HRS, with respect to notification of a security breach of personal information.

e. Records Retention.

- (1) Upon any termination of this Contract or as otherwise required by applicable law, CONTRACTOR shall, pursuant to chapter 487R, HRS, destroy all copies (paper or electronic form) of personal information received from the STATE.
- (2) The CONTRACTOR and any subcontractors shall maintain the files, books, and records that relate to the Contract, including any personal information created or received by the CONTRACTOR on behalf of the STATE, and any cost or pricing data, for at least three (3) years after the date of final payment under the Contract. The personal information shall continue to be confidential and shall only be disclosed as permitted or required by law. After the three (3) year, or longer retention period as required by law has ended, the files, books, and records that contain personal information shall be destroyed pursuant to chapter 487R, HRS or returned to the STATE at the request of the STATE.



State of New Jersey Standard Terms and Conditions

(Revised December 13, 2021)

STATE OF NEW JERSEY
DEPARTMENT OF THE TREASURY - DIVISION OF PURCHASE AND PROPERTY
33 WEST STATE STREET, P.O. BOX 230 TRENTON, NEW JERSEY 08625-0230

1.0 STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT

The following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. The State's terms and conditions shall prevail over any conflicts set forth in a Contractor's Quote or Proposal.

2.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS

The statutes, laws, regulations or codes cited herein are available for review at the [New Jersey State Library](#), 185 West State Street, Trenton, New Jersey 08625.

2.1 BUSINESS REGISTRATION

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the Contractor and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the Contractor who shall provide it to the State.

The contractor shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The contractor shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 *et seq.*) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at <http://www.state.nj.us/treasury/revenue/busregcert.shtml>.

2.2 OWNERSHIP DISCLOSURE

Pursuant to N.J.S.A. 52:25-24.2, in the event the Contractor is a corporation, partnership or limited liability company, the Contractor must complete an Ownership Disclosure Form.

A current completed Ownership Disclosure Form must be received prior to or accompany the submitted Quote. A Contractor's failure to submit the completed and signed form prior to or with its Quote will result in the Contractor being ineligible for a Contract award, unless the Division has on file a signed and accurate Ownership Disclosure Form dated and received no more than six (6) months prior to the Quote submission deadline for this procurement. If any ownership change has occurred within the last six (6) months, a new Ownership Disclosure Form must be completed, signed and submitted with the Quote.

In the alternative, a Contractor with any direct or indirect parent entity which is publicly traded may submit the name and address of each publicly traded entity and the name and address of each person that holds a 10 percent or greater beneficial interest in the publicly traded entity as of the last annual filing with the federal Securities and Exchange Commission or the foreign equivalent, and, if there is any person that holds a 10 percent or greater beneficial interest, also shall submit links to the websites containing the last annual filings with the federal Securities and Exchange Commission or the foreign equivalent and the relevant page numbers of the filings that contain the information on each person that holds a 10 percent or greater beneficial interest. N.J.S.A. 52:25-24.2.

2.3 DISCLOSURE OF INVESTMENT ACTIVITIES IN IRAN

Pursuant to N.J.S.A. 52:32-58, the Contractor must utilize this Disclosure of Investment Activities in Iran form to certify that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Contractor, nor one (1) of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Contractor is unable to so certify, the Contractor shall provide a detailed and precise description of such activities as directed on the form. A Contractor's failure to submit the completed and signed form will preclude the award of a Contract to said Contractor.

2.4 ANTI-DISCRIMINATION

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 *et seq.* and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Constructions

Contracts (Exhibit B and Exhibit C - Executive Order 151 Requirements) as appropriate.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

2.5 AFFIRMATIVE ACTION

In accordance with N.J.A.C. 17:27-1.1, prior to award, the Contractor and subcontractor must submit a copy of a New Jersey Certificate of Employee Information Report, or a copy of Federal Letter of Approval verifying it is operating under a federally approved or sanctioned Affirmative Action program. Contractors or subcontractors not in possession of either a New Jersey Certificate of Employee Information Report or a Federal Letter of Approval must complete the Affirmative Action Employee Information Report (AA-302) located on the web at https://www.state.nj.us/treasury/contract_compliance/.

2.6 AMERICANS WITH DISABILITIES ACT

The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.

2.7 MACBRIDE PRINCIPLES

The Contractor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

2.8 PAY TO PLAY PROHIBITIONS

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), The State shall not enter into a Contract to procure services or any material, supplies or equipment, or to acquire, sell, or lease any land or building from any Business Entity, where the value of the transaction exceeds \$17,500, if that Business Entity has solicited or made any contribution of money, or pledge of contribution, including in-kind contributions, to a candidate committee and/or election fund of any candidate for or holder of the public office of Governor or Lieutenant Governor, to any State, county, municipal political party committee, or to any legislative leadership committee during certain specified time periods. It shall be a breach of the terms of the contract for the business entity to:

- A. Make or solicit a contribution in violation of the statute;
- B. Knowingly conceal or misrepresent a contribution given or received;
- C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate of holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;
- E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

Prior to awarding any Contract or agreement to any Business Entity, the Business Entity proposed as the intended Contractor of the Contract shall submit the Two-Year Chapter 51/Executive Order 117 Vendor Certification and Disclosure of Political Contributions form, certifying that no contributions prohibited by either Chapter 51 or Executive Order No. 117 have been made by the Business Entity and reporting all qualifying contributions made by the Business Entity or any person or entity whose contributions are attributable to the Business Entity. The required form and instructions, available for review on the Division's website at <http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>, shall be provided to the intended Contractor for completion and submission to the Division with the Notice of Intent to Award. Upon receipt of a Notice of Intent to Award a Contract, the intended Contractor shall submit to the Division, in care of the Division Procurement Specialist, the Certification and Disclosure(s) within five (5) business days of the State's request. The Certification and Disclosure(s) may be executed electronically by typing the name of the authorized signatory in the "Signature" block as an alternative to downloading, physically signing the form, scanning the form, and uploading the form. Failure to submit the required forms will preclude award of a Contract under this Bid Solicitation, as well as future Contract opportunities; and

Further, the Contractor is required, on a continuing basis, to report any contributions it makes during the term of the Contract, and any extension(s) thereof, at the time any such contribution is made. The required form and instructions, available for review on the Division's website at <http://www.state.nj.us/treasury/purchase/forms/eo134/Chapter51.pdf>, shall be provided to the intended Contractor with the Notice of Intent to Award.

2.9 POLITICAL CONTRIBUTION DISCLOSURE

The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor

receives one (1) or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

2.10 STANDARDS PROHIBITING CONFLICTS OF INTEREST

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

- A. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;
- B. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards, now known as the State Ethics Commission;
- C. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, now known as the State Ethics Commission, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;
- D. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;
- E. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and
- F. The provisions cited above in paragraphs 2.8A through 2.8E shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards, now known as the State Ethics Commission may promulgate under paragraph 3c of Executive Order No. 189.

2.11 NEW JERSEY BUSINESS ETHICS GUIDE CERTIFICATION

The Treasurer has established a business ethics guide to be followed by a Contractor in dealings with the State. The guide can be found at: <https://www.nj.gov/treasury/purchase/pdf/BusinessEthicsGuide.pdf>.

2.12 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

2.13 COMPLIANCE - LAWS

The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

2.14 COMPLIANCE - STATE LAWS

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

2.15 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

2.16 DISCLOSURE OF INVESTIGATIONS AND OTHER ACTIONS

The Contractor should submit the Disclosure of Investigations and Other Actions Form which provides a detailed description of any investigation, litigation, including administrative complaints or other administrative proceedings, involving any public sector clients during the past five (5) years, including the nature and status of the investigation, and, for any litigation, the caption of the action, a brief description of the action, the date of inception, current status, and, if applicable, disposition. If a Contractor does not submit the form with the Quote, the Contractor must comply within seven (7) business days of the State's request or the State may deem the Quote non-responsive.

3.0 STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT

3.1 COMPLIANCE - CODES

The contractor must comply with New Jersey Uniform Construction Code and the latest National Electrical Code 70®, B.O.C.A. Basic Building code, Occupational Safety and Health Administration and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

3.2 PREVAILING WAGE ACT

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The Contractor's signature on [the proposal] is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by [the proposal] has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the Contractor's signature on the proposal is also his/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by [the proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

3.3 PUBLIC WORKS CONTRACTOR REGISTRATION ACT

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance.

3.4 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

- A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- B. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- C. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- A. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion,

or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;

- B. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
- C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:
 - 1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
 - 2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
 - 3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
 - 4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

3.5 BUILDING SERVICE

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11-56.59. The prevailing wage shall be adjusted annually during the term of the contract.

3.6 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

3.7 SERVICE PERFORMANCE WITHIN U.S.

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

3.8 BUY AMERICAN

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States, whenever available, and the contractor shall be required to so certify.

3.9 DOMESTIC MATERIALS

Pursuant to N.J.S.A. 52:33-2 et seq., if the contract is for the construction, alteration or repair of any public work, the contractor and all subcontractors shall use only domestic materials in the performance of the work unless otherwise noted in the specifications.

3.10 DIANE B. ALLEN EQUAL PAY ACT

Pursuant to N.J.S.A. 34:11-56.14 and N.J.A.C. 12:10-1.1 et seq., a contractor performing "qualifying services" or "public work" to the State or any agency or instrumentality of the State shall provide the Commissioner of Labor and Workforce Development a report regarding the compensation and hours worked by employees categorized by gender, race, ethnicity, and job category. For more information and report templates see <https://nj.gov/labor/equalpay/equalpay.html>.

3.11 EMPLOYEE MISCLASSIFICATION

In accordance with [Governor Murphy's Executive Order #25](#) and the [Task Force's July 2019 Report](#), employers are required to properly classify their employees. Workers are presumed to be employees and not independent contractors, unless the employer can demonstrate all three factors of the "ABC Test" below:

- A. Such individual has been and will continue to be free from control or direction of the performance of such service, but under his or her contract of service and in fact; and
- B. Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all places of business of the enterprise for which such service is performed; and
- C. Such individual is customarily engaged in an independently established trade, occupation, profession or business.

This test has been adopted by New Jersey under its Wage & Hour, Wage Payment and Unemployment Insurance Laws to determine whether a worker is properly classified. Under N.J.S.A. 34:1A-1.17-1.19, the Department of Labor and Workforce Development has the authority to investigate potential violations of these laws and issue penalties and stop work order to employers found to be in violation of the laws.

3.12 EXECUTIVE ORDER NO. 271 (MURPHY)

Pursuant to [Governor Murphy's Executive Order No. 271](#) (EO 271) which was signed and went into effect on October 20, 2021, a covered contractor, must certify that it has a policy in place:

- (1) that requires all covered workers to provide adequate proof, in accordance with EO 271, to the covered contractor that the covered worker has been fully vaccinated; or
- (2) that requires that unvaccinated covered workers submit to COVID-19 screening testing at minimum one to two times weekly until such time as the covered worker is fully vaccinated; and
- (3) that the covered contractor has a policy for tracking COVID-19 screening test results as required by EO 271 and must report the results to local public health departments.

The requirements of EO 271 apply to all covered contractors and subcontractors, at any tier, providing services, construction, demolition, remediation, removal of hazardous substances, alteration, custom fabrication, repair work, or maintenance work, or a leasehold interest in real property through which covered workers have access to State property.

These requirements shall automatically expire when EO 271 is rescinded.

4.0 INDEMNIFICATION AND INSURANCE

4.1 INDEMNIFICATION

The contractor's liability to the State and its employees in third party suits shall be as follows:

- A. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;
- B. The contractor's indemnification and liability under subsection (A) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and
- C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

4.2 INSURANCE

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the contractor's insurer cannot provide 30 days written notice, then it will become the obligation of the contractor to provide the same. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the State at: ccau.certificate@treas.nj.gov

The insurance to be provided by the contractor shall be as follows:

- A. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New

Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;

- B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;
- C. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
 - 1. \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
 - 2. \$1,000,000 DISEASE EACH EMPLOYEE; and
 - 3. \$1,000,000 DISEASE AGGREGATE LIMIT.

This \$1,000,000 amount may be raised when deemed necessary by the Director;

In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections A, B, and C. above may be amended for certain commodities when deemed in the best interests of the State by the Director.

5.0 TERMS GOVERNING ALL CONTRACTS

5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR

The contractor's status shall be that of any independent contractor and not as an employee of the State.

5.2 RESERVED

5.3 CONTRACT TERM AND EXTENSION OPTION

If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions of the original contract shall apply unless more favorable terms for the State have been negotiated.

5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and
- B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

Any changes or modifications to the terms of this Contract shall be valid only when they have been reduced to writing and signed by the Contractor and the Director.

5.5 CHANGE IN LAW

If, after award, a change in applicable law or regulation occurs which affects the Contract, the parties may amend the Contract, including pricing, in order to provide equitable relief for the party disadvantaged by the change in law. The parties shall negotiate in good faith, however if agreement is not possible after reasonable efforts, the Director shall make a prompt decision as to an equitable adjustment, taking all relevant information into account, and shall notify the Contractor of the final adjusted contract price.

5.6 SUSPENSION OF WORK

The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is

required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

5.7 TERMINATION OF CONTRACT

- A. For Convenience:
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;
- B. For Cause:
 - 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond; and
 - 2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.
- C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and
- D. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

5.8 SUBCONTRACTING

The Contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws. Nothing contained in any of the contract documents, shall be construed as creating any contractual relationship between any subcontractor and the State.

5.9 RESERVED

5.10 MERGERS, ACQUISITIONS AND ASSIGNMENTS

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

5.11 PERFORMANCE GUARANTEE OF CONTRACTOR

The contractor hereby certifies that:

- A. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;
- B. All equipment supplied to the State and operated by electrical current is UL listed where applicable;
- C. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;
- D. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
- E. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
- F. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and
- G. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

5.12 DELIVERY REQUIREMENTS

- A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
- B. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice;
- C. Items delivered must be strictly in accordance with the contract; and
- D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

5.13 APPLICABLE LAW AND JURISDICTION

This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

5.14 CONTRACT AMENDMENT

Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.

5.15 MAINTENANCE OF RECORDS

Pursuant to N.J.A.C. 17:44-2.2, the contractor shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)

The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor:

- A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
- B. It shall advise the Attorney General of New Jersey:
 - 1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and
 - 2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
- D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

5.17 NEWS RELEASES

The Contractor is not permitted to issue news releases pertaining to any aspect of the services being provided under this Contract without the prior written consent of the Director.

5.18 ADVERTISING

The Contractor shall not use the State's name, logos, images, or any data or results arising from this Contract as a part of any commercial advertising without first obtaining the prior written consent of the Director.

5.19 ORGAN DONATION

As required by N.J.S.A. 52:32-33.1, the State encourages the contractor to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. 1320b-8 to serve in this State.

5.20 LICENSES AND PERMITS

The Contractor shall obtain and maintain in full force and effect all required licenses, permits, and authorizations necessary to perform this Contract. Notwithstanding the requirements of the Bid Solicitation, the Contractor shall supply the State Contract Manager with evidence of all such licenses, permits and authorizations. This evidence shall be submitted subsequent to this Contract award. All costs associated with any such licenses, permits, and authorizations must be considered by the Contractor in its Quote.

5.21 CLAIMS AND REMEDIES

- A. All claims asserted against the State by the Contractor shall be subject to the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., and/or the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq.
- B. Nothing in this Contract shall be construed to be a waiver by the State of any warranty, expressed or implied, of any remedy at law or equity, except as specifically and expressly stated in a writing executed by the Director.
- C. In the event that the Contractor fails to comply with any material Contract requirements, the Director may take steps to terminate this Contract in accordance with the SSTC, authorize the delivery of Contract items by any available means, with the difference between the price paid and the defaulting Contractor's price either being deducted from any monies due the defaulting Contractor or being an obligation owed the State by the defaulting Contractor, as provided for in the State administrative code, or take any other action or seek any other remedies available at law or in equity.

5.22 ACCESSIBILITY COMPLIANCE

The Contractor acknowledges that the State may be required to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. The Contractor agrees that any information that it provides to the State in the form of a Voluntary Product Accessibility Template (VPAT) about the accessibility of the Software is accurate to a commercially reasonable standard and the Contractor agrees to provide the State with technical information available to support such VPAT documentation in the event that the State relied on any of Contractor's VPAT information to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794. In addition, Contractor shall defend any claims against the State that the Software does not meet the accessibility standards set forth in the VPAT provided by Provider in order to comply with the accessibility standards of Section 508 of the Rehabilitation Act, 29 U.S.C. §794 and will indemnify the State with regard to any claim made against the State with regard to any judgment or settlement resulting from those claims to the extent the Provider's Software provided under this Contract was not accessible in the same manner as or to the degree set forth in the Contractor's statements or information about accessibility as set forth in the then-current version of an applicable VPAT.

