

STATE OF VERMONT PARTICIPATING ADDENDUM # 42865  
FOR NASPO VALUEPOINT PURCHASING PROGRAM: Construction Equipment  
Led by the State of Oklahoma  
**Master Agreement # OK-SW-192**

**Contractor:** CNH Industrial America LLC d/b/a CASE Construction

**Contractor's NASPO ValuePoint Webpage:** <https://www.naspovaluepoint.org/portfolio/construction-equipment-2018-2023/case-construction/>

1. **Parties.** This Participating Addendum is a contract between the State of Vermont, through its Department of Buildings and General Services, Office of Purchasing & Contracting (hereinafter "State" or "Vermont"), and the Contractor identified above. It is the Contractor's responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. **Subject Matter.** This Participating Addendum authorizes the purchase of Construction Equipment from Contractor pursuant to the Master Agreement identified above, which is hereby incorporated by reference. Contractor's awarded categories are:
  - a. Tracked Loaders
  - b. Backhoes
  - c. Wheel Loaders
  - d. Skid Steers
  - e. Motor Graders
  - f. Track Excavators
  - g. Dozers
  - h. Articulated Dump Haulers
3. **Definitions.** Capitalized terms used, but not defined herein, have the meanings ascribed to such terms in the Master Agreement between the Lead State and the Contractor.
4. **Purchasing Entities.** This Participating Addendum may be used by (a) all departments, offices, institutions, and other agencies of the State of Vermont and counties (each a "State Purchaser") according to the process for ordering and other restrictions applicable to State Purchasers set forth herein; and (b) political subdivisions of the State of Vermont and any institution of higher education chartered in Vermont and accredited or holding a certificate of approval from the State Board of Education as authorized under 29 V.S.A. § 902 (each an "Additional Purchaser"). Issues concerning interpretation and eligibility for participation are solely within the authority of the State of Vermont Chief Procurement Officer. The State of Vermont and its officers and employees shall have no responsibility or liability for Additional Purchasers. Each Additional Purchaser is to make its own determination whether this Participating Addendum and the Master Agreement are consistent with its procurement policies and regulations.

**Contractor:** CNH Industrial America LLC d/b/a CASE Construction

5. **Contract Term.** The period of Contractor's performance shall begin on October 20, 2021 and end upon expiration of the Master Agreement, unless terminated earlier in accordance with the terms of this Participating Addendum or the Master Agreement. An amendment to this Participating Addendum shall not be necessary in the event of the renewal or extension of the Master Agreement.
6. **Available Products and Services.** All products, services and accessories listed on the Contractor's NASPO ValuePoint Webpage may be purchased under this Participating Addendum.
7. **No Lease Agreements.** Contractor is prohibited from leasing to State Purchasers under this Participating Addendum. Additional Purchasers are not subject to this prohibition and may negotiate lease agreements with Contractor if the terms of the Master Agreement permit leasing.
8. **Requirements for Ordering.**
  - a. Contractor understands that State Purchasers are expected to informally compete their requirements among the awarded vendors to place Purchase Orders under this Agreement, and Contractor agrees to make best efforts to promptly respond to solicitations for quotes.
  - b. Written Purchase Orders must be used to order items available under this Participating Addendum. Verbal orders shall not be binding on the Purchasing Entity.
  - c. Any order placed by the State or an Additional Purchaser for a product or service available under this Participating Addendum (hereinafter "Purchase Order") shall be deemed to be a sale governed by the prices and other terms and conditions of this Participating Addendum, provided that the Master Agreement number and the Participating Addendum Number must appear on every Purchase Order placed under this Participating Addendum.
  - d. Purchase Orders may only be placed directly through Contractor or through a subcontractor of the Contractor that is both approved by Contractor and authorized by the State of Vermont (hereinafter "Distributor"). A Distributor shall not solicit or otherwise fulfill any Purchase Order unless the Distributor (i) is an entity approved by Contractor, in accordance with Contractor's established qualifying criteria, to provide sales and service support to participants in the NASPO ValuePoint Master Price Agreement on Contractor's behalf and (ii) has executed a separate agreement with the State that directly obligates Distributor to fulfill Purchase Orders in accordance with the terms and conditions set forth in this Participating Addendum and the Master Agreement.
  - e. Contractor may, in its sole discretion, add Distributors at any time during the term of this Participating Addendum. Except as otherwise set forth in the Master Agreement, Contractor will not, directly or indirectly, restrict any Distributor's participation or ability to quote pricing for the State. Distributors shall not offer less favorable pricing discounts than the discounts established under the Master Agreement. However, a Distributor may offer any additional incremental discounts to the State or any Additional Purchaser, and such additional discounts, if offered, may be provided to the State or an Additional Purchaser in the discretion and at the sole legal obligation of the Distributor.