5.23 CONFIDENTIALITY

- A. The obligations of the State under this provision are subject to the New Jersey Open Public Records Act ("OPRA"), N.J.S.A. 47:1A-1 et seq., the New Jersey common law right to know, and any other lawful document request or subpoena;
- B. By virtue of this Contract, the parties may have access to information that is confidential to one another. The parties agree to disclose to each other only information that is required for the performance of their obligations under this Contract. Contractor's Confidential Information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure Vendor Intellectual Property ("Contractor Confidential Information"). Notwithstanding the previous sentence, the terms and pricing of this Contract are subject to disclosure under OPRA, the common law right to know, and any other lawful document request or subpoena;
- C. The State's Confidential Information shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Contractor in fulfillment of the Contract and any analysis thereof (whether in fulfillment of the Contract or not);
- D. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party;
- E. The State agrees to hold Contractor's Confidential Information in confidence, using at least the same degree of care used to protect its own Confidential Information;
- F. In the event that the State receives a request for Contractor Confidential Information related to this Contract pursuant to a court order, subpoena, or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such order of law. Contractor shall take any action it deems appropriate to protect its documents and/or information;
- G. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such order of law. The State shall take any action it deems appropriate to protect its documents and/or information; and
- H. Notwithstanding the requirements of nondisclosure described in this Section, either party may release the other party's Confidential Information:
 - (i) if directed to do so by a court or arbitrator of competent jurisdiction; or
 - (ii) pursuant to a lawfully issued subpoena or other lawful document request:
 - (a) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in Section 5.23(F), or if Contractor is unsuccessful in defending its rights as described in Section 5.23(F); or
 - (b) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights described in Section 5.23(G), or if the State is unsuccessful in defending its rights as described in Section 5.23(G).

6.0 TERMS RELATING TO PRICE AND PAYMENT

6.1 PRICE FLUCTUATION DURING CONTRACT

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract. In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

In an exceptional situation the State may consider a price adjustment. Requests for price adjustments must include justification and documentation.

6.2 TAX CHARGES

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

6.3 PAYMENT TO VENDORS

- A. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price;
- B. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the Bill of Lading, and/or other documentation to confirm shipment and receipt of contracted goods must be received by the using agency prior to payment. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work and must be in strict accordance with the firm, fixed prices submitted for each task or subtask. When applicable, invoices should reference the appropriate task or subtask or price line number from the contractor's proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;
- C. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls; and
- D. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Office of Diversity and Inclusion.
- E. The Contractor shall have sole responsibility for all payments due any Subcontractor

6.4 OPTIONAL PAYMENT METHOD: P-CARD

The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

6.5 NEW JERSEY PROMPT PAYMENT ACT

The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice. Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

6.6 AVAILABILITY OF FUNDS

The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

7.0 TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS

The provisions set forth in this Section of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

7.1 CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS.

Pursuant to 2 CFR 200.321, the State must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Accordingly, if subawards are to be made the Contractor shall:

- (1) Include qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assure that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Divide total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establish delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
- (5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

7.2 DOMESTIC PREFERENCE FOR PROCUREMENTS

Pursuant to 2 CFR 200.322, where appropriate, the State has a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). If subawards are to be made the Contractor shall include a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- (2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

7.3 PROCUREMENT OF RECOVERED MATERIALS

Where applicable, in the performance of contract, pursuant to 2 CFR 200.323, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

To the extent that the scope of work or specifications in the contract requires the contractor to provide recovered materials the scope of work or specifications are modified to require that as follows.

- i. In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
 1. Competitively within a timeframe providing for compliance with the contract performance schedule;
 2. Meeting contract performance requirements; or
 3. At a reasonable price.
- ii. Information about this requirement, along with the list of EPA- designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.
- iii. The Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act."

7.4 EQUAL EMPLOYMENT OPPORTUNITY

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor." See, 2 CFR Part 200, Appendix II, para. C.

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous

places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) 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, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

7.5 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED

When required by Federal program legislation, all prime construction contracts in excess of \$ 2,000 shall be done in compliance with the Davis-Bacon Act (40 U.S.C. 3141- 3144, and 3146-3148) and the requirements of 29 C.F.R. pt. 5 as may be applicable. The contractor shall comply with 40 U.S.C. 3141-3144, and 3146-3148 and the requirements of 29 C.F.R. pt. 5 as applicable. Contractors are required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor.

Additionally, contractors are required to pay wages not less than once a week.

7.6 COPELAND ANTI-KICK-BACK ACT

Where applicable, the Contractor must comply with Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States").

- a. Contractor. The Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into the OGS centralized contract.
- b. Subcontracts. The Contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- c. Breach. A breach of the clauses above may be grounds for termination of the OGS centralized contract, and for debarment as a Contractor and subcontractor as provided in 29 C.F.R. § 5.12.

7.7 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

- (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. The unauthorized user shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

7.8 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7.9 CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED

Where applicable, Contract and subgrants of amounts in excess of \$150,000, must comply with the following:

Clean Air Act

- 7.9.1.1 The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- 7.9.1.2 The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
- 7.9.1.3 The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

Federal Water Pollution Control Act

1. The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

2. The contractor agrees to report each violation to the Division of Purchase and Property and understands and agrees that the Division of Purchase and Property will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
3. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by FEMA.

7.10 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)

- (1) This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the contractor is required to verify that none of the contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by the State or authorized user. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the State or authorized user, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

7.11 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

7.12 PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

- (a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
 - (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in *Public Law 115–232*, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
 - (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
 - (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
 - (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

EXHIBIT A - GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.A.C. 17:27 et seq.

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

- Letter of Federal Affirmative Action Plan Approval;
- Certificate of Employee Information Report; or
- Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at http://www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase and Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase and Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1 et seq.

EXHIBIT B - CONSTRUCTION CONTRACTS

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.S.A. 10:5-39 et seq. (P.L. 1983, c. 197)

N.J.A.C. 17:27-1.1 et seq.

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of \$250,000 to guarantee equal employment opportunity to veterans.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- (A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.
- (B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:
 - (1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;

- (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
 - (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
 - (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
 - (5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
 - (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
 - (i) The contractor or subcontractor shall interview the referred minority or women worker.
 - (ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.
 - (iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.
 - (iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.
 - (7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.
- (C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.

- (D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

EXHIBIT C - EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <https://newjersey.usnlx.com/>;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.

State of New Jersey Standard Terms and Conditions

(Revised December 13, 2021)

I HEREBY ACCEPT THE TERMS AND CONDITIONS OF THIS CONTRACT

Signature

Date

Print Name and Title

Print Name of Contractor

EXHIBIT D - The Contractor's response to the Solicitation



22nd Century Technologies, Inc.

CMMI Level 3 | ISO 27001 | ISO 20000 | ISO 9001



The State of New Mexico
General Services Department/State Purchasing Division
In conjunction with



New Mexico Solicitation Number 20-00000-21-00021
Temporary Employment Services

TECHNICAL PROPOSAL

Proposals Due: Jan 31, 2022 3:00 PM Mountain Time

Submitted to:

Natalie Martinez/RFP Lead
State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM 87505
Telephone: 505-690-5977
natalie.martinez1@state.nm.us

Submitted by:

Isha Sharma, Contracts Manager
22nd Century Technologies, Inc.
8251 Greensboro Drive, Suite 900 McLean, VA 46204
Phone. 888-99-(87284)
Email: sledproposaxx@xxxxx.xxx



A. SIGNED CAMPAIGN CONTRIBUTION DISCLOSURE FORM

APPENDIX C

CAMPAIGN CONTRIBUTION DISCLOSURE FORM

Pursuant to the Procurement Code, Sections 13-1-28, et seq., NMSA 1978 and NMSA 1978, § 13-1-191.1 (2006), as amended by Laws of 2007, Chapter 234, a prospective contractor subject to this section shall disclose all campaign contributions given by the prospective contractor or a family member or representative of the prospective contractor to an applicable public official of the state or a local public body during the two years prior to the date on which a proposal is submitted or, in the case of a sole source or small purchase contract, the two years prior to the date on which the contractor signs the contract, if the aggregate total of contributions given by the prospective contractor or a family member or representative of the prospective contractor to the public official exceeds two hundred fifty dollars (\$250) over the two-year period. A prospective contractor submitting a disclosure statement pursuant to this section who has not contributed to an applicable public official, whose family members have not contributed to an applicable public official or whose representatives have not contributed to an applicable public official shall make a statement that no contribution was made.

A prospective contractor or a family member or representative of the prospective contractor shall not give a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process or during the pendency of negotiations for a sole source or small purchase contract.

Furthermore, a solicitation or proposed award for a proposed contract may be canceled pursuant to Section 13-1-181 NMSA 1978 or a contract that is executed may be ratified or terminated pursuant to Section 13-1-182 NMSA 1978 if a prospective contractor fails to submit a fully completed disclosure statement pursuant to this section; or a prospective contractor or family member or representative of the prospective contractor gives a campaign contribution or other thing of value to an applicable public official or the applicable public official's employees during the pendency of the procurement process.

The state agency or local public body that procures the services or items of tangible personal property shall indicate on the form the name or names of every applicable public official, if any, for which disclosure is required by a prospective contractor.

THIS FORM MUST BE INCLUDED IN THE REQUEST FOR PROPOSALS AND MUST BE FILED BY ANY PROSPECTIVE CONTRACTOR WHETHER OR NOT THEY, THEIR FAMILY MEMBER, OR THEIR REPRESENTATIVE HAS MADE ANY CONTRIBUTIONS SUBJECT TO DISCLOSURE.

The following definitions apply:

“Applicable public official” means a person elected to an office or a person appointed to complete a term of an elected office, who has the authority to award or influence the award of the contract for which the prospective contractor is submitting a competitive sealed proposal or who has the authority to negotiate a sole source or small purchase contract that may be awarded without submission of a sealed competitive proposal.

“Campaign Contribution” means a gift, subscription, loan, advance or deposit of money or other thing of value, including the estimated value of an in-kind contribution, that is made to or received by an applicable public official or any person authorized to raise, collect or expend contributions on that official's behalf for the purpose of electing the official to statewide or local office. “Campaign Contribution” includes the



payment of a debt incurred in an election campaign, but does not include the value of services provided without compensation or unreimbursed travel or other personal expenses of individuals who volunteer a portion or all of their time on behalf of a candidate or political committee, nor does it include the administrative or solicitation expenses of a political committee that are paid by an organization that sponsors the committee.

"Family member" means a spouse, father, mother, child, father-in-law, mother-in-law, daughter-in-law or son-in-law of (a) a prospective contractor, if the prospective contractor is a natural person; or (b) an owner of a prospective contractor;

"Pendency of the procurement process" means the time period commencing with the public notice of the request for proposals and ending with the award of the contract or the cancellation of the request for proposals.

"Prospective contractor" means a person or business that is subject to the competitive sealed proposal process set forth in the Procurement Code [Sections [13-1-28](#) through [13-1-199](#) NMSA 1978] or is not required to submit a competitive sealed proposal because that person or business qualifies for a sole source or small purchase contract.

"Representative of a prospective contractor" means an officer or director of a corporation, a member or manager of a limited liability corporation, a partner of a partnership or a trustee of a trust of the prospective contractor.

Name(s) of Applicable Public Official(s) if any: Governor of New Mexico

DISCLOSURE OF CONTRIBUTIONS BY PROSPECTIVE CONTRACTOR:

Contribution Made By: _____

Relation to Prospective Contractor: _____

Date Contribution(s) Made: _____

Amount(s) of Contribution(s) _____

Nature of Contribution(s) _____

Purpose of Contribution(s) _____

(Attach extra pages if necessary)

Signature _____ Date _____

_____ Title (position)



—OR—

NO CONTRIBUTIONS IN THE AGGREGATE TOTAL OVER TWO HUNDRED FIFTY DOLLARS (\$250) WERE MADE to an applicable public official by me, a family member or representative.

Isha Sharma

Signature

Jan 22, 2022

Date

Contracts Manager

Title (Position)



Solicitation #20-00000-21-00021
Technical Proposal



B. SIGNED LETTER OF TRANSMITTAL

APPENDIX B Letter of Transmittal Form

**ITEMS #1 to #4 EACH MUST BE COMPLETED IN FULL (pursuant to Section II.C.30).
FAILURE TO RESPOND TO ALL FOUR (4) ITEMS WILL RESULT IN THE
DISQUALIFICATION OF OFFEROR'S PROPOSAL! DO NOT LEAVE ANY ITEM BLANK!**
(N/A, None, Does not apply, etc. are acceptable responses.)
RFP#: 20-00000-21-00021

1. Identify the following information for the submitting organization:

Offeror Name	22nd Century Technologies, Inc.
Mailing Address	8251 Greensboro Drive, Suite 900 McLean, VA 46204
Telephone	888-99-(87284)
FED ID#	N.J.S.A. 17:27A-1, N.J.S.A. 1A-1.1 Personal identifying information
NM CRS#	04182828980-CIT

2. Identify the individual(s) authorized by the organization to (A) contractually obligate, (B) negotiate, and/or (C) clarify/respond to queries on behalf of this Offeror:

	A Contractually Obligate	B Negotiate*	C Clarify/Respond to Queries*
Name	Isha Sharma	Isha Sharma	Sandeep Singh
Title	Contracts Manager	Contracts Manager	Project Director
E-mail	sledproposals@tscti.com	sledproposals@tscti.com	sandeeps@tscti.com
Telephone	888-99-(87284)	888-99-(87284)	703-286-7655

* If the individual identified in Column A also performs the functions identified in Columns B & C, then no response is required for those Columns. If separate individuals perform the functions in Columns B and/or C, they must be identified.

3. Use of subcontractors (Select one):

- ☒ No subcontractors will be used in the performance of any resultant contract, OR
☐ The following subcontractors will be used in the performance of any resultant contract:

(Attach extra sheets, as needed)

4. Describe any relationship with any entity (such as a State Agency, reseller, etc. that is not a subcontractors listed in #3 above), if any, which will be used in the performance of any resultant contract. (N/A, None, Does not apply, etc. are acceptable responses to this item.)

N/A
 (Attach extra sheets, as needed)

By signing the form below, the Authorized Signatory attests to the accuracy and veracity of the information provided on this form, and explicitly acknowledges the following:

- On behalf of the submitting-organization identified in item #1, above, I accept the Conditions Governing the Procurement, as required in Section II.C.1. of this RFP;
- I concur that submission of our proposal constitutes acceptance of the Evaluation Factors contained in Section V of this RFP; and
- I acknowledge receipt of any and all amendments to this RFP, if any.

Isha Sharma Jan 31, 20 22
 Authorized Signature and Date (Must be signed by the individual identified in item #2.A, above.)



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D. RESPONSE TO SPECIFICATIONS

a. Business Requirements

i. Company Profile

Incorporated in 1997 as a corporation, 22nd Century Technologies, Inc. (22nd Century) is a public sector focused staffing company providing efficient and practical workforce solutions to various Federal, State, and Local government entities. 22nd Century is a Certified National Minority Business Enterprise with 6000+ employees supporting our customers in all 50 states. With public sector HQs in Somerset-NJ and McLean-VA, 22nd Century has 16 offices throughout the United States including office in New Mexico. As part of our unrelenting focus on quality and compliance, 22nd Century delivery is based on Certified Matured Processes including CMMI L3 Dev & SVC, ISO 20000, ISO 27001, and ISO 9001:2015 quality processes. *We are a current incumbent under the Temporary Employment Services (50-000-15-00058) Master Agreement. Utilizing this contract, we have obtained State of New Jersey contract and have placed 1300+ staff at 150+ state agencies. 22nd Century has signed Participating Addendums (PA) with Hawaii and District of Columbia through our existing NASPO Temporary Employment Services contract. We recently awarded NASPO contract for Cyber Security Services. We have 5M+ pre-vetted candidates in our resume database which make us fully capable to fulfill the State & procuring Agency's requirements as & when required. With D&B Open rating score of 93, we have been successfully serving customer base on over 250 temporary employment contracts with various government agencies across United States. As a staffing provider for State on previous contract, we have developed an in-depth understanding of State and other Procuring Agency's business culture along with procurement rules, procedures and regulations. With our strong experience providing consultants under this contract, we will use this advantage to provide best services matching procuring agency's temporary employment needs.*

Experience working with Cooperative contracts: Table below shows our major cooperative contracts.

Cooperative Program Name	Public Link
GSA IT Schedule 70	https://www.gsaelibrary.gsa.gov/ElibMain/home.dohttp://www.gsaelibrary.gsa.gov/ElibMain/contractorInfo.do;jsessionid=01DEF488737EB53325B09CAA0AA44EE3.prd1pweb?contractNumber=GS-35F-0579T&contractorName=22ND+CENTURY+TECHNOLOGIES+INC.&executeQuery=YES
NASPO ValuePoint – Temporary Employment Services	https://www.naspovaluepoint.org/portfolio/temporary-employment-services-2017-2022/twentysecond-century-technologies/
NASPO ValuePoint – Information Security Services	https://www.naspovaluepoint.org/portfolio/information-security-services/22nd-century-technologies/
Sourcewell	https://www.sourcewell-mn.gov/cooperative-purchasing/071321-cen
Omnia Partners	https://public.omniapartners.com/suppliers/22nd-century-technologies/overview
Education Service Center, Region 20	https://www.esc20.net/apps/pages/personnel-services-cooperative
Education Service Center, Region 8	https://www.tips-usa.com/vendorProfile.cfm?RecordID=85D12C146A4EB7777434AC9AB064FBEC
Education Service Center, Region 14	http://www.ncpa.us/Vendors/Details/1390
Education Service Center, Region 19	alliedstatescooperative.com/contracts.php?purchasing_commodity_id=62
GoodBuy Purchasing Cooperative	https://goodbuy.ionwave.net/PublicContractDetail.aspx?ctid=3966&wid=1&t=ACTI
Choice Partners	https://www.choicepartners.org/about-choice-partners
Education Service Center, Region 10	https://equalisgroup.org/2021/01/21/22nd-century-r10-1105a/
Department of Information Resources, State of Texas	https://dir.texas.gov/cooperative-contracts/deliverables-based-it-services-dbits

Provide a **detailed response** for the following information specific to your company

1) Company History	
Required Information	Offeror's Response



a) Company was formed at least three years ago	Yes, 22nd Century was incorporated in the year 1997 in State of NJ and holds 24+ years of experience providing Temporary employment services across US.																																								
b) Hours of operation must be at least 8:00 am to 5:00 pm Monday through Friday	22nd Century's normal business hours of operation are 08:00 AM EST to 08:00 PM PST Monday through Friday, to cover early EST and late PST customer requirement. We are available 24x7 on our toll-free no. 888-998-7284. If our clients have any request, query or issue, they may directly contact us on our toll-free number or mail on us sledproposals@tscti.com, before or after hours of operation and lodge a request or other related issues (if any).																																								
c) Provide a minimum of three business references for similar contracts that include contact name, title, email, and phone number. These references should be able to thoroughly describe the experience, expertise, and knowledge provided by the offeror. These references will be verified by the Lead State Administrator.	Placed below are the references where we are providing similar services: <table border="1"> <tr> <td>Reference#1</td><td>State of New Jersey Division of Purchase and Property Procurement Bureau</td></tr> <tr> <td>Contact Name</td><td>Kate Popso</td></tr> <tr> <td>Title</td><td>Procurement Lead</td></tr> <tr> <td>Email</td><td>Katherine.Popso@treas.nj.gov</td></tr> <tr> <td>Phone Number</td><td>609.292.7776 (office)</td></tr> </table> <table border="1"> <tr> <td>Reference#2</td><td>Commonwealth of VA</td></tr> <tr> <td>Contact Name</td><td>Katie Baird, M. Fin</td></tr> <tr> <td>Title</td><td>Statewide Sourcing & Contracting Officer</td></tr> <tr> <td>Email</td><td>katherine.baird@dgs.virginia.gov</td></tr> <tr> <td>Phone Number</td><td>804-786-3858</td></tr> </table> <table border="1"> <tr> <td>Reference#3</td><td>Department of Military Affairs FL</td></tr> <tr> <td>Contact Name</td><td>Sulana Riley</td></tr> <tr> <td>Title</td><td>Contract Manager</td></tr> <tr> <td>Email</td><td>sulana.d.riley.nfg@mail.mil</td></tr> <tr> <td>Phone Number</td><td>904-823-0238</td></tr> </table> <table border="1"> <tr> <td>Reference#4</td><td>District of Columbia- Department of Health</td></tr> <tr> <td>Contact Name</td><td>Todd Allen</td></tr> <tr> <td>Title</td><td>Sr. Contracting Officer</td></tr> <tr> <td>Email</td><td>todd.allen@dc.gov</td></tr> <tr> <td>Phone Number</td><td>202.724.3969</td></tr> </table>	Reference#1	State of New Jersey Division of Purchase and Property Procurement Bureau	Contact Name	Kate Popso	Title	Procurement Lead	Email	Katherine.Popso@treas.nj.gov	Phone Number	609.292.7776 (office)	Reference#2	Commonwealth of VA	Contact Name	Katie Baird, M. Fin	Title	Statewide Sourcing & Contracting Officer	Email	katherine.baird@dgs.virginia.gov	Phone Number	804-786-3858	Reference#3	Department of Military Affairs FL	Contact Name	Sulana Riley	Title	Contract Manager	Email	sulana.d.riley.nfg@mail.mil	Phone Number	904-823-0238	Reference#4	District of Columbia- Department of Health	Contact Name	Todd Allen	Title	Sr. Contracting Officer	Email	todd.allen@dc.gov	Phone Number	202.724.3969
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ii. Business Profile

1. Customer Service/Service Delivery Strategy

1) Customer Service / Service Delivery Strategy	
a) <i>Describe how conflict identification and resolution will be handled.</i>	One of our key strengths is the ability to provide exceptional customer service, supported by detailed conflict identification and resolution procedures. We take a proactive approach to conflict. Therefore, we address minor conflict immediately and regularly assess and re-assess our programs and services to identify any potential conflicts to prevent the need for escalations. These procedures are documented, tracked in the "Open Issues" report, and are reported on during our weekly meetings with the State. Conflict resolution is of utmost importance. We first identify and document the conflict to be addressed. We research,



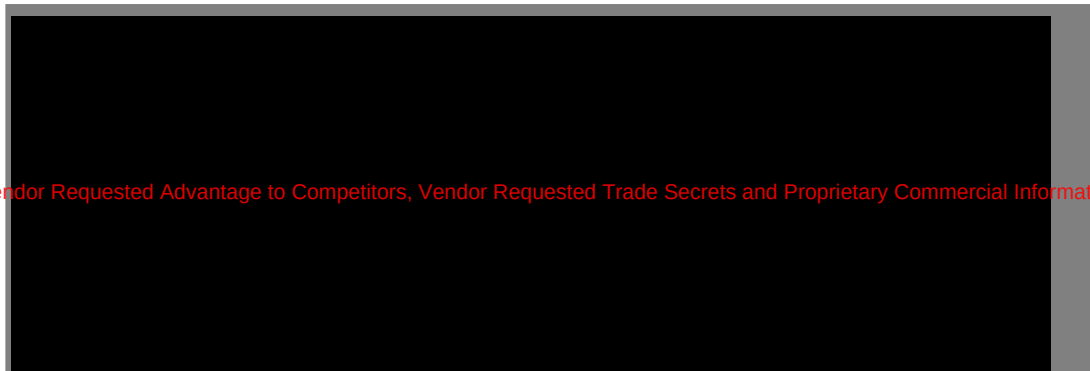
How do you respond to client complaints and service delivery issues?

develop a solution, and if necessary and appropriate, we provide a recommendation to the State. We then initiate corrective action, track improvements, and conduct follow-up audits. 22nd Century will configure our standard escalation procedure specifically for the State to include various conflict that may arise throughout the program.

Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

The program team will provide conflicts resolution support from 08:00 AM EST to 08:00 PM PST, Monday – Friday. An emergency / after-hours number is made available and is covered 24/7/365 to ensure any urgent conflicts are addressed on behalf of the State or Procuring Agency

22nd Century always gives top priority to meeting customers' needs and resolving their conflicts. State's management staff will have access to 22nd Century's local staff and key management to facilitate direct contact and communication. Once a conflict is raised or occurs, an acknowledgement mail is sent back to the customer by the Account Manager within an hour. If acknowledgement is not received within an hour, the customer can escalate it to the next higher level. 22nd Century checks the status of a conflict every hour till the conflict is resolved. 22nd Century Key Management Executives work diligently with its clients to identify client's needs and to provide best solution for those needs using continuous effective communication channels. 22nd Century vigorously follows up on all staffing projects to ensure client/ consultant compatibility and satisfaction and monitor progress to ensure successful completion of each assignment. Continual detailed feedback from both employees and clients ensures that 22nd Century is meeting its goals. The feedback gathered helps 22nd Century to improve its consultant benefits, service offerings, and placement procedures.



Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

Compliant Resolution Procedure. Step by step procedure for handling complaints and service delivery issues.

Whenever the State or any other personnel designated by the State sends a communication via e-mail, telephone or other-directed method to resolve a conflict or make a change, the Account Manager is responsible for resolving the conflict and directly interfacing with State personnel. The issue is logged into 22nd Century's conflict resolution system, and a ticket is generated. All correspondence is logged against this ticket to provide an accurate audit trail. The ticket is closed only when the conflict is resolved. The table below depicts 22nd Century's conflict escalation procedure.

Steps	Description of Activities	Responsibility
Identify conflict	Identify conflict by having one-to-one meetings with the State's stakeholder.	Account Executive/ Account Manager
Track conflict/ Resolution – Level3	Interact with the concerned candidate or stakeholder.	Account Executive/ Project Manager



		- Resolve the conflict and convey the status to the candidate or stakeholder. - Escalate any unresolved issue to Level 2 & Update the Audit log.	
	Track conflict/ Resolution – Level2	- Understand the issue, the affected groups, and the position of stakeholders - Determine a resolution and an appropriate plan of action. - Resolve issue, inform to the affected groups and 22nd Century Account Manager.	Account Manager
	Track conflict/ Resolution – Level1	- Reach an understanding of the conflict, the affected groups, and the position of the existing parties - Determine a resolution - Determine an appropriate plan of action; Inform affected groups, and convey to Executive Leadership	Executive Management
Conflict Escalation Procedure 22nd Century involves all levels of management to resolve customer issues. By putting the proper procedures in place and by having a transparent, repeatable process, 22nd Century ensures that State will have continual access to our 22nd Century management and staff in order to inform us of any conflict or problems. Through the work of our Account Manager, State will have a constant resource to communicate the slightest conflict that may arise. 22nd Century will be quickly able to resolve those conflict and be able to resolve them following our straightforward conflict escalation procedure. By already having conflict plans in place, 22nd Century can provide State with a straightforward and effective temporary employment service.			
b) How will you service your clients' accounts? Describe in detail how your company profiles your clients' needs for temporary services.	22nd Century's comprehensive Management Approach adheres to the industry best practices of Project Management Institute (PMI) and Capability Maturity Model Integration (CMMI). We will ensure complete functionality of the overall program by facilitating the prioritization and assignment of our resources in response to tasks. Through our proven experience, we have evolved in-house practices and procedures to handle similar temporary employment services contracts and have devised well defined and documented processes to meet the client requirements. 22nd Century management approach uses a proven organizational structure, highly skilled management team and extensive experienced team backed up with SME's to ensure that client's project requirements are supported.		



Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information



Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information



Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information



Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

To ensure that the qualified staff is available to Client in all situations, 22nd Century uses its proven proactive and reactive approaches, processes, and tools practiced for over 24 years. 22nd Century build a customized staffing program to meet the preferences of the Client. In addition to our current pool of employees, we develop a targeted and proactive recruitment plan based on Client's specific staffing needs to build a pipeline of qualified candidates to leverage as staffing needs arise. Our staffing programs are customized by client, and a great deal of time is spent during implementation understanding client's needs for staff (typical skill sets requested, frequency, length of notice, length of assignment, quantities, and seasonal fluctuations) to anticipate changes and develop the most effective recruitment and engagement plan.

Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

c) Describe your company's national capabilities to satisfy clients' needs for temporary services and how you manage those accounts in various geographical areas

22nd Century possesses proven track record in providing similar temporary employment Services to public sector clients since 1997. To present our capabilities and the essential components of the scope of services of the State, 22nd Century offers the following unique capabilities to the State that make us distinctive and sets us apart from our competition to deliver better value to the State:

- **24+ Years of Staffing Expertise:** 22nd Century have placed more than 180,000 skilled resources and delivered 25 million+ man-hours on over 250 temporary employment contracts all over the USA.
- **Nationwide Presence:** We have a strong presence in all 50 States where are providing similar temporary employment services to various State, Federal & Commercial clients. We have regional offices in 16 States with the help of which we successfully manage various contracts across the different regions.
- **Hold various Cooperative Contracts:** 22nd Century has been working on various cooperative contract like NASPO ValuePoint, Omnia Partners, Goodbuy Purchasing Cooperative, Source well, Choice Partners, S.E. Florida governmental purchasing Cooperative group, Education Service Center (Region 8, 10, 14, 19).
- **Public Sector Focused company:** 22nd Century business model is focused on prime contract with federal, state and local government agencies. Over 90% of our revenue comes from government contract which reflect the stability, integrity, maturity and knowledge of government processes and procedures.





- **Dedicated Account Management Team:** 22nd Century's local account management approach for handling staffing contracts ensures that contract requirements and goals are well supported. For State & procuring Agencies, we have a dedicated account management team including local dedicated experienced accounts manager to ensure the right delivery of services. In addition, we have a team of 10 customer support personnel in NM. Local Account manager will provide single face to the customer with clear lines of authority; vertical and horizontal coordination and open flow of communication to appropriate levels. Our Account Manager has over 100 combined years of experience managing staffing needs of government agencies such as State of New Mexico, State of Texas, State Maryland, State of New York, and many more.
- **Recruitment team, Job boards and Turnaround Time:** 22nd Century has a total 250+ domain specified recruiters with an advantage of access to all major electronic resume bulletin boards – CareerBuilder, Zip Recruiter, Indeed, Dice, Glassdoor and Monster. We also use social media platforms such as LinkedIn and Facebook. We currently have internal database of 5 Million+ resumes. In normal scenarios, we provide an average turnaround time of 1 business day per candidate.
- **Current Incumbent:** 22nd Century is the current awarded vendor (incumbent) under the contract Temporary employment services pact with State. We have successfully held this contract since 2017 and under this contract we are successfully running of State of NJ contract (single award) where we have placed 1300+ candidates under it.
- **ISO 9001:2015 compliant recruitment process:** We have an ISO 9001: 2015 compliant recruitment process, which makes us capable to provide requested services. By using this process, we have successfully placed more than 10,000 candidates across US in last 2 years.
- **Ability to staff work request / task orders immediately/ Gigantic Resume Database:** We understand the importance of the initiatives taken by the State and we are committed to provide our best resources. 22nd Century has excellent resources in its resume database pool for various categories required by the State. 22nd Century has more than 500,000 highly proficient and experienced candidates' resumes database of labor categories required by the State. We keep on updating this database enabling us to meet requirements of client with short-term notice.
- **Surge Capability:** 22nd Century has the capability to support emergency situations. We can provide vast number of resources on a short turnaround time.