**Contractor:** CNH Industrial America LLC d/b/a CASE Construction

- f. The Master Agreement number and the Participating Addendum Number must appear on every Purchase Order placed under this Participating Addendum.
- g. Orders may include additional terms as necessary to comply with local, state or federal laws or regulations applicable to the Purchasing Entity.

**9. *Payment Provisions and Invoicing.***

- a. Product offerings and complete details of product pricing, including discounts, applicable to this Participating Addendum are set forth in the Price Schedule maintained on-line at Contractor's NASPO ValuePoint Webpage listed above.
- b. Purchasing Entities may solicit the Contractor or Fulfillment Partner/Authorized Reseller for deeper discounts than the minimum contract pricing as set forth in the Price Schedule (e.g., additional volume pricing, incremental discounts, firm fixed pricing or other incentives).
- c. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored.
- d. In the discretion of the Purchasing Entity, retainage may be specified in a Purchase Order, in an amount mutually agreeable to the parties.
- e. Payment terms are Net 30 days from the date the State receives an error-free invoice with all necessary and complete supporting documentation. Invoices shall itemize all products delivered or work performed during the invoice period, including, as applicable, the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment. As applicable, a copy of the notice(s) of acceptance shall accompany invoices submitted for payment.
- f. Invoices shall be sent to the address identified on the Purchasing Entity's Purchase Order and shall specify the address to which payments will be sent. The State of Vermont Participating Addendum Number and Purchasing Entity's Purchase Order Number shall appear on each invoice for all purchases placed under this Participating Addendum.
- g. Reimbursement of expenses is not authorized. All rates set forth in a Purchase Order shall be inclusive of any and all Contractor fees and expenses.
- h. Unless otherwise indicated in a manufacturer's return policy, unopened Products can be returned with no restocking fee up to 30 days from the date of receipt.
- i. The State Purchasing Card may be used by State Purchasers for the payment of invoices. Use of the Purchasing Card requires all required documentation applicable to the purchase. The Purchasing Card is a payment mechanism, not a procurement approach and, therefore, does not relieve State Purchasers from adhering to all procurement laws, regulations, policies, procedures, and best practices.

**10. *Approved Distributors.***

- a. Distributors are available for this Participating Addendum if and to the extent approved by the State Chief Procurement Officer (each an "Distributor"). Any approved Distributor shall be issued a contract under the terms of this Participating Addendum.

- b. All State policies, guidelines and requirements shall apply to Distributors.
- c. Contractor shall be responsible for successful performance and compliance with all requirements in accordance with the terms and conditions set forth by this Participating Addendum. Contractor acknowledges that each and all of the promises it makes as “Contractor” in the Master Agreement and in this Participating Addendum will apply to all Products and Services provided hereunder, regardless of who is providing or licensing the Product or performing the work.
  - i. Contractor promises that Purchasing Entities will not be required to affirmatively accept additional terms and conditions to use or access any Product or Service purchased under this Participating Addendum, whether by electronic means (e.g.,click-through) or otherwise.
  - ii. Contractor promises that each of the third parties whose Products and/or Services are available for purchase under this Participating Addendum understand and agree that the terms and conditions applicable to their Products and/or Services are as set forth in the Master Agreement, as amended, and are subordinate to the terms of this Participating Addendum and the NASPO ValuePoint Master Agreement Terms & Conditions and associated service model Exhibits.

11. **Reporting.** Contractor shall submit quarterly reports electronically in the same format as set forth under the Master Agreement, detailing the purchasing of all items under this Participating Addendum. Contractor’s reporting shall state "no activity" for any month in which there is no activity during a quarterly reporting period.

- a. The reports shall be an excel spreadsheet transmitted electronically to [SOV.ThePathForward@vermont.gov](mailto:SOV.ThePathForward@vermont.gov) .
- b. Reports are due for each quarter as follows:

Reporting Period	Report Due
January 1 to March 31	April 30
April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

- c. Failure to meet these reporting requirements may result in suspension or termination of this Participating Addendum.