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- **Timesheet and Attendance Reports:** 22nd Century uses premier accounting software to record financial transactions and Time, Expense to collect, record time and attendance information. We will use CONREP & Office Clips for generating and maintain customized or innovative timesheets and attendance reports.
- **Knowledge Exchange Portal:** 22nd Century has implemented an innovative knowledge management portal for internal employees or Key Personnel, which enables the employee to share their knowledge across their projects. It enables the sharing of technical data &



	information, pitfalls and successful stories among all employees. We conduct Knowledge Exchange sessions either as in-house training or via our portal. This has been very successful & been appreciated by our customers as it helped reduce project delivery timelines. ▪ On the Job Training (OJT) to the Employees: 22nd Century provides internal and external management and training for all our staffing employees. We recognize the importance of imparting training to its employee lead to their personal growth and development, as well as the necessity of a highly skilled workforce in order to improve the success and efficiency of the organization. ▪ Financially Stable: 22nd Century is a financially stable and growing company with strong cash flow. Vendor Requested Financial Information Vendor Requested Financial Information ▪ 22nd Century's Team Strength: We ensure our commitment to satisfy all client requests by following these principles: ○ Understanding the client 's needs ○ Meeting all requirements/commitments of customer with intelligent management for recruitment services. ○ Verifying that its recruitment services meet agreed requirements ○ Making provisions of quality assessment, testing & training for accepting market challenges ○ Monitoring, benchmarking and continuously improving its business, products and services, organization and employees' performance. With this proven ability and distinctive competencies make us fully confident and ideal to take this contract and to fill any job title to perform the quality work on time and within budget to fulfill the vacancy. By selecting 22nd Century, State will have a partner with a proven combination of staffing experience, resources, and management processes.										
d) <i>Affirm that you can provide the services throughout the United States (including Alaska, Hawaii, and the District of Columbia).</i>	Yes, 22nd Century can provide services throughout the United States including Alaska, Hawaii, and the District of Columbia. 22nd Century has signed Participating Addendums (PA) already with Hawaii and District of Columbia through our existing NASPO Temporary Employment Services contract. We have been providing resources to the District of Columbia as well as Hawaii through the signed PA. Also, we have been providing services to the Maniilaq Association and the Anchorage Health Department in Alaska through independent contracts with those respective agencies. Our support in Hawaii extends to various State agencies – Dept of Education, Hawaii Health Systems corporation, Dept. of Human Services to name a few, through independent contracts.										
e) <i>Indicate where you offer services in the territories of the United States.</i>	With 300+ temporary employment contract and 22nd Century has presence in all 50 states across US. Being headquarters in McLean VA, 22nd Century hold 16 physical offices and more than 40 registered offices across the USA. To provide premium services to all its customer, 22nd Century always ready to open new office. Below is the list of current offices. <table border="1" data-bbox="397 1732 1469 1890"> <thead> <tr> <th>State</th><th>Address</th></tr> </thead> <tbody> <tr> <td>AR</td><td>701 South Street STE100, Mountain Home, AR 72653</td></tr> <tr> <td>AZ</td><td>3800 N Central Ave Suite 460 Phoenix, AZ 85012</td></tr> <tr> <td>CA</td><td>818 W Seventh ST STE 930, Los Angeles CA 90017</td></tr> <tr> <td>CO</td><td>8400 E Prentice Ave Suite 1500, Greenwood Village, CO 80111</td></tr> </tbody> </table>	State	Address	AR	701 South Street STE100, Mountain Home, AR 72653	AZ	3800 N Central Ave Suite 460 Phoenix, AZ 85012	CA	818 W Seventh ST STE 930, Los Angeles CA 90017	CO	8400 E Prentice Ave Suite 1500, Greenwood Village, CO 80111
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CO	8400 E Prentice Ave Suite 1500, Greenwood Village, CO 80111										



DC	1015 15TH ST. NW Suite 1000 Washington, DC 20005
DE	160 Greentree Dr STE 101Dover, DE 19904
FL	1200 South Pine Island Road Plantation, FL 3332
GA	1201 Peachtree Street N.E., Suite 1240, Fulton, Atlanta, GA, 30361
HI	1136 Union Mall STE 301 Honolulu, Hawaii 96813
IA	315 E. 5th Street STE 202 Waterloo, IA 50703
ID	784 S. Clearwater Loop, STE R, Post Falls ID 83854
IN	150 West Market Street, Indianapolis, IN 46204
KS	534 S Kansas AVE, Suite 1000, Topeka, KS 66603
KY	306 W. MAIN Street Suite 512, Frankfort, KY 40601
LA	3867 Plaza Tower DR., Baton Rouge, LA 70816
MA	155 Federal Street, Suite 700, Boston, MA 02110
MD	351 W Camden Street, Baltimore, MD 21201
MI	30600 Telegraph Road STE 2345, Bingham Farms MI 48025
MN	1010 Dale St N., St Paul, MN 55117
MO	120 South Central Avenue, Clayton, MO 63105
MS	270 Trace Colony Park Dr STE B, Ridgeland, MS 39157
MT	1001 S Main Street STE 49, Kalispell, MT 59901
NC	150 Fayetteville Street Raleigh Wake County, NC 27602
ND	314 E Thayer Ave Bismarck, ND 58501
NE	5601 South 59th Street, Lincoln, NE 68516
NH	9 Capitol Street, Concord NH 03301
NJ	1 Executive Drive Suite 285, Somerset, NJ 08873
NM	206 S Coronado Ave, Espanola, NM 87532
NV	3773 Howard Hughes Pkwy Ste 500S, Las Vegas, NV 89169
OH	4400 Easton Commons Way, Columbus OH 43219
OK	1833 South Morgan Road, Oklahoma City OK 73128
OR	780 Commercial Street SE, Ste.100 Salem, OR 97301
RI	450 Veterans Memorial Parkway, Suite 7A East Providence, RI 02914
SC	2 Office Park Court STE 103, Columbia, SC 29223
TN	5810 Shelby Oaks Dr., STE B, Memphis, TN 38134
TX	700 Lavaca St., STE 1401 Austin, TX 78701
VA	8251 Greensboro Drive, Suite 900, McLean, VA 22102
VT	17 G W Tatro Dr, Jeffersonville, VT 05464
WA	2524 55th Ave SE, Olympia WA 98501
WI	301 S. Bedford St. Suite 1, Madison WI 53703
WV	5400 D. Big Tyler Road Charleston, WV 25313

f) How do you assess customer satisfaction? How do you measure customer satisfaction? What are your quality assurance measures and how are they handled in your

22nd Century is committed to total client satisfaction and commits to maintaining its dedication to quality service. Relentless and uncompromising attention to the needs of client and the dedication to a creative, supportive work environment for our employees is the foundation of 22nd Century' quality philosophy. We feel that quality is achieved through continuous review and improvement of all our business operations. This ensures that we are positioned to satisfy our client expectations, meet the needs of our internal customers, develop and support our staff and provide superior service to the client facility. With D&B Open rating score of 93, we have been successfully serving customer with high customer satisfaction and the following are industry recognitions speak to that

- SIA 2021 Fastest-Growing US Staffing Firms - Rank 17
- Forbes Best Company to work
- Most Promising Managed IT Services 2021 – CIOReview
- Top Naval Tech USA Consulting/Service Companies
- 13-Time Inc. 5000 Honoree
- Five-Time Inc. 500 Honor ROLL Award
- Fastest Growing Companies in New Jersey – Rank # 3



organization
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- CRN 100 fast growth
- Software Magazine Fastest Growing
- 2021 NVTC Tech 100 Honorees
- Top Diversity Owned Businesses in the U.S

22nd Century as a regular practice conducts monthly satisfaction surveys of the agency for the resource(s) placed and services offered to highlight both positive and negative points. We hold quarterly business reviews with the key stakeholders in accordance with SLAs and provide satisfaction surveys and other methods to measure satisfaction and identify areas of improvement. Through our dedicated Project Management team, ISO 9001:2015 quality management system in place, we have been successful in providing high level of customer satisfaction by providing consultants matching required qualification and experience within defined time frame and budget. We are recognized by our customers through renewals of the contracts that were going to expire. The tools or methods to assess and measure customer satisfaction needs to be defined sophisticatedly to fulfill the desired norms.

Methods to assess customer satisfaction:

- **Direct Methods:** Directly contacting customers and getting their valuable feedback is very important. Following are some of the ways by which customers could be directly tabbed:
 - Getting customer feedback through third party agencies.
 - Direct marketing, in-house call centers, complaint handling department could be treated as first point of contact for getting customer feedback. These feedbacks are compiled to analyze customers' perception.
 - Getting customer feedback through face-to-face conversation or meeting.
 - Feedback through complaint or appreciation letter.
 - Direct customer feedback through surveys and questionnaires
- **Indirect Method:** 22nd Century frequently also uses these indirect methods of getting feedback regarding customer satisfaction:
 - **Customer Complaints:** Customer's complaints are the issues and problems reported by the customer to supplier with regards to any specific product or related service. These complaints can be classified under different segments according to the severity and department. If the complaints under a particular segment go high in a specific period of time, then the performance of the organization is degrading in that specific area or segment. But if the complaints diminish in a specific period of time, then that means the organization is performing well and customer satisfaction level is also higher.
 - **Customer Loyalty:** 22nd Century interact and communicate with customers on a regular basis to increase customer loyalty. In these interactions and communications, it is required to learn and determine all individual customer needs and respond accordingly. A customer is said to be loyal if he/she revisits supplier on regular basis for purchases. These loyal customers are the satisfied ones and hence they are bounded with a relationship with the supplier. Hence by obtaining the customer loyalty index, suppliers can indirectly measure customer satisfaction.
- **Performance Assessment Rating Forms:** 22nd Century sends these performance assessment rating forms to the clients to get feedback from them related to services they are getting from us. These forms help us in understanding the client mindset and help us in improving the services in case the rating is low. Since we began formally tracking this data, our numbers are strong. In 2020, we reached a possible employee satisfaction score 9 out of a possible 10. We perform periodic evaluations of our temporary personnel for their performance working at various client sites Proof of 22nd Century's employee's



satisfactory performance through Performance Assessment Rating Forms is placed under *Appendix A: Performance Assessment Rating Forms for State's consideration.*

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1. QUALITY PLANNING: Quality planning is a collaborative activity between our management and Client's stakeholder leadership resulting in a comprehensive Quality Assurance Plan (QAP) incorporated into master project plans (e.g. PMP). Planning is focused on the methods to automate the measurement of success and failure rates to prevent recurrence of defective services. Quality controls, inspection systems, and testing plans, as well as quality roles and responsibilities are established within the QAP. During quality planning our management team conducts product and project assessments to identify, verify, and update as needed any gaps with metrics for each task area. Quality monitoring and document management tools (e.g. Management Dashboard, MS Project, Financial/Schedule system, Ticketing System, monitoring tool, etc.) are identified. KPIs are established to define performance, schedule, cost, and quality baselines. All quality assurance procedures are measured against these baselines using techniques like trend analysis to provide a clear assessment of Programs health in terms of constraints (i.e. cost, schedule, quality, scope) and deliverables. The table below features but is not limited to quality planning activities 22nd Century supports in the quality planning phase.



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- **Establish Metrics:** Identify, propose, and implement metrics and KPIs for each task area. We establish performance metrics by translating contract requirements required to plan and conduct performance benchmarking. If metrics are needed in certain contract areas, we will set up KPIs to capture data that feed dashboards through metrics-based management.

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3.PERFORM QA ACTIVITIES: The QAM and management team analyzes evaluates project performance against the KPIs/metrics as well as customer satisfaction information



to make certain that it meets and exceeds quality standards developed during the planning process. Routine inspections, testing, trend analysis and audits are conducted by our QAM and quality contributors to ensure all requirements are accomplished in accordance with the specifications of the Client's scope of work and QASP throughout performance.

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- **Quality Audits:** Our QAMs provide independent audits upon Client's approval. The characteristics of our audits consists of independent review/inspection conducted quarterly or more often. The QA provides embedded QC activities, such as process audits, product quality events, post-milestone reviews, and corrective action suggestions with due dates. QAMs also help develop, implement, communicate, and maintain the QAP, to ensure our QMS is compliant with quality system requirements. Our QAs help the management direct the activities of personnel to measure key quality characteristics of processes, from inception to completion.

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- **Customer/End User Feedback:** In addition to regular feedback from our management toolset, 22nd Century conducts formal customer surveys to obtain all feedback on the relative successes and points of emphasis for improvement concerning of our services. Upon Client approval, management will establish and schedule customer satisfaction surveys. Any negative findings will be documented and routinely reported on. Our management will act on customer feedback by implementing Government approved corrective actions in accordance with best practices of integrated management framework.

4. IMPLEMENT CORRECTIVE ACTIONS: We take corrective action to eliminate the cause of a detected nonconformity, defect, or other undesirable situation and to prevent recurrence. By classifying, prioritizing, and analyzing nonconformity, defect, or another undesirable situation, the root cause can be identified and eliminated. Removal of the root cause greatly reduces the probability of that type of nonconformity, defect, or other undesirable situation from recurring on the same project or across other projects in the organization. Corrective actions are not implemented without Client's approval.

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In summary, we identify opportunities for improvements through data analytics derived from MBM, employee reporting, predictive trend analysis, feedback from the Client's stakeholders, and constant observation of our services. 22nd Century's quality framework allows us to identify trends and evaluate where improvements are warranted whether through people (e.g. staff training), process (e.g. adjusting the method of delivery), or through technology (e.g. implementing tools for automation). 22nd Century works with stakeholders only implementing approved improvement activities which are then diligently tracked and reported on. Initial measurements determine the extent of improvements made and create a new baseline measurement.

g) Describe in detail what steps your company takes to understand the business needs of their customer.

Understanding customers is the key to giving them good service. 22nd Century performs a hard look at the points at which customers contact us for business. These include meetings and visits, phone calls, correspondence, and deliveries. Our engagement process is focused on our clients and their business needs. This consultative approach, known as our Perfect Fit Program, details from start to finish how our staffing firm selects the perfect candidate for client's organization. This Perfect Fit Program includes five phases: Customer Analysis, Sourcing/Recruitment, Screening, Selection and Performance Monitoring. Our management executives will work diligently with State to identify the contract needs and to provide best resources for those needs using continuous effective communication channels. Our account management team has over 70 years of collective experience handling similar temporary employment services. We have an experienced account management team with our dedicated Account Manager having 11 years of experience providing temporary employment services. Our account management team understands State needs and will work with State to accomplish its goals and objectives, and quickly resolve any performance or contract related issue.

Our commitment to be transparent and straight forward throughout the placement process has helped us to build strong client and contractor relationships. As one of the premier temporary employment agencies in public sector, we have distinguished ourselves as a personable and professional firm. Our team has been delivering in a time-efficient, yet highly professional manner that makes us fully capable to provide the required temporary employment services to the State as and when required.

h) Describe your

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*company's
performance
monitoring
for the
company.*

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2. Candidate Qualifications

2) Candidate Qualifications



a) Describe your company's plan and methodology for quality assurance and evaluation of the proposed services. How are the most qualified candidates identified for your customers? Describe your company's performance monitoring for the candidates.

To maintain and enforce quality of processes and services, 22nd Century prepares a contract-level quality management program and then tailors these processes as needed to each specific technical and management activities. We apply our ISO 9001:2015 quality

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Identification of Qualified Candidate: 22nd Century has streamlined screening and evaluating methods with the goal to make a successful match for the Client's program staffing profile per requirement. Our domain-specific Recruiters will screen candidates' qualifications per position. The first step in our interview methodology is short-listing of qualified resumes by recruiters. At this stage, the recruiters conduct first level screening by juxtaposing a job description with our exhaustive questions bank. The 22nd proprietary questions bank includes thousands of questions across technologies, skill sets and domains. It is also the duty of a recruiter to verify the contents of a resume for authenticity by conducting reference checks and a thorough HR evaluation by an interview. Following this, a resourcing manager conducts resume and candidate assessment. Depending on the skill set and level of experience, he/she calls upon the screening experts to conduct a thorough Interview of the candidates in line with our understanding of Client's requirement. Once a candidate is cleared by the screening experts, the resourcing manager conducts a second round of discussion with the candidate before forwarding his resume to the Client. The selected candidate will appear for a face-to-face interview/ telephonic interview with a SMEs in order to go more in depth into their resume, previous work experience, primary skillsets, salary history, and future goals are all covered in these interviews. The assessment of the candidate's fitment vis-à-vis Client's requirement - taking into consideration the feedback he/she receives from the recruiter, talent sourcing manager, and the screening expert. It is only once the Project Manager(s) is completely satisfied with a resume that it is presented to Client program stakeholders. Detail approach of candidate's screening is provided in *section 2(d) of the proposal*.

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b) Describe your company's general methodology for recruiting qualified staff tailored to the needs of the customer. Has your company encountered challenges with recruiting qualified staff? If so, how have those challenges been addressed?

Attracting, recruiting and retaining qualified personnel are critical for 22nd Century to ensure successful delivery of services to State & its procuring agencies. To ensure that the qualified resources are available as per the requirements, 22nd Century will use its proven and proactive approaches, processes and tools practiced for over 24 years, to provide staff with required skills. 22nd Century employs a meticulous screening process, combining our understanding of the requirement being incumbent and similar experience in staffing government organizations to ensure we staff the requirements with personnel who meet client's requirements, bring the right experience, and has the required qualifications. Our proprietary recruiting methods make us unique from any other firm. Our recruiting team consists of 250+ recruiters, data miners and research analysts with an average experience of 7+ years supporting client requirements. Our recruitment team works closely with our dedicated Account Manager to understand the State's requirements for providing best match to client needs. 22nd Century will use our ISO-certified staffing approach, processes and tools perfected on over 400 Government contracts to provide high quality personnel with required skills. We use an ISO certified process to ensure that we provide the right candidates to State. We have developed in-house processes and methodologies for recruiting, screening, selection and quality control processes to provide qualified candidates to State.

Methodologies and Approach to Source Skilled Candidates

22nd Century's proven sourcing methodology includes a proactive approach to source candidates that match the skill sets related to the State's needs.

Proactive Approach: Utilizing its current experience, the recruiting team uses the proactive approach to identify the resources internally and externally to build a candidate



pool for the State. This work includes making calls to candidates, introducing our new client and establishing a relationship with them. Our team also shares our success on this contract and the nature of work involved with consultants who worked with us in the past. 22nd Century uses job Fairs, advertisements, and referrals to build our consultant database. The consultants are added to our database only after the screening process.

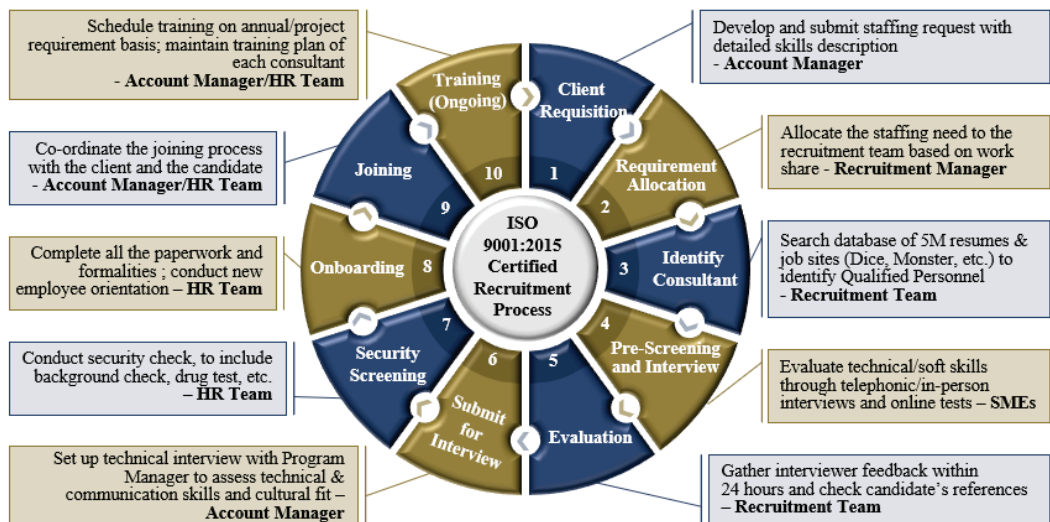
Reactive Approach: 22nd Century's ISO 9001:2015 certified recruitment process is initiated as soon as we get the sourcing requirement from the State through email. The dedicated Account Manager drafts a requisition and immediately submits it in JobDiva along with sending it to the Recruitment Manager detailing about understanding of the project requirements, environment, qualification, experience, mandatory and desirable skill set requirement. The Recruitment Manager assigns this requirement to the dedicated recruitment team for the State. From there, the recruitment team sources the candidate using one of following methods:

- **Employee Referrals:** One of our best sources of exceptional talent is employee referrals. Our employee referral program offers employees a cash reward for referring their friends and associates for a position for which they are qualified and eventually placed.
- **Postings to Internal and External Job Boards:** 22nd Century's JobDiva publishes requisitions in real-time on 22nd Century's career website, enabling jobs to be published seamlessly on the internal job board. 22nd Century's over 6,000 employees can search internal requisitions, and depending on their current assignment term dates, apply online as well as refer qualified friends and associates for open positions through the employee referral gateway. JobDiva also helps make external job publishing easier and more efficient by quickly cross-posting requisitions to internet job boards, driving them back to 22nd Century's corporate career site for applications and entry into the candidate database. JobDiva provides the ability to cross-post to most of the popular third-party internet job search boards.
- **Online Job Boards:** 22nd Century uses all the common job boards such as Ziprecruiter, Monster, LinkedIn, Dice, Career Builder, Indeed.com, and Hot Jobs, as well as specialty job boards for niche or highly skilled positions. Our Career Builder account is cross-indexed with several newspapers throughout the nation so that both print and online advertising is created.
- **Local Employment Posting Papers and Websites:** We understand that many clerical, administrative and industrial candidates review free employment-related websites (e.g. Craigslist) and papers that can be found in local establishments and many support organizations, missions, and restaurants and we post on these sources.
- **Community Colleges, Universities and Public Libraries:** Many skilled personnel are trained through local community colleges, universities and trade schools. We find that advertising and working with their student career centers, and advertising through public libraries (through weekly/monthly newsletters) have proved to be a good source of applicants looking for employment opportunities
- **Local Job Fairs:** In addition to selected advertising in local media, 22nd Century's recruiting/management team sponsors and participates in regular job fares, hosts recruiting open houses, saturates local markets with recruiting and referral fliers, and works closely with state and local job-assistance agencies to ensure every possible sourcing option is pursued. Additional examples include multi-lingual job postings and diversity-based referral bonus programs.
- **Social Networking Sites:** As social and professional networking sites continue to gain popularity, 22nd Century's proactive recruiting strategy maximizes the use of social



networking sites such as LinkedIn, Facebook, and Twitter to connect with untapped pools of potential candidates. This medium is also successful in generating referrals.

Methodology and tools used to ensure consistency: To ensure consistent best fit, 22nd Century uses a ten-step recruiting framework, also referred to as our recruitment productivity process, which breaks down recruitment into ten clearly identifiable steps. The factors that make our process unique are the way we execute these steps and 22nd Century's long established and proven staffing experience. Our experience, established through the successful management of government contracts has helped us in developing a standard **ISO 9001:2015 certified 10-step recruitment process**, as shown in figure below, that is key for filling the State's temporary employment needs.



Ten Step Recruitment Process. Ensure the right candidates are hired at the Right Time.

22nd Century Recruitment Process and Responsibilities:

Recruitment Process	Responsibility
Client Requisition	
- Analyze the State staff requisition and write synopsis of the requisition - Submit position description and client requirements in JobDiva tools	Account Manager
Requirement Allocation	
Allocate the staffing need to the recruitment team based on skill set	Recruiting Manager
Identify Consultant	
- Assign to 22nd Century Recruitment team lead through JobDiva - Check if there is matching skilled consultant available "on bench" - Identify existing skill sets and candidates within 22nd Century JobDiva database. - Share job profile to all consultants by posting it on our website and sending mailer to approved consultants for referrals. - Post job to external job sites (22nd Century website, Dice, Monster, CareerBuilder)	Recruiting Manager
Pre-Screening and Interview	
- Execute a comprehensive prescreening that confirms previous experience, motivation, salary, skill level, and potential team-fit. Pre-Screening includes online test and internal tools - Discuss salary requirements and relocation needs with candidates and update in JobDiva - Evaluate attitude and aptitude by discussing team scenarios	Recruiting Team and SMEs



	Provide 22nd Century overview and explain benefits	
	Skill Evaluation	
	- Conduct initial assessment of the candidate's qualifications - Conduct detailed interviews based on job requirement	
	Soft Skills Evaluation	
	Evaluate candidate's communication, creativity, analytical thinking, diplomacy, flexibility, change-readiness, problem solving, leadership, team building, and listening skills	
	Evaluation	
	- Prepare the feedback form to summarize the results of the interview and update JobDiva with qualified consultants - Relay interview results to the consultants - Check consultant's references	Account Manager / Recruitment Team
	Submit of Interview	
	- Create skill matrices matching required skills with experience of consultants to present consistent skill summary to State. - Submit resumes with a Skill summary of the selected consultants and references to State. - Discuss interview schedule with hiring manager for pre-qualified consultants - Set face to face or telephone interview depending upon the State requirements	Account Manager
	Security Screening	
	- Conduct criminal, credit and background check including driving record and sexual offender database search - Conduct drug check for selected consultants - Verification of employment, education, certifications and licenses	HR Team
	Onboarding	
	- Complete paperwork and Conduct e-Verification - Conduct new hire orientation	HR Team
	Joining	
	- Inform the joining date of the candidate to State - Candidate joins the project on specified date	HR Team /Account manager
	Ongoing Support and Training	
	- Conduct training on need/ project basis - Update PDP (Personal Development Plan) of each consultant	HR Team /Account manager
Recruitment Plan. <i>Step by step process to recruit candidates for successfully achievement of State mission</i>		

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c) What is your company's policy in regard to unsatisfactory candidates?

Our Account Manager keeps regular interaction with the whole team and based upon team meetings, weekly report, collect details on the working of the team, their performance, any shortcomings noticed, any improvements expected etc. Based upon this information, Account Manager takes appropriate action like discussing in-person with the employee on his/her performance, arranging training for them if required, providing some mentor to sharpen his/her skills or finding a replacement for the non-performing employee. Addition to this, our account manager takes regular feedback from assigned project manager/ COR about the performance of our staff. Such feedback mechanism plays an important role in the timely delivery of project by the team.

We have well-defined and documented replacement and credit policy for an inadequate performance and mitigation plan. After we have completed the recruitment, selection, and screening process, we continuously strive to motivate and retain our employees. In case, if the client asks for replacement of consultant due to his/ her inability to perform the tasks set out by the Client, we have a well-defined step to handle situations. Our Account Manager will have a one-to-one meeting with the Client's Manager to understand the areas in which the employee is lagging. After having detailed discussions with the Client's Manager and concerned employee, our Account Manager will have a complete understanding on the situation. Based upon the inputs, we follow one of the 2 options:

i. In case, the Client's Manager feels that some time can be afforded for performance improvement to the consultant, 22nd Century will put the employee on Performance Improvement Plan (PIP) which is followed by 22nd Century to improve performance of its employees. 22nd Century Account Manager will send a mail to Client's Manager informing that consultant is given a mutually agreed time period to improve and in case no improvement in performance, we will provide a replacement. During this period, a mentor (SME in the respectable area) who can help the employee to meet the Client's expectations will be assigned to the employee. Mentor will have detailed discussions with the consultant and provide guidance on the difficulties faced by the consultant. Mentor might take some sessions and provides material so as to improve the skills. Employee performance will be closely monitored based upon mentor's feedback as well as feedback of Client's Manager during this period. If the Client's Manager is satisfied after the PIP period that employee can perform as per expectations, the consultant is put out of PIP and a mail is sent to him/her conveying the same. In case, performance is not improved during this period, company might not need his/ her services after the PIP period.



	ii. In case the Client's Manager feels the employee will not be able to perform and wants immediate replacement, a mail will be sent by 22nd Century Account Manager to the Client's Manager that we will provide a replacement of the candidate. The employee is informed by the e-Care department that his/ her services on this project are not required any more. Our Account Manager immediately escalate the same to the senior management for corrective action. Parallel, the request will be forwarded to the recruiting team along with complete skill-set, qualification and experience requirement and other preferred areas like domain experience. We will: • Provide resumes to Client within one business day from internal CRM (JobDiva). • Facilitate the candidate interview with Client's Manager. • Initiate the joining process of selected consultant. As part of this process, consultants document their daily tasks and submit it to the Client's Manager and/ or 22nd Century Account Manager. Throughout the lifecycle of the 22nd Century project, the status of key milestones is regularly and formally documented. Changes to project scope, timing, or direction are frequently communicated to ensure the project schedule is monitored and clearly understood at all levels. In normal case, 22nd Century employee has to give a notice of minimum of 10 days before leaving the contract. The newly hired employee works along with the employee during this period for complete knowledge transfer - understand the project, current status and pending tasks/ issues to minimize the project impact.
d) Identify how temporary staffing will be assigned under the contract. Policies and responses must include the following: skill testing and screening mechanisms, including a description of reference and/or background checks solicited for each applicant and the manner in which job assignments/job matching will be determined. Describe how your company accommodates pre-	22nd Century has streamlined screening or testing methods with the goal to make a successful match for the State/procuring agency. 22nd Century full-service Talent Acquisition Team (TAT) screen the candidate's qualifications for the position. Our TAT comprises: • Recruiters (across levels and domains) with a mix of resourcing background (1-7 years of experience) • Resourcing Managers with a mix of talent acquisition and managerial background (7-12 years of experience) • HR Managers with a mix of HR, talent acquisition and managerial background (7-12 years of experience) • Account Managers with a mix of account management and service delivery background (10-15 years of experience) • A panel of Screening Experts (leads/managers)



employment screening requirements that may be specific to the Procuring Agency. (This may be negotiated with Awarded Offeror(s) to ensure consistency at entry level positions; additional requirements will be at the Procuring Agency's discretion)

The first step in our interview methodology is short-listing of qualified resumes by recruiters. At this stage, the recruiters conduct **first level screening** by juxtaposing a job description with our exhaustive questions bank. The 22nd Century proprietary **questions bank** includes thousands of questions across technologies, skill-sets and domains. It is also the duty of a recruiter to verify the contents of a resume for authenticity by conducting **reference checks** and a thorough HR evaluation by an interview. Following this, a resourcing manager conducts resume and **candidate assessment**.

Depending on the skill-set and level of experience, he calls upon the screening experts to conduct a **thorough Interview** of the candidates in line with our understanding of State/procuring agency's requirement. Once a candidate is cleared by the screening experts, the resourcing manager conducts a **final round** of discussion with the candidate before forwarding his resume to the Account Manager. The Account Manager then conducts an assessment of the candidate's fitment vis-à-vis State/procuring agency's requirement - taking into consideration the feedback (which is documented being **the incumbent** in prescribed formats – at all levels) she receives from the recruiter, resourcing manager, and the screening expert. It is only once the Account Manager is completely satisfied with a resume that it is presented to the client.



Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

22nd Century Interviewing Process: All 22nd Century candidates are interviewed by a recruiter trained to uncover the candidates' past performance and future goals. The interview comprises an in-depth assessment of each candidate's skills and abilities, proven past performance, attitude, career goals, motivations, and aspirations. 22nd Century recruiters understand these detailed elements to provide the State/procuring agency with the most qualified candidates from a performance, cultural, and retention perspective. The key objectives of the interview process are to find resources that match the State/procuring agency's requirements.



Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

Background and Drug Screening Check Policy: At 22nd Century, we have a well-defined and documented Background Check Policy to perform as pre-employment check at our own cost. Under this policy, as per the State/procuring agency's requirement, candidates are subjected to pre-employment background checks. If the candidate is selected by the State/procuring agency, an independent third-party agency will perform a background check on behalf of 22nd Century. The candidate is notified and required to sign a consent and authorization form as to the procedures set forth in our Background Check Policy. The Background Verification (BGV) form also contains the self-declaration, binding the candidate's employment in that organization subject to clearance of all the checks positively. We notify the State/procuring agency in writing regarding the result of the background check. The candidates successfully clearing the background check will join the State/procuring agency. The following checks are performed by 22nd Century.

• Residence Check	• Civil Litigation Check
• Academic Record Check	• Identity Check
• Employment Check	• Drug Test
• Reference Check	• Emerging Background Checks
• Criminal Record Check/Police Background Check	• Child Protective Services Background
• Database Check	• Driving Records Check

e) What is your company's timeframe for placements of

Our Account Manager, supported by Recruitment Team, is responsible for ensuring the timely fulfillment of State's staffing needs. 22nd Century will assign a dedicated Account Manager to handle the State/Procuring Agency account. On receiving the requirement from State, the Account Manager will prepare a skill matrix of the specific job requirement for position(s) from State/ Procuring Agency. Most of the time, we present qualified



candidates for new customers?

resumes within one business day as our Recruitment Team work over the span of 14 hours and cover early morning and late evening hours of all US time zones to reach the candidates. The steps and timeline to fulfill the job requirements are shown in the table below.

Step	Responsible Person/Team	Estimated Time
Creating Job requisition in JobDiva based on staffing requirement	Account Manager	1- 2 Hours
Search and identify the perspective candidates	Recruitment Team	2 - 8 Hours
Screening Process	Recruitment Team	4 – 8 Hours
Reference Check for qualified candidates	Recruitment Team	4 – 8 Hours
Response presentation	Recruitment Team	2 Hours
Submittal to client for action and client interview	Account Manager	1 – 2 Hours

f) Describe any benefits and incentive programs, as well as skill enhancement opportunities which are available to assignable staff.

The employees play a vital role in the success of any business, and we have policies to keep them motivated and retained. Our approach to attracting top talent and retain our workforce is based on our 'Hire and Retain' Program developed and implemented by our Human Resources (HR) Department. We have a dedicated Employee Care (E-Care) team that supports the contract leadership in managing the hiring decision. Our HR and E-Care team is ISO 9001 certified and follow industry-proven practices.

As employer of the record, 22nd Century adheres to staff development policies that are focused on providing employees with the essential services they need to succeed, including virtual assistants, talent transformation sabbaticals, expert guidance for fast-track growth, and democratic empowerment. We believe our success is a result of our consultants' efforts, and they should be compensated appropriately. Although we recognize the importance of the pre-employment selection process, extensive training and professional development programs, and unrivalled management support, we firmly believe that our comprehensive program of employee benefits, performance incentives, and individual recognition awards significantly enhances our ability to attract, retain, and motivate an incredible team of dedicated professionals. 22nd Century has a retention rate of 93% due to our approach. Our salary data is constantly updated based on industry surveys and the US Department of Labour Wage Reports. We offer flexible health benefits that allow our employees to choose from a variety of plans to meet their own needs and the needs of their families. Our family-friendly policies and programs help balance their personal and professional lives. Following table provide high level overview of the benefits we offer our employees. Some of these benefits included in our packages are based on type of employment and association of employment with us.