12. **Prior Approvals.** In accordance with current State law, bulletins, and interpretations, this Participating Addendum shall not be binding until it has been approved by the Vermont Attorney General’s Office, the Secretary of Administration, and the State’s Chief Information Officer.

**Contractor:** CNH Industrial America LLC d/b/a CASE Construction

13. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Participating Addendum shall be effective unless reduced to writing, numbered and signed by the duly authorized representative of the State and Contractor.
14. **Termination.** This Participating Addendum may be terminated by the State at any time upon 30 days prior written notice to the Contractor. Upon termination or expiration of this Participating Addendum, each party will assist the other in orderly termination of the Participating Addendum and the transfer of all assets, tangible and intangible, as may facilitate the orderly, non-disrupted business continuation of each party. This provision shall not relieve the Contractor of the obligation to perform under any order executed prior to the effective date of termination or other expiration of this Participating Addendum.
15. **Primary Contacts.** The Parties will keep and maintain current at all times a primary point of contact for this Participating Addendum. The primary contacts for this this Participating Addendum are as follows:

a. **For the Contractor:**

Name: Tony Simpson  
Phone: (262) 631-0881  
Email: [tony.simpson@casece.com](mailto:tony.simpson@casece.com)

b. **For the State:**

Name: State of Vermont, Bill Vivian  
Address: 109 State Street, Montpelier, VT 05633-3001  
Phone: 802/828-2210  
Fax: 802/828-2222  
Email: [bill.vivian@vermont.gov](mailto:bill.vivian@vermont.gov)

**16. Additional Terms and Conditions.**

- a. Notwithstanding any contrary language anywhere, in no event shall the terms of this contract or any document furnished by Contractor in connection with performance under this contract obligate the State to (1) defend or indemnify Contractor or any third party, or (2) otherwise be liable for the expenses or reimbursement, including attorneys' fees, collection costs or other costs of Contractor or any third party.
- b. Contractor is required at all times to comply with all applicable federal and state laws and regulations pertaining to information security and privacy.
- c. **Governing Law, Jurisdiction and Venue; No Waiver of Jury Trial:** This Agreement will be governed by the laws of the State of Vermont. Any action or proceeding brought by either the State or the Contractor in connection with this Agreement shall be brought and enforced in the Superior Court of the State of Vermont, Civil Division, Washington Unit. Contractor irrevocably submits to the jurisdiction of this court for any action or proceeding regarding this Agreement. Contractor agrees that it must first exhaust any applicable administrative remedies with respect to any cause of action that it may have against the State with regard to

**Contractor:** CNH Industrial America LLC d/b/a CASE Construction

its performance under this Agreement. Contractor agrees that the State shall not be required to submit to binding arbitration or waive its right to a jury trial.

- d. **Sovereign Immunity:** The State reserves all immunities, defenses, rights or actions arising out of the State's sovereign status or under the Eleventh Amendment to the United States Constitution. No waiver of the State's immunities, defenses, rights or actions shall be implied or otherwise deemed to exist by reason of the State's entry into this Agreement.
- e. **False Claims Act:** Contractor acknowledges that it is subject to the Vermont False Claims Act as set forth in 32 V.S.A. § 630 *et seq.* Contractor's liability to the State under the False Claims Act shall not be limited notwithstanding any agreement of the State to otherwise limit Contractor's liability.
- f. **Whistleblower Protections:** Contractor shall not discriminate or retaliate against one of its employees or agents for disclosing information concerning a violation of law, fraud, waste, abuse of authority or acts threatening health or safety, including but not limited to allegations concerning the False Claims Act. Further, Contractor shall not require such employees or agents to forego monetary awards as a result of such disclosures, nor should they be required to report misconduct to Contractor or its agents prior to reporting to any governmental entity and/or the public.
- g. **Fair Employment Practices and Americans with Disabilities Act:** Contractor agrees to comply with the requirement of 21 V.S.A. Chapter 5, Subchapter 6, relating to fair employment practices, to the full extent applicable. Contractor shall also ensure, to the full extent required by the Americans with Disabilities Act of 1990, as amended, that qualified individuals with disabilities receive equitable access to the services, programs, and activities provided by Contractor under this Agreement.
- h. **Set Off:** The State may set off any sums which Contractor owes the State against any sums due Contractor under this Agreement; provided, however, that any set off of amounts due the State of Vermont as taxes shall be in accordance with the procedures set forth in 32 V.S.A. § 3113.
- i. **Taxes Due to the State:** Contractor certifies under the pains and penalties of perjury that, as of the date this Agreement is signed, Contractor is in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- j. **Taxation of Purchases:** All State purchases must be invoiced tax free. An exemption certificate will be furnished upon request with respect to otherwise taxable items.
- k. **Certification Regarding Debarment:** Contractor certifies under pains and penalties of perjury that, as of the date that this Agreement is signed, neither Contractor nor Contractor's principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in Federal programs, or programs supported in whole or in part by Federal funds. Contractor further certifies under pains and penalties of perjury that, as of the date that this Agreement is signed,