Health and Wellness	Time-Off Benefits	Retirement & Pecuniary Benefits
➤ ACA compliant Insurance (Medical, Dental, Vision) ➤ Life Insurance ➤ Dependent Care Assistance Plan ➤ Employee Assistance Program ➤ Short Term & Long-Term Disability ➤ Business Travel Accident Insurance ➤ Unemployment compensation	➤ Holidays ➤ Paid time off ➤ Sick Leave	➤ Performance-based bonuses ➤ Employee Referral Award Program ➤ 360-degree Review ➤ Education & Training assistance ➤ Tuition Reimbursement ➤ Federal and state Unemployment ➤ Relocation Assistance ➤ 401(K)

Company Benefits. 22nd Century's Comprehensive Benefit Package Overview



We have established many other employee recognition policies including quarterly, annually and on-the-spot awards. We solicit regular feedback from customers and communicate with their respective Human Resources departments to recognize significant accomplishments. We continually review award criteria to make sure they are still relevant and conduct annual survey with employees to get feedback on this program and for improvements. We also provide a full internal training program as well as a certification and education reimbursement plan, putting our employees on a path of growth and professional development.

22nd Century realizes that continuous, effective training is the key to provide a quality service to our customers. We will work extremely hard to have the lowest turnover rate possible through actively monitoring and training staff via training sessions, informational updates, on-site collaboration with State/Procuring Agency managers and by following the standard operating procedures established for State/Procuring Agency. Our temporary employees' pride and morals will be high, thus increasing their extraordinary performance. Our training program is designed to familiarize new employees and help them adjust to any work environment successfully. Our e-Care department is responsible for preparing a training calendar for each of our active employees at the beginning of each year and closely monitors its effective implementation. Our team committed to this training approach and its proven success is evident in the following:

- Our internal training budget exceeded \$2 million in 2021
- Tuition and training reimbursement are provided up to \$8,000 per year per employee and participation is encouraged in professional associations and conferences
- Conduct three "boot camps" per year with eight training sessions to bring our new staff members up to speed with team/project specific processes, such as ITIL, CMMI, ISO, and PMI best practices
- Leadership development program, available to project staff with high potential
- Organizational Training Plan (OTP) based on the project, organizational, and individual training needs

Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information



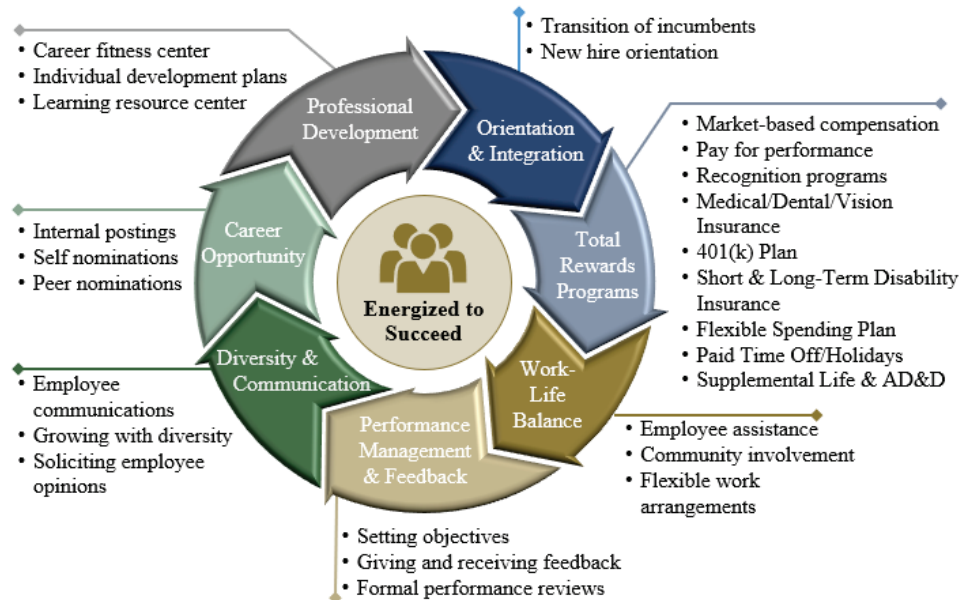
Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

g) What steps does your company take to retain qualified assignable

22nd Century's staffing policy adheres to methods that have proven most successful in attracting and maintaining a qualified and stable workforce. 22nd Century has a retention rate above the industry average over the past five (5) years across the team. This is attributed to our employee growth program and our comprehensive benefits package as depicted in Figure. Our philosophy is that professional growth, training, regular & positive performance reviews, and comprehensive benefits facilitate the retention of an

temporary staff?

experienced and dedicated workforce. These policies address various compensation components as shown in the figure. We offer highly competitive pay and comprehensive benefits, a promote from within culture, initiate routine morale boosting activities (e.g., spot bonuses, team lunches, formal recognition, etc.) and provide a highly accessible corporate structure & professional HR representatives to support direct employee interaction.



Retention Plan. *22nd Century's Hire and Retain program aim is satisfied employees and customers*

A key function of 22nd Century's success with retention has been our efforts to promote from within the team, wherever possible. This focus on employee growth is a proven means to retain high-value team members, by showing them a "path to growth" and even applies to employees who hope to be promoted, as they too see a way for themselves to succeed in the future.

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Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information



engineering, and data engineering fields; enabling each employee to realize his/her career path.

3. Government Relations

3) Government Relations

- a) Describe the experience your company has with regards to placements of candidates within government entities.

Placed below is our placement record at various government entities:

Client Name	Candidates Placed
State of NJ	1300
The New York Fire Department, NY	163
Commonwealth of Virginia	850
County of Santa Clara Social Services	209
School District of Palm Beach County, FL	450
Department of Military Affairs, FL	193
County of Ventura	200
State of Colorado	59
State of Alabama	25
State of Florida	90
Virginia Housing Development Authority (VHDA), VA	100
CareerSource Florida	50
City of Phoenix, AZ	30
State of Washington DC	100
Dallas Area Rapid Transit, Texas	78
City of Dallas TX	150
Illinois State Police (ISP)	30
Governor's Office of Storm Recovery (GOSR), NY	50
State of Delaware	100
State of Texas - Purchasing Department	50
City of Santa Clara, CA	201
Superior Court of California	15
State Board of Election MD	350
Superior Court of Los Angeles, CA	21
Judicial Council of California, Administrative Office of the Courts, CA	12
Buffalo Public School, NY	380
City of Long Beach CA	12
Housing Authority of El Paso, TX	30
County of Orange, CA	10
Vendor Requested Advantage to Competitors	
San Diego Association of Governments, CA	32
City of Santa Clara, CA	201
Chicago Public School, IL	30
Alameda-Contra Costa Transit District	51
San Antonio Water System (SAWS), TX	20
County of San Bernardino, CA	53
Los Angeles Department of Water and Power	54
Oakland Housing Authority	44
Sacramento Housing and Redevelopment Agency	23
Santa Clara Valley Water District	210
Employee Trust Fund (ETF), WI	10
Miami Dade County, FL	50



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	City of Las Vegas, NV	20
	MTA – Metropolitan Transit Authority	10
	Vendor Requested Advantage to Competitors	
	Hampton Road Transit (HRT), VA	125
b) Describe your company's experience providing services in states where preferences exist for agencies that employ a minimum percentage of persons with disabilities.	We were awarded a contract in 2018 as Managed Services Provider for State of NJ to provide temporary staffing services through NASPO. As per State of NJ's mandatory requirement, we have subcontractor with CNA (specialized in hiring persons with disabilities) as our primary vendor and send requirement to them 8 hours before we release the requirement to our MSP vendors. Similar for Department of Social Security (DSS) – Delaware, we are providing underprivileged and underrepresented staff to DSS	

iii. Protection of Sensitive Information

Required Information	Offeror's Response
a) What measures do you take to protect sensitive customer (procuring agency) information?	22nd Century fully understands the criticality of information security. 22nd Century is ISO 27001:2013 certified and has a Top-Secret facility clearance from DoD and DHS. ISO 27001:2013 is designed to ensure the selection of adequate and proportionate security controls that protect information assets and give confidence to interested parties. 22nd Century is serving on over 30 defense contracts involving classified and sensitive information. Therefore, data security is paramount for us. Educating qualified personnel on client's security policies - All employees and personnel working at various clients' locations are required to treat all client information with the utmost confidentiality. Staff with access to confidential or proprietary information is thoroughly educated not to divulge this information with any other personnel unless authorized to do so. 22nd Century requires its personnel to attend mandatory confidentiality training at least annually or more frequently for positions that deal with sensitive data on a regular basis. We have developed data privacy policies and workflows regarding confidentiality, privacy and security. Our trainer creates PowerPoint presentations based on our client's confidentiality policies and procedures as well as government regulations. We train all new hires on our client's confidentiality policies and procedures during orientation. We also provide refresher training on an annual basis to all personnel. Confidentiality training is delivered using classrooms, conference calls and online presentations. All our personnel sign the data privacy policy as part of their employment contracts. Personally, Identifiable Information (PII) - 22nd Century shares the concern of all government agencies to protect personally identifiable information (PII). We conduct training for all of our personnel on protecting PII and will fully comply with safeguarding provisions. Should there be a PII data breach, 22nd Century will immediately report the details to the State management and will fully cooperate with State enquiries. We maintain HIPAA policies and procedures to ensure employees and affiliates keep all information concerning person and contacts confidential. Advanced data security capabilities and HIPAA compliance ensure full security of PII.



	Sensitive and Non-Sensitive (Public Domain) Data – We are committed to protect information assets, personal data and client information. We believe that a data privacy and information security program is an essential component of a leading temporary staffing services organization. Our data privacy and information security program and practices are focused on sharing information appropriately and lawfully, while providing confidentiality, integrity, and availability. We secure information assets for our clients through the use of an integrated data privacy and information security strategy: • We align our information security governance with our data privacy governance to provide a consistent, cohesive vision around the protection of our information assets, personal data and client information. • We subject our global applications and systems to both data privacy impact assessments and security certification reviews, which enable a robust, consistent approach in deployment and operation. • We protect personal data within our network using appropriate physical, technical and organizational security measures. • We provide assurance that our contracts with third-party processors contain provisions that are commensurate with our own policies, practices and controls to confirm client's data is managed properly and securely, in accordance with legal and regulatory requirements. Our multifaceted and detailed security program is anchored by our global information security and personal conduct policies. This enables us to consistently apply appropriate security standards, controls and guidance. Our information security policy and its supporting standards and controls are continually reviewed, vetted and approved by senior management. We conduct these reviews to confirm that the material remains timely and accurate, and that it correlates to legal or regulatory requirements applicable to our organization. This policy is built upon the internationally accepted standards for security program management, ISO 27001/2. Sanitization and Disposal - At the end of the contract period of performance or when no longer needed, personnel will coordinate with the State for the sanitization and disposal of program information approved by State through our sanitization and disposal plans.
b) Describe how your company trains and ensures that the candidates placed with a procuring agency adhere to all privacy and confidential State specific confidentiality requirements regarding confidential information as defined in Section 1.3 Definitions, including HIPAA as it applies to any category of service you are proposing.	Complete knowledge of and compliance with all applicable regulations and HIPAA requirements is a vital part of our culture and, therefore, a crucial component of our training program. As the regulatory environment is constantly changing, our training staff remains up to date on the constantly evolving regulatory environment and provides ongoing education to staff through individual and group training, e-learning programs, and updated training guides. Before placing candidate at client location in depth security briefing and training is given to ensure the employee is aware of proper handling procedures. The goal of this training is to ensure that rights to privacy and confidentiality are protected at all times. We have trainers and instructors who provide In-person seminars and arrange boot camps for our employees during the weekends. We also offer online compliance and security training, for both individuals and organizations. 22nd Century make sure that for all HIPAA training, employees must sign a form stated that they have completed the training. This form is kept as part of the



employees' personnel records. 22nd Century has read and will comply with the statement mentioned under Section 1.3 of the RFP document.

Prior to any employee handling confidential data for the first time, an in-depth security briefing is given to ensure the employee is aware of proper handling procedures. Removal or transfer of confidential data by personnel from the State facility is not authorized without processing through the facility's Information Management System. All confidential data removed from the State facility will be properly wrapped with transfer documentation included. If an employee is hand carrying the material, have the employee sign an acknowledging brief, and issue a courier letter or card. If the document is not hand carried, then it is forwarded via approved State forms of transfer, such as U.S. Postal Registered, U.S. Postal Express or secure facsimile. 22nd Century will fully comply with all requirements for the handling, storage, processing, reproduction, and transfer of confidential data outlined in state security guidelines defined in Section 1.3. In situations where there may be a conflict in directives, the most restrictive procedure will be implemented pending final clarification. No confidential data provided by the State, or generated by 22nd Century pursuant to the contract, will be downgraded or declassified unless authorized in writing by the State.



b. Technical Requirements

i. Scope of Work

Project Understanding: 22nd Century understands that the State is requesting proposals from qualified firm(s) to provide temporary employment services relating to Administrative Support (Including Office and Clerical), Commercial/Industrial Workers, and Healthcare Staffing Services, Information Technology, and Professional Services to the State and its different Procuring Agencies. The awarded contractor(s) will be responsible for hiring and firing temporary employees, paying all applicable taxes, workers' compensation, benefits, etc., for the candidates who are not employees of the individual participating entities.

1. Temporary Employment Services

A. Contractor will notify the Procuring Agency on availability within four (4) hours after a request is made for services that will commence within five (5) working days following the request;

Response: 22nd Century has read, understood and will comply with the above-mentioned statement. As regular practice, 22nd Century does profile for each customer depending on location, frequency/ urgency of the requirement, scope of work and create a dedicated account management team respectively of each customer. With dedicated Account management in-place for each customer, 22nd Century assures that team will notifying Procuring Agency within the defined timeframe.

B. Contractor will notify the Procuring Agency on availability within two (2) days after a request is made for services that will commence later than five (5) working days following the request;

Response: 22nd Century has read, understood and will comply with the above-mentioned statement. With a dedicated account management team consisting of dedicated account manager and account executive, 250+ domain-specific recruiters, data miners, and research analysts, proprietary database of 5M+ pre-vetted resume and 6000+ internal employees, 22nd Century is capable to notify the Procuring Agency on availability within two (2) days after a request is made for services that will commence later than five (5) working days following the request.

C. Contractor will confirm with the Procuring Agency the arrival of its candidate by telephone within one-half (1/2) hour after scheduled arrival time or as determined by the Procuring Agency and the Contractor by mutual agreement.

Response: 22nd Century has read, understood and will comply with the above-mentioned statement. We have a dedicated Employee Care (E-care) team who will get in touch with the candidate and help him join the client location as required by the procuring agency. Our Account Manager will inform procuring agency about the joining and reporting details and will arrange call as required by the agency.

D. Contractor is responsible to communicate with its candidate the Procuring Agency's requirements regarding hours of work, duration, location, expectations, dress code and other information concerning the assignment.

Response: 22nd Century has read, understood and will comply with the above-mentioned statement.

Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets

Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information



E. All temporarily assigned individuals will be appropriately dressed for the assignment and shall maintain a professional demeanor. Dress code policy is established by the individual agencies. Temporary candidate must dress according to the requirements of the Procuring Agency requesting the assignment.

Response: 22nd Century has read, understood and will comply with the above-mentioned statement. 22nd Century understands that dress and personal appearance play an important role in how the public perceives us. We will make sure that all our personnel are properly dressed as per Procuring Agency's dress code. We convey to our assigned personnel at the time of orientation about the Agency's dress code policy so that our employees follow them from day one and display a professional conduct at its work location.

F. Temporarily assigned individuals should be available for the entire length of the assignment; however, if a replacement is required, a qualified replacement must be provided within twenty-four (24) hours of notification, including weekends and holidays.

Response: 22nd Century has read, understood and will comply with the above-mentioned statement. Our Account Manager will take care about all the joining and replacements within the defined time frame. We ensure that there will be no need for a replacement but however a need arises we will successfully staff a qualified candidate within 24 hours of notification to the Procuring Agency.

Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

G. The Procuring Agency reserves the right to reduce the length of the temporary assignment and will provide the Contractor with as much notification as possible.

Response: 22nd Century has read and understood the above-mentioned statement.

2. Work Hours

A. The exact work hours for temporarily assigned personnel will be determined by the Procuring Agency. Generally, work hours begin at 8:00 a.m. and end at 5:00 p.m. Monday through Friday excluding officially observed holidays. Any non-working time as the result of early dismissal, due to weather or any other situation as determined by the Procuring Agency are also excluded. Temporarily assigned personnel will work no more than eight (8) hours per day, excluding one (1) hour for lunch; or a total of forty (40) hours per week.