Contractor is not presently debarred, suspended, nor named on the State's debarment list at: <http://bgs.vermont.gov/purchasing/debarment>

- l. **Confidentiality:** Contractor acknowledges and agrees that this Agreement and any and all information obtained by the State from the Party in connection with this Agreement are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq.
- m. **Marketing:** Contractor shall not refer to the State in any publicity materials, information pamphlets, press releases, research reports, advertising, sales promotions, trade shows, or marketing materials or similar communications to third parties except with the prior written consent of the State.
- n. **Non-Appropriation:** If an order made under this Participating Addendum extends into more than one fiscal year of the State (July 1 to June 30), and if appropriations are insufficient to support the order, the State Purchaser may cancel the order at the end of the fiscal year, or otherwise upon the expiration of existing appropriation authority. If the order is funded in whole or in part by Federal funds, and those Federal funds become unavailable or reduced, the State Purchaser may suspend or cancel the order immediately and shall have no obligation to pay from State revenues.
- o. **Continuity of Performance:** In the event of a dispute between Contractor and the State, each party will continue to perform its obligations under this Agreement during the resolution of the dispute until this Agreement is terminated in accordance with its terms.
- p. **State Facilities:** If the State makes space available to Contractor in any State facility during the term of this Agreement for purposes of Contractor's performance under this Agreement, Contractor shall only use the space in accordance with all policies and procedures governing access to and use of State facilities which shall be made available upon request. State facilities will be made available to Party on an "AS IS, WHERE IS" basis, with no warranties whatsoever.

By signing below Contractor agrees to offer the products and services on the Master Agreement at prices equal to or lower than the prices listed on the Master Agreement.

**WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT**

By the State of Vermont:

By CNH Industrial America LLC d/b/a CASE Construction

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_



**OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT  
CONSTRUCTION EQUIPMENT INCLUDING EQUIPMENT AND  
WARRANTY WORK WITH REPLACEMENT PARTS**

**Office of Management and Enterprise Services**

**Central Purchasing Division**

**5005 North Lincoln Boulevard**

**Oklahoma City, OK 73105**

**And**

**CNH Industrial America LLC d/b/a CASE Construction**

**621 State Street**



**Racine, WI 53402**

Master Agreement Number: OK-SW-192



The Contractor identified below is hereby notified that a contract is being awarded to the Contractor in connection with Solicitation No. OK-SW192, issued May 25, 2017.

**NOW, THEREFORE,** in consideration of the foregoing and mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties have caused this Master Agreement to be duly executed and agree to terms contained herein.

STATE OF OKLAHOMA	CONTRACTOR
<p>Ferris J. Barger, State Purchasing Director</p> <p>By: </p>	<p>CNH Industrial America LLC d/b/a CASE Construction</p> <p></p> <p>By:</p>
<p>Date: 7-13-18</p>	<p>Date: 7-11-18</p>
<p>State Purchasing Director</p>	<p>Title: Government Sales</p>

*\*The person signing for Contractor hereby swears and affirms that he or she is authorized to act on Contractor's behalf and acknowledges that the Lead State is relying on his or her representations to that effect.*

**TABLE OF CONTENTS**

---

SUMMARY ..... 4

GENERAL TERMS AND CONDITIONS ..... 5

EXHIBIT A –NASPO VALUEPOINT TERMS AND CONDITIONS ..... 8

EXHIBIT B – SCOPE OF WORK..... 26

EXHIBIT C- PRICING ..... 29

EXHIBIT D - CONTRACTOR'S TERMS AND CONDITIONS CONTAINED IN CONTRACTOR'S  
RESPONSE AS REVISED AND ACCEPTED BY THE LEAD STATE ..... 30

# OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

## SUMMARY

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1. **Scope of Work Defined.** The purpose of this Master Agreement is to memorialize terms of the contract under which catalog discount and multi-unit discount options are provided for construction equipment and warranty work with replacement parts for all Participating Entities in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The objective is to obtain best value, and in some cases achieve more favorable pricing, than is obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities.
  