Response: 22nd Century has read and understood the above-mentioned statement.

B. Temporarily assigned individuals will not be paid for their lunch break.

Response: 22nd Century has read and understood the above-mentioned statement. During on-boarding training, 22nd Century will make sure that the assigned temporary individual are educated that they will not be paid for their lunch break.

C. Overtime worked is at the discretion of the Procuring Agency and must be approved in advanced and in writing. Overtime will not be authorized or paid unless prior written authorization is obtained from appropriate management staff.

Response: 22nd Century has read and understood the above-mentioned statement. For any overtime worked, our payroll team will get the timesheet approved in advance and in writing. We understand that all the overtime will be paid only after the written authorization.



D. Agencies have the right to request temporarily assigned individuals for holiday, evening/night, weekend, or shift work as needed.

Response: 22nd Century has read and agrees to comply with the above-mentioned statement. We convey to all our assigned personnel in orientation itself that they can be asked to work holiday, evening/night, weekend, or shift work as needed and that is also documented in their respective joining letters.

E. Hours may vary per Procuring Agency.

Response: 22nd Century has read and agrees to comply with the above-mentioned statement.

F. The Procuring Agency reserves the right to request a replacement of any individual. If for any reason a replacement is required within the first eight (8) hours of service, there will be no charge to the Procuring Agency. If at any time beyond the initial eight (8) hours of service the temporarily assigned individual is determined to be unsatisfactory, the Contractor agrees to issue a credit invoice to the Procuring Agency for the total charges from the point the Procuring Agency notifies the Contractor to request a replacement.

Response: 22nd Century has read and agrees to comply with the above-mentioned statement.

G. The Contractor agrees to replace an unsatisfactory individual within one (1) business day; however, the Procuring Agency has the option to contact a different Contractor for the service.

Response: 22nd Century has read and agrees to comply the above-mentioned statement. Our Account Manager after discussion with Procuring Agency will replace the unsatisfactory personnel within 1 day.

H. The Procuring Agency shall be the sole judge as to whether a temporarily assigned individual is satisfactory and is fulfilling the Procuring Agency's requirements.

Response: 22nd Century will screen and provide the Procuring Agency with the best fit candidate as per requirement. Our 10 Step recruitment process, prescreening, resume evaluation and background check procedures are so strong that we will be successfully placing the best match candidate on the requirement. The final verdict of selection of the individual will be of the Procurement Agency.

3. Listing of Position Classifications & Pay Rate

Each Procuring Agency will provide a listing of position classifications to the Contractor; however, the listing is not meant to be all-inclusive. Individual states or agencies may request other temporary positions by way of providing the Contractor(s) with the employee pay rate, position classification/title and description of duties. Offeror shall describe the process their company currently has in place to provide requested services, as well as providing additional positions/services that fit the needs of the Procuring Agency.

Response: 22nd Century has been providing similar temporary employment services more than two decades now. With the help of recruitment team of 180+, 10,000+ internal employee, over 5 million pre-vetted resume database and access to different job portal, we assure state that 22nd Century possesses the capability to captures and provides additional positions requested by the Procuring Agencies.

4. Placement

Offeror shall describe how their company will provide assistance for Procuring Agencies with the placement of any candidate(s). At a minimum, include problem (conflict) and resolutions and the following items below:

A. Agencies may refer a specific individual as a candidate to be recruited by the Contractor to perform specific services needed or may request the Contractor to recruit and provide a specific temporary candidate. The Procuring Agency will not pay a placement or conversion fee for individuals who are a direct referral from the Procuring Agency.

Response: 22nd Century has read and agrees to the above-mentioned statement. We have a well-defined process for handling pass-through candidates which include complete validation, induction, and communication management.



B. Upon a request for service from the Procuring Agency, the Contractor will provide expedient temporary employment services. An e-mail, facsimile, or telephone call from the Procuring Agency will constitute a request for service.

Response: 22nd Century work is initiated as soon as we get the task order/requirement from Procuring Agency. The task order is immediately entered into JobDiva, our centralized recruiting portal. The Account Manager understands the agency requirement based upon the task order received. This includes an understanding of the contract skill set, SOW, environment, qualification and experience as well as the mandatory and desirable skill set of the candidate. Accounts Manager drafts a requisition and submits the requirement in JobDiva along with sending it to Recruitment Manager. The Recruitment Manager checks whether a consultant with a matching skill set is available in-house or in our internal resume database of 5M+ consultants. If a suitable match is found, the screening process is triggered which includes interview by our SME in the respective area before submittal to the requesting agency. If not, enough qualified consultants are found in our database, job is post into the various job portals like Dice, Monster, and Career Builder etc. Also, a Boolean search is performed on these Job portals. After finding the 4-5 consultants per requirement, the screening process is triggered. The main point of contact for any request for service coming from the agency will be:

- **Name:** Sandeep Singh
- **Address:** 8251 Greensboro Drive, Suite 900
- **City, State, Zip:** McLean, VA 46204
- **Phone Number:** 888-99-(87284)
- **Fax:** 732-537-0888
- **Email:** sledproposals@tscti.com

C. The Procuring Agency reserves the right to interview the candidate to determine their qualifications for the required position (this does not negate the Contractor's responsibility of qualifying candidate(s)).

Response: 22nd Century has read and understood the above-mentioned statement. Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

D. The Procuring Agency may reject and/or remove any candidate who does not meet the requested experience or is deficient in the performance of the assignment.

Response: 22nd Century has read and understood the above-mentioned statement.

E. Procuring Agencies may select Contractor(s) within their geographic region based on the preference of the Procuring Agency.

Response: 22nd Century has read and understood the above-mentioned statement.

F. Multiple Contractors may be contacted to fill the same position.

Response: 22nd Century has read and understood the above-mentioned statement.

5. Contractor's Responsibilities

A. The Contractor is responsible to obtain the information as described in the Scope of Work and any other information necessary to determine what job category satisfies the service request.

Response: 22nd Century has read and understood the above-mentioned statement. Our Account Manager will be the single point of contact responsible for gathering information related to SOW or any other information from the procuring Agency.



B. Contractor shall supply sufficient, competent, reliable, and properly licensed or certified or both personnel to provide adequate and satisfactory services as required under this Contract. In cases where special licenses, accreditations, certifications, or permits are required by State, Federal and/or Local law, statute, or regulation for an employee to perform services of specified job descriptions, Contractor shall provide current copies of such licenses, accreditations, certifications and permits upon Client Agency's request. Contractor shall maintain all applicable licenses, accreditations, certifications and permits during the term of this Contract. Contractor shall immediately notify the Client Agency by written notice in the event any of its employees' licenses, accreditations, certifications, or permits are revoked, expired, or suspended.

Response: 22nd Century has read and understood the above-mentioned statement. As described in earlier section of the response, our recruitment team and screening team is responsible to validate candidate's licenses, accreditations, certifications, etc required by the client. We have team-up third party also to perform credentials check so that we only represent candidates that meets client's requirements.

C. The Contractor will inform the Procuring Agency point of contact of the proposed job classification and applicable rate to obtain authorization to proceed with the service request.

Response: 22nd Century has read and understood the above-mentioned statement. Our Account Manager will inform the Procuring Agency point of contact of the proposed job classification and applicable rate to obtain authorization to progress with the service request.

D. Placing candidates out of applicable job classification is considered a breach of contract. Periodic checks of requests and assignments will be performed by the Procuring Agency to ensure this does not occur.

Response: 22nd Century has read and understood the above-mentioned statement.

E. The Contractor is responsible for conducting appropriate background and reference checks on potential candidates prior to any assignments and should be prepared to conduct more extensive background investigations when required by the Procuring Agency. Upon request, Contractor must provide, to the Procuring Agencies, the compliance of the background and reference checks. Failure to provide this information will be considered a violation of the contract and may result in rejection of the candidate and possibly jeopardize future placements by offending Contractor.

Response: At 22nd Century, we have a well-defined and documented Background Check Policy to perform as pre-employment check at our own cost. Under this policy, as per the Procuring Agency's requirement, candidates are subjected to pre-employment background checks. If the candidate is selected by the DMA, an independent third-party agency will perform a background check on behalf of 22nd Century. The candidate is notified and required to sign a consent and authorization form as to the procedures set forth in our Background Check Policy. The Background Verification (BGV) form also contains the self-declaration, binding the candidate's employment in that organization subject to clearance of all the checks positively. We notify the Procuring Agency in writing regarding the result of the background check. The candidates successfully clearing the background check will join the Procuring Agency. The following checks are performed by 22nd Century.

• Residence Check	• Civil Litigation Check
• Academic Record Check	• Identity Check
• Employment Check	• Drug Test
• Reference Check	• Emerging Background Checks
• Criminal Record Check/Police Background Check	• Child Protective Services Background
• Database Check	• Driving Records Check

F. Contractor will be responsible for liability insurance, federal and state payroll requirements including but not limited to insurance coverage for any candidate sent to the Procuring Agency, payroll taxes, payroll reports, workers' compensation, benefits, hiring and firing etc., for the candidates.

Response: 22nd Century will take care of all the responsibility for liability insurance, federal and state payroll requirements including but not limited to insurance coverage for any candidate sent to the Procuring Agency, payroll



taxes, payroll reports, workers' compensation, benefits, hiring and firing etc., for the candidates. We have a dedicated management team who will work on these tasks and will deliver the required results to the Procuring Agency and ensure service commitments.

G. The Contractor is responsible for conducting periodic quality assurance checks with the Procuring Agency's point of contact to verify that the Procuring Agency's requirements are being fulfilled by the candidate. At a minimum, these checks should be completed at the end of the first week of any assignment. Procuring Agencies may request quality assurance checks at any interval during the term of the candidate's placement.

Response: 22nd Century designated Account Manager for this contract will perform all the periodic quality assurance checks with the Procuring Agency's point of contact to verify that the Procuring Agency's requirements are being fulfilled by the candidate. We will complete this task in the first week and will perform Quality Assurance (QA) check when needed by the agency. Our QA team will perform Internal Quality Assurance Audit and take care of all aspects of delivery from supplying information to procurement agency, candidate performance to the timeliness of deliverables follows the best quality practices.

H. Candidates may be hired as a permanent employee of the State or Procuring Agency if the Procuring Agencies and hiring processes have been complied with and if the candidate elects to accept employment with the State or Procuring Agency. Such occurrence will create no further obligation (financial or otherwise) on the part of the Procuring Agency.

Response: 22nd Century has read and understood the above-mentioned statement.

I. The Procuring Agency will not be responsible for the Contractor's candidate who voluntarily leaves the Contractor's employment or engages in employment with another company.

Response: 22nd Century has read and understood the above-mentioned statement.

J. The Contractor agrees to ensure candidates agree to be bound by the Participating State's security regulations, policies, and standards as required by the Procuring Agency (e.g., Department of Corrections). This will vary based on the individual Procuring Agency's requirements.

Response: 22nd Century hereby affirms that all the personnel assigned under the contract with Participating State will agree and will be bound by the Participating State's security regulations, policies, and standards as required by the Procuring Agency (e.g., Department of Corrections). 22nd Century understands that the regulations will vary based on the individual Procuring Agency's requirements.

K. Contractor shall ensure adequate backup documentation (such as candidate timesheets) are attached to invoice or billing requests. The timesheet should include the following:

- a. *Name of the Procuring Agency;*
- b. *Name of the temporarily assigned individual;*
- c. *Dates worked;*
- d. *Beginning and ending time;*
- e. *Number of actual regular hours worked each day; and*
- f. *If applicable, number of overtime hours worked each day*
- g. *Written pre-approval of overtime hours.*
- h. *Time sheet signed by authorized representative of the Procuring Agency.*

Response: 22nd Century accounting system is DCAA approved and audited regularly. We agree to maintain adequate backup documentation related to candidate timesheets and ensure that these documentations are synced with all the invoice or billing requests. Sample of our timesheet & Invoice is placed below:



Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

<https://tscti.conrep.com/conrep/sindex.php>

1/1



Solicitation #20-00000-21-00021
Technical Proposal



22nd Century Technologies, Inc.



22nd Century Technologies
8251 Greensboro Drive
Suite # 900 McLean, VA 22102-3827

Invoice

Date	Invoice#
12/15/2021	1142902

N.J.S.A. 47:1A-1, N.J.S.A. 1A-1.1 Personal identifying information

Bill To
[Redacted]

		PQ Number	Terms	Due Date
		*****	Net 30	01/14/2022
Item Code	Description	Qty.	Bill Rate	Amount
Quality Assurance Analyst Senior	[Redacted] Analyst Senior : 12/01/2021			
Remit Payment to [Redacted], Routing No.021200339			Total:	[Redacted]
Point of Contact : Shiv Kumar accounts@tscti.com			(804) 442-3114 Ext. 2024	



L. The Contractor is responsible and may be held financially liable for the negligent acts of its candidates.

Response: 22nd Century has read and understood the above-mentioned statement.

6. Bonding

A. The Contractor shall have the ability to bond candidates as directed by the Procuring Agency.

Response: 22nd Century has read and understood the above-mentioned statement. 22nd Century has the ability to bond candidates as directed by the Procurement Agency

B. The fee for this service will be borne by the Procuring Agency.

Selection of the bonding insurer is at the Contractor's discretion; however, each insurance policy shall be: Issued by insurance companies authorized to do business in the Participating State or eligible surplus lines insurers acceptable to and having agents in the State upon whom service of process may be made.

Response: 22nd Century has read and will comply with the above-mentioned statements.

7. Travel

A. Reimbursement for travel will be at the discretion of the Procuring agency and shall not be subject to the Contractor's markup.

Response: 22nd Century has read and understood the above-mentioned statement.

B. In the event a candidate's duties require travel, the reimbursable travel costs shall follow the Procuring Agencies travel reimbursement policies. Travel authorizations must be given before travel occurs per Procuring Agency's internal policies.

Response: 22nd Century has read and understood the above-mentioned statement. Our Account Manager/Supervisor will ensure that all the travel should be sanctioned beforehand as per the respective Procuring Agency's internal policies.

C. Travel expenses submitted for reimbursement must follow Procuring Agency's internal policies.

Response: 22nd Century has read and understood the above-mentioned statement. We will follow the Procuring Agency's internal policies for any travel reimbursements to be claimed.

D. Valid travel reimbursements will be reimbursed at the Procuring Agencies current travel rate.

Response: 22nd Century has read and understood the above-mentioned statement.

E. The candidate and the Procuring Agency's contact person must sign the travel expense form.

Response: 22nd Century has read and understood the above-mentioned statement.

F. The form must be submitted with the Contractor's invoice for services with the travel expense as a separate line item on the invoice in order to be reimbursed by the Procuring Agency

Response: 22nd Century has read and understood the above-mentioned statement.

G. The type of position requiring travel will vary based on the individual Procuring Agency's requirements.

Response: 22nd Century has read and understood the above-mentioned statement.

8. Equipment, Property and Damages

A. The Contractor shall be responsible for the proper maintenance and custody of any personal tangible property owned and real property furnished by the Procuring Agency for the use in connection with the performance of the contract.

Response: 22nd Century has read and understood the above-mentioned statement. We will ensure that any kind of property provided to our assigned personnel by the procuring agency will be safeguarded and handed over the



agency after the service is ended. We maintain a list of equipment's/properties a candidate gets during his/he performance under the contract.

B. The Contractor will reimburse the Procuring Agency for such property's loss or damage caused by the Contractor's assigned individual, with the exception of normal wear and tear.

Response: 22nd Century has read, understood and agrees to comply by the above-mentioned statement.

C. The equipment used may include computers, copy machines, phones, printers, etc. Equipment may vary depending on the candidate assignments.

Response: 22nd Century has read and understood the above-mentioned statement.

9. Procuring Agency's Responsibilities

A. Prior to contacting the Contractor (s), the Procuring Agency is responsible to define details of the request to include, but not be limited to:

- a. *Number of individuals needed;*
- b. *Job duties;*
- c. *Equipment to be used;*
- d. *Knowledge, skills and education and/or experience;*
- e. *Computer software to be used;*
- f. *Hours of work;*
- g. *Expected length of assignment;*
- h. *Job related attire;*
- i. *Position location;*
- j. *Procuring Agency contact person; and*
- k. *Other pertinent job-related information*

Response: 22nd Century has read, understood the above-mentioned statement.

B. Depending on the amount of detail required, it is recommended the Procuring Agency submit this information in writing via e-mail or facsimile to reduce the possibility of an inappropriate temporary assignment.