2. **Categories of Products Offered.** This Master Agreement will offer the following categories of products: Construction Equipment and Warranty Work with Replacement Parts.  
Note: the Contractor does not presently offer telehandlers or site dumpers.
  
3. **Contract Documents and Master Agreement Order of Precedence.** Any Order placed under this Master Agreement is governed by and subject to the following contract documents, the terms of which are hereby incorporated:
  - A. Participating Entity's Participating Addendum ("PA");
  - B. Oklahoma NASPO ValuePoint Master Agreement;
    - i. Summary;
    - ii. General Terms, Conditions, and Instructions;
    - iii. Exhibit A, NASPO ValuePoint Terms and Conditions;
    - iv. Exhibit B, Scope of Work; and
    - v. Exhibit C, Pricing.
  - C. A Purchase Order issued against the Master Agreement;
  - D. Request for Proposal; and
  - E. Exhibit D, Contractor's Terms and Conditions Contained In Contractor's Response As Revised And Accepted By The Lead State.

These documents shall be read to be consistent and complementary. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and attached to this Master Agreement at Exhibit D; however, any conflict among contract documents shall be resolved by giving priority to documents in the order listed above.

# OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

## GENERAL TERMS AND CONDITIONS

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1. **Period of Performance.** The initial term of this Master Agreement is 1 (one) year with an option to renew for up to four (4) additional one-year periods. Renewal options are at the Lead State's discretion upon review of requirements of Participating Entities, current market conditions and Contractor performance.
  
2. **Contract Administrator.** The Lead State Contract Administrator identified below is the single point of contact in connection with this Master Agreement and all questions concerning the procurement process, contractual requirements, changes and any other questions that may arise related to this Master Agreement. The Lead State Contract Administrator designated by the State of Oklahoma, OMES Central Purchasing is:  
  
Jennifer McCaulla, Statewide Initiatives Lead  
State of Oklahoma, OMES Central Purchasing  
5005 N. Lincoln Blvd., Suite 300  
Oklahoma City, OK 73105  
jennifer.mccaulla@omes.ok.gov  
Phone: 405/521-4772
  
3. **Authorized Users.** Any Purchasing Entity, as defined herein, may make acquisitions under this Master Agreement.
  
4. **Certification of Non-Debarment.** Contractor certifies to the best of its knowledge and belief, that the Contractor and its principals or participants:
  - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;
  - B. Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
  - C. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses listed above this certification; and
  - D. Have not with a three-year period preceding this application/proposal had one or more public (Federal, State or local) contracts terminated for cause or default. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its solicitation response.

5. **Insurance.** The Contractor agrees to maintain insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state at the prescribed levels set forth in Section 21 of Exhibit A, the NASPO ValuePoint Terms and Conditions.

6. **Governing Laws and Regulations.** The construction and effect of this Master Agreement is governed by the laws of the state of Oklahoma and venue for any claims or administrative or judicial action relating to such construction and effect including, but not limited to, the procurement process, evaluation and award shall be in Oklahoma County, Oklahoma.

The provisions governing choice of law and venue for issues arising after award and during contract performance are specified in section 35 of the NASPO ValuePoint Terms and Conditions of this Exhibit.

7. **Cost, Prices, and Rates.** Prices and rates shall include all anticipated charges including, but not limited to, standard freight and delivery, cost of materials and product, transaction fees, overhead, profits, and other costs and expenses incidental to the Contractor's performance. Any travel costs must be included in the cost of the products and services offered under this Master Agreement. No line item billing for travel will be allowed under this Master Agreement.

Pricing will remain fixed for the initial term of this Master Agreement, which is one year. Any request for price or rate adjustment following the initial Master Agreement term is subject to pre-approval of the Lead State and shall be subject to other applicable restrictions with respect to the frequency or amount of such adjustment. Additional terms related to pricing are set forth in Exhibit A, Section 11.