Response: 22nd Century recognizes environmental impact and climate change among the key sustainability challenges to businesses and society; affecting economic stability, ecology and vulnerable communities. 22nd Century is committed to assume a leadership role in environmental protection and climate change mitigation while pursuing our business aspirations and enhancement of shareholder value. We strive toward "greening" our infrastructure and operations including data centers. To support our initiative of go-green, we take every possible step to reduce the utilization of paper. 22nd Century assures that it will submit all information in writing via e-mail or facsimile to reduce the possibility of an inappropriate temporary assignment.

10. Background checks

A. The Procuring Agency is responsible for requesting additional background investigations beyond normal references prior to the temporary assignment

Response: 22nd Century has read and understood the above-mentioned statement.

Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

B. Should an additional background check be required due to the nature of the assignment, the Procuring Agency may be responsible for the cost of the additional checks

Response: 22nd Century has read and understood the above-mentioned statement.



C. It is reasonable to expect employment eligibility and references will be required for all candidates; background checks for referrals by the Procuring Agency will be at the discretion of the Procuring Agency.

Response: 22nd Century has read and understood the above-mentioned statement.

D. Standard checks which would include employment eligibility and reference checks shall be at the cost of the Contractor (s).

Response: 22nd Century has read and agree to the above-mentioned statement. We will perform the employment eligibility and reference checks on our own expense.

E. Other background checks will be at the discretion of each requesting Procuring Agency.

Response: 22nd Century has read and agree to the above-mentioned statement. All the background checks will be as per Procuring Agency's discretion.

F. Procuring Agencies reserve the right to request and conduct pre-employment background checks and drug testing prior to the potential candidates starting date. Procuring Agencies also reserve the right to require other tests as negotiated in their Participating Addendum.

Response: 22nd Century has read and agree to the above-mentioned statement. Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information



Vendor Requested Advantage to Competitors, Vendor Requested Trade Secrets and Proprietary Commercial Information

G. Procuring Agencies will limit their background checks, drug testing, and other testing requirements to the same as required of their own permanent full-time employees holding the same or similar positions to be filled by the candidate.

Response: 22nd Century has read and agree to the above-mentioned statement.



E. RESPONSE TO CONTRACT TERMS AND CONDITIONS (FROM SECTION 3.12)

The contract between a Procuring Agency and a contractor will follow the format specified by the Lead State and contain the terms and conditions set forth in the NASPO ValuePoint Master Agreement Terms and Conditions and, for New Mexico Procuring Agencies, the Lead State Participating Addendum. However, the Procuring Agency reserves the right to negotiate provisions in addition to those contained in this RFP with any Offeror. The contents of this RFP, as revised and/or supplemented, and selected portions of the successful Offeror's proposal may be incorporated into and become part of any resultant contract.

The Lead State discourages exceptions from the contract terms and conditions as set forth in the Master Agreement. Such exceptions may cause a proposal to be rejected as nonresponsive when, in the sole judgment of the Lead State (and the evaluation team), the proposal appears to be conditioned on the exception, or correction of what is deemed to be a deficiency, or an unacceptable exception is proposed which would require a substantial proposal rewrite to correct.

Should an Offeror object to any of the terms and conditions as set forth in the RFP strongly enough to propose alternate terms and conditions in spite of the above, the Offeror must propose specific alternative language. The Lead State may or may not accept the alternative language. General references to the Offeror's terms and conditions or attempts at complete substitutions of the Master Agreement are not acceptable to the Lead State and will result in disqualification of the Offeror's proposal.

Offerors must provide a brief discussion of the purpose and impact, if any, of each proposed change followed by the specific proposed alternate wording.

If an Offeror fails to propose any alternate terms and conditions during the procurement process (the RFP process prior to selection as a successful Offeror), no proposed alternate terms and conditions will be considered later during the negotiation process. Failure to propose alternate terms and conditions during the procurement process (the RFP process prior to selection as successful Offeror) is an explicit agreement by the Offeror that the contractual terms and conditions contained herein are accepted by the Offeror.

22nd Century hereby agrees to all the contract terms and conditions. We are not proposing any changes to it.



F. OFFEROR'S ADDITIONAL TERMS AND CONDITIONS (FROM SECTION 3.13)

Offerors must submit with the proposal a complete set of any additional terms and conditions they expect to have included in a contract negotiated with the Agency. See Sections 3.16 and 3.17 for requirements.

None.



G. OTHER SUPPORTING MATERIAL

22nd Century believes that we have provided all the required information in response, if state believes that additional information is required to evaluate our performance and capability, 22nd Century is ready to provide the required information to the soonest.



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Technical Proposal



APPENDIX A: PERFORMANCE ASSESSMENT RATING FORMS

Performance Assessment Rating Forms #1

Client Reference and Contractor History

Proposing Firm's Name: 22nd Century Technologies, Inc.

Vertical/Sub-Vertical: Application Development
(Only 1 Vertical/Sub-Vertical per Form)

Classification(s):

☐	Senior Technical Specialist/Lead	☐	Technical Specialist	☐	Business Analyst
☐	Senior Systems Analyst	☒	Systems Analyst	☒	Senior Programmer
☒	Programmer	☐	Instructor	☐	

NOTE TO PROPOSER: Attach SECTION IV SERVICES TO BE PROVIDED/MINIMUM QUALIFICATIONS to this form as a reference for the client evaluator.

CLIENT EVALUATOR SECTION

This form must be completed based on the contract performance requirements (SECTION IV SERVICES TO BE PROVIDED/MINIMUM QUALIFICATIONS) that the Proposer has attached to this form. Please review the appropriate requirements(s) that pertain to this reference and provide a description of the project and examples of work performed for each classification.

- Created a new Announcement module to show latest updates on the existing applications and anything new added to the project.
- Fixed bugs on existing applications

CUSTOMER SATISFACTION RATING: Rate the overall performance for projects completed or substantially completed for your organization by the Proposer. Rate the Proposer on a scale from (1) to ten (10) – with ten being the highest rating.

10

I hereby certify that I have made a diligent effort to ascertain the facts with regard to the representation made herein, and to the best of my knowledge and belief, all information is accurate.

Signature of Client Evaluator

Ritesh Pathwa, Senior Manager

Name and Title of Client Evaluator (Please Print)





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Performance Assessment Rating Forms #2

Client Reference and Contractor History

Proposing Firm's Name: 22nd Century Technologies, Inc.

Vertical/Sub-Vertical: Application Development
(Only 1 Vertical/Sub-Vertical per Form)

Classification(s):

	Senior Technical Specialist/Lead		Technical Specialist		Business Analyst
	Senior Systems Analyst	X	Systems Analyst	X	Senior Programmer
X	Programmer		Instructor		

NOTE TO PROPOSER: Attach SECTION IV SERVICES TO BE PROVIDED/MINIMUM QUALIFICATIONS to this form as a reference for the client evaluator.

CLIENT EVALUATOR SECTION

On this form, the client evaluator shall provide a rating and a description of the project and examples of work performed for each classification.

- Redesign of landing page—including tabs, new wireframes, and increased photo/visual images
- Addition of News Tab, Staff About Us Tab, Arts Advocacy Tab, Resources Guide & Links
- Grants—duplication and improvement of existing functionality
- Art Org. Directory with user registration/search function
- Public Art search/graphic files; Public Art map; Public art videos; Art in Public Places Guide
- Calendar widget (no need to build, just need to be able to interact with Now Playing Nashville calendar)

CUSTOMER SATISFACTION RATING: Rate the overall performance for projects completed or substantially completed for your organization by the Proposer. Rate the Proposer on a scale from (1) to ten (10) — with ten being the highest rating.

9

I hereby certify that I have made a diligent effort to ascertain the facts with regard to the representation made herein, and to the best of my knowledge and belief, all information is accurate.

Signature of Client Evaluator

Betsy Talley, Division Manager Application Solutions
Name and Title of Client Evaluator (Please Print)



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22nd Century Technologies, Inc.

Performance Assessment Rating Forms #3

Client Reference and Contractor History

Proposing Firm's Name: 22nd Century Technologies, Inc.

Vertical/Sub-Vertical: Application Development
(Only 1 Vertical/Sub-Vertical per Form)

Classification(s):

☒	Senior Technical Specialist/Lead	☒	Technical Specialist		Business Analyst
	Senior Systems Analyst		Systems Analyst	☒	Senior Programmer
☒	Programmer		Instructor		

form. Please review the appropriate requirements(s) that pertain to this reference and provide a description of the project and examples of work performed for each classification.

Project: ECorrespondence

The ECorrespondence project will primarily develop L&I's new E-Correspondence system to allow customers to receive correspondence electronically and integrate it into L&I's E-Government vision of a seamless secure portal ("My Secure L&I"). This effort will primarily support the State Fund Insurance Program.

- Stabilization of the ECorrespondence application
- Providing production support
- Programming in VB.net
- Testing

CUSTOMER SATISFACTION RATING: Rate the overall performance for projects completed or substantially completed for your organization by the Proposer. Rate the Proposer on a scale from (1) to ten (10) – with ten being the highest rating.

10

I hereby certify that I have made a diligent effort to ascertain the facts with regard to the representation made herein, and to the best of my knowledge and belief, all information is accurate.

Mark Solie

Signature of Client Evaluator

Mark Solie
Supervisor, Shared Application Services Team
Information Services
Washington State Department of Labor and Industries

Name and Title of Client Evaluator (Please Print)





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22nd Century Technologies, Inc.

Performance Assessment Rating Forms #4

Client Reference and Contractor History

Proposing Firm's Name: 22nd Century Technologies, Inc.

Vertical/Sub-Vertical: Application Development
(Only 1 Vertical/Sub-Vertical per Form)

Classification(s):

	Senior Technical Specialist/Lead		Technical Specialist		Business Analyst
X	Senior Systems Analyst	X	Systems Analyst	X	Senior Programmer
X	Programmer		Instructor		

NOTE TO PROPOSER: Attach SECTION IV SERVICES TO BE PROVIDED/MINIMUM QUALIFICATIONS to this form as a reference for the client evaluator.

CLIENT EVALUATOR SECTION

BE PROVIDED/MINIMUM QUALIFICATIONS) that the Proposer has attached to this form. Please review the appropriate requirements(s) that pertain to this reference and provide a description of the project and examples of work performed for each classification.

- Implemented J2EE Design Patterns such as Factory Patterns, Singleton Pattern.
- BRD and Functional Specification to UML diagrams including use case diagrams, object diagrams, class, sequence, collaboration and component and deployment diagram.
- Deployment process for Development/ Preproduction/ Production Support/ Staging/ QA environments.
- Development of automated XML based reports for various quote proposals.
- Developing mechanisms to accomplish bulk data load, data compare, generate report for any discrepancies and develop tools to fix them using SQL, PL/SQL, Oracle Sql* Loader, Toad and JDBC API's.

CUSTOMER SATISFACTION RATING: Rate the overall performance for projects completed or substantially completed for your organization by the Proposer. Rate the Proposer on a scale from (1) to ten (10) – with ten being the highest rating.

9

I hereby certify that I have made a diligent effort to ascertain the facts with regard to the representation made herein, and to the best of my knowledge and belief, all information is accurate.

Signature of Client Evaluator

Richard A. Futrell

Name and Title of Client Evaluator (Please Print)





Solicitation #20-00000-21-00021
Technical Proposal



Performance Assessment Rating Forms #5

Client Reference and Contractor History

Proposing Firm's Name: 22nd Century Technologies, Inc.

Vertical/Sub-Vertical: Desktop Services
(Only 1 Vertical/Sub-Vertical per Form)

Classification(s):

☒	Senior Technical Specialist/Lead	☒	Technical Specialist	☒	Senior Desktop Security Specialist
	Instructor				

BEFORE PROCEEDING WITH ANY WORK, THE PROPOSER HAS AGREED TO THE TERMS AND CONDITIONS AND APPROPRIATE REQUIREMENTS(S) THAT PERTAIN TO THIS REFERENCE AND PROVIDE A DESCRIPTION OF THE PROJECT AND EXAMPLES OF WORK PERFORMED FOR EACH CLASSIFICATION.

- Coordinate retrieval and replacement of EFS hardware components either personally or working with hardware and construction vendors such as Puget Sound Data Systems, Gateway Ticketing Systems, Eagle Harbor Maintenance Facility, ERG, Net Versant and others.
- Create and maintain ghost images of each XPpro component's OS and software, including: Paratechs, Turnstile biscuits (PCM-9373-XP), Kiosks, and DVRs
- Configure the OS on replacement machines to conform with WSDOT's SCCM and Group Policy standards and join them as assets to the WSDOT's enterprise domain network, using WSDOT WSF DomainAdmin credentials.
- Configure the Kiosks, Turnstiles and DVRs to Auto Log On after nightly reboot, by editing or writing new string values in the Windows Registry.
- As part of the EFS technical team provide help desk support to troubleshoot hardware and software problems called in from the field.
- Provide status and participate at twice weekly meetings of the EFS technical team.
- Provided assistance in managing the RMA process to ship equipment under warranty to the appropriate vendor for repair or replacement, and receive returned equipment for redeployment.

CUSTOMER SATISFACTION RATING: Rate the overall performance for projects completed or substantially completed for your organization by the Proposer. Rate the Proposer on a scale from (1) to ten (10) – with ten being the highest rating.

10

I hereby certify that I have made a diligent effort to ascertain the facts with regard to the representation made herein, and to the best of my knowledge and belief, all information is accurate.

Roger X. [Signature]
Signature of Client Evaluator

IT Resource Manager
Name and Title of Client Evaluator (Please Print)



EXHIBIT E – ACCSES NJ Waiver



State of New Jersey

DEPARTMENT OF THE TREASURY
DIVISION OF PURCHASE AND PROPERTY

OFFICE OF THE DIRECTOR
33 WEST STATE STREET

P. O. BOX 039

TRENTON, NEW JERSEY 08625-0039

<https://www.njstart.gov>

Telephone (609) 292-4886 / Facsimile (609) 984-2575

PHILIP D. MURPHY
Governor

ELIZABETH MAHER MUOIO
State Treasurer

SHEILA Y. OLIVER
Lt. Governor

AMY F. DAVIS, ESQ.
Acting Director

TO: ACCSES NJ/CNA SERVICES

FROM: Department of the Treasury, Division of Purchase and Property

DATE: December 14, 2022

RE: Formal Waiver Pursuant to N.J.A.C. 10:99-5.1 for NASPO ValuePoint Contract Pursuant to RFP Solicitation Number 20-00000-21-00021. Participating Addendum between 22nd Century Technologies, Inc. and the State of New Jersey

The Rehabilitation Facilities Set Aside Act, N.J.S.A. 30:6-23 et seq., and the implementing regulations (N.J.A.C. 10:99-1.1 et seq.), require the State of New Jersey (the "State") to procure certain goods and services from approved rehabilitation facilities. N.J.S.A. 30:6-30 provides: "State agencies shall procure through the Central Nonprofit Agency those commodities and services which have been set aside for purchase from approved rehabilitation facilities." ACCSES NJ is a non-profit organization providing leadership and support to affiliate programs serving and employing people with disabilities and other disadvantages statewide. The State of New Jersey has designated ACCSES NJ as the Central Nonprofit Agency (the "CNA").

N.J.A.C. 10:99-5.1 provides: "All State purchasing agencies shall purchase approved set-aside commodities and services on a sole source basis from the CNA. Moreover, agencies are prohibited from buying similar commodities and/or services from alternate sources unless granted a formal waiver from the CNA." Temporary services are among those currently provided to the State by ACCESS NJ in the North Region (comprised of Bergen, Essex, Hudson, Morris, Passaic, Somerset, Sussex, Union and Warren Counties). The State is now requesting a formal waiver to permit the State to enter into a Participating Addendum with 22nd Century Technologies, Inc., pursuant to which the State will obtain certain temporary staffing and related services under the NASPO ValuePoint Contract pursuant to Lead State Master Agreement No. 50-000-15-00058 AA ("the Lead State Agreement") under the terms and conditions set forth therein. Among other terms, the State of New Jersey's intended Participating Addendum pursuant to the Lead State Agreement will designate the CNA as the primary vendor in the North Region (comprised of Bergen, Essex, Hudson, Morris, Passaic, Somerset, Sussex, Union and Warren Counties) and will give the CNA a minimum of eight (8) hours to provide the State's using agencies with acceptable candidates, before opening the job request to other vendors.

By signing below, ACCSES NJ is hereby providing the State of New Jersey with a formal waiver to permit the State to enter into a Participating Addendum with 22nd Century Technologies, Inc. ACCSES NJ understands that the Participating Addendum may be amended from time to time.

Sincerely,

Jennifer Loughran
Administrative Analyst 3 DPP



Signature



Date

DANIEL NOBLER, CFO

Print Name and Title

Date