8. **Oklahoma Open Records Act.** This Master Agreement and all proposal and other materials submitted in response to Request For Proposal SW#192 are the property of the State of Oklahoma and subject to the Oklahoma Open Records Act.

9. **Changes in Contractor Company Status, Equipment or Contact.** The Contractor shall notify the Lead State Contract Administrator of any changes in the company status, such as mergers, sell offs and changes in the contact information of the Contractor. The Contractor may add new Products to products available under this Master Agreement subject to the prior written approval of the Lead State. The price discount may not be decreased. The Contractor shall also provide prior written notice of any discontinued products or replacement models. The Contractor shall be available at all times during normal business hours for contact from Lead State Contract Administrator.

10. **Invoices.** In addition to requirements in an applicable Participating Addendum, to ensure prompt payment, the Contractor will provide necessary training for the dealer network to make sure all invoices include the following information:

- A. Purchase order number if applicable;
- B. Make, model, and VIN number of equipment;

- C. Name of Purchasing Entity;
- D. Description of equipment purchased or warranty services performed and/or parts, material and supplies provided;
- E. The Contractor's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered;
- F. Name of company who provided the products/services; and
- G. If requested by the Purchasing Entity for its accounting purposes, a copy of the current, dated Supplier's Price List showing the equipment price.

**11. 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.

# OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

## EXHIBIT A

### NASPO VALUEPOINT TERMS AND CONDITIONS

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1. **Master Agreement Order of Precedence.** The order of precedence of contract documents is set forth in Section 3 of the Summary above.
  
2. **Definitions.**
  - A. **Acceptance** is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product. Acceptance shall occur not later than thirty (30) calendar days after the date of delivery of the products to the Participating or Purchasing Entity.
  - B. **Contractor** means the person or entity delivering Products under the terms and conditions set forth in this Master Agreement.
  - C. **Embedded Software** means one or more software applications which permanently reside on a computing device.
  - D. **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.
  - E. **Lead State** means the State centrally administering any resulting Master Agreement(s).
  - F. **Master Agreement** means this agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.
  - G. **NASPO ValuePoint** is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c) (3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.
  - H. **Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

- I. **Participating Addendum** means a bilateral agreement executed by the Contractor and a Participating Entity incorporating this Master Agreement and any other terms and conditions, e.g. ordering procedures, specific to the Participating Entity.
- J. **Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.
- K. **Product** means any equipment, software (including Embedded Software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.
- L. **Purchasing Entity** means a state government (as well as the District of Columbia and U.S. territories) including a department, agency, institution and similar governmental entity thereof, an institution of higher education, city, county, district, or other political subdivision of a state and other eligible entities, subject to approval of the individual state procurement director and compliance with statutory and regulatory requirements,, that issues a Purchase Order and becomes financially committed to the purchase.
- M. **Resale** means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services.

3. **Intentionally Omitted.**

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

5. **Participants and Scope.**

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



- B.** Use of this Master Agreement by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state’s statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- C.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of a Participating Entity are limited to the Orders placed by departments or other state agencies and institutions having available funds. A Participating Entity incurs no financial obligations on behalf of any Purchasing Entity. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.
- D.** NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.
- E.** A Participating Addendum shall not be construed to amend the terms of this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.
- F.** Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; the Participating Entity must ensure it has the requisite procurement authority to execute a Participating Addendum.
- G.** 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 participate in the Resale of Products (the definition of which includes services that are deliverables). 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.

**6. Administrative Fees.**

- A.** The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.
- B.** Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

**7. NASPO ValuePoint Summary and Detailed Usage Reports.** Within fifteen (15) days of execution of this Master Agreement, Contractor shall identify the person responsible for providing the mandatory usage reports. If the person providing the usage reports changes, Contractor will promptly notify the Lead State and NASPO ValuePoint.

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

- A.** Summary Sales Data. The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).
- B.** Detailed Sales Data. Contractor shall also report detailed sales data by:
  - i.** state;
  - ii.** entity/customer type, e.g. local government, higher education, K12, non-profit;
  - iii.** Purchasing Entity name;

- iv. Purchasing Entity bill-to and ship-to locations;
- v. Purchasing Entity and Contractor Purchase Order identifier/number(s);
- vi. Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices);
- vii. Purchase Order date;
- viii. Ship Date; and
- ix. line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is set forth at Attachment A-1 and may be amended from time to time.

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

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

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

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

A. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract

administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.

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

**9. NASPO ValuePoint eMarket Center**

- A. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.
- B. Contractor agrees to cooperate with NASPO ValuePoint and SciQuest (and any authorized agent or successor entity to SciQuest) to integrate its presence in the NASPO ValuePoint eMarket Center either through an electronic catalog (hosted or punchout site) or unique Ordering Instructions. At a minimum, the Contractor agrees to participate in development of Ordering Instructions.
- C. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.
- D. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

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

- 11. Price and Rate Guarantee Period.** All prices and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting

the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.

**12. Individual Customers.** Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement which include the General Terms and Conditions, the NASPO ValuePoint Terms and Conditions, and the applicable Participating Addendum and will have the same rights and responsibilities for its purchases as the Lead State has in the Master Agreement including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for its 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 and shall have no right of setoff.

**13. Ordering.**

- A. Master Agreement Order and Purchase Order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
- B. Purchasing Entities may define project-specific requirements and informally compete the requirement among awarded companies 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 a Participating Addendum and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which awarded Contractors are solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, considering cost and other factors.
- C. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedures and documentation. Contractor is expected to become familiar with the Purchasing Entities’ rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
- D. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document in compliance with the law of the Purchasing Entity.
- E. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
- F. All Orders pursuant to this Master Agreement, at a minimum, shall include:
  - i. The description and quantity of services or supplies being delivered;
  - ii. The place and requested time of delivery;
  - iii. A billing address;
  - iv. The name, phone number, and address of the Purchasing Entity representative;
  - v. The price per hour or other pricing elements consistent with this Master Agreement; and

vi. The Master Agreement identifier.

- G. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- H. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- I. Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

**14. Intentionally Omitted.**

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

**16. Inspection and Acceptance.**

- A. Where an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.
- B. 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, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. 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. 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.

- C. 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.
- D. The warranty period shall begin upon Acceptance.
- E. Acceptance Testing is a process to ascertain that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is applicable, this subsection applies to Products, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in this Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product does not meet the standard of performance, the Purchasing Entity may, at its option:
  - i. declare Contractor to be in breach and terminate the Order;
  - ii. demand replacement Product from Contractor at no additional cost to Purchasing Entity; or
  - iii. continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to this section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met.

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

**18. Warranty.** Notwithstanding any other provision of the Contract, the parties agree to the following provisions concerning the Contractor's 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.

Upon breach of the warranty, 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. 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.

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

**20. License of Pre-Existing Intellectual Property.** Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

**21. Insurance.**

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



and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

- B.** Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:
    - i.** Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate and
    - ii.** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
  - C.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur
  - D.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that:
    - i.** names the Participating States identified in the Request for Proposal as additional insureds;
    - ii.** provides that written notice of cancellation shall be delivered in accordance with the policy provisions; and
    - iii.** provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory.
- Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.
- E.** Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, result in this Master Agreement's termination or, at the sole option of any Participating Entity, the termination of any Participating Addendum.
  - F.** Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

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

- A. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or Orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of seven (7) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.
- B. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of fees found as a result of the examination of the Contractor's records.
- C. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

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

- A. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to:
  - i. any Purchasing Entity's records;
  - ii. personnel records; and
  - iii. information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").

Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that:

- i. is or becomes (other than by disclosure by Contractor) publicly known;
- ii. is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement;

- iii. is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement;
  - iv. is obtained from a source other than Purchasing Entity without the obligation of confidentiality;
  - v. is disclosed with the written consent of Purchasing Entity; or
  - vi. is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.
- B.** Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination or expiration of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.
- C.** Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.
- D.** Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

24. **Public Information.** This Master Agreement and all contract documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.
25. **Assignment/Subcontracts.**
- A. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.
  - B. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint.
26. **Changes in Contractor Representation.** The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing this Master Agreement in writing within ten (10) calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's Proposal. The Contractor agrees to propose replacement key personnel having sufficient education, training, and experience.
27. **Independent Contractor.** The Contractor is an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating Entities or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.
28. **Cancellation.** Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and Accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.
29. **Force Majeure.** Neither party to this Master Agreement shall be held responsible for delay or default caused by unusually severe weather, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement, and a Participating Entity may terminate a Participating Addendum, after determining such delay or default will reasonably prevent successful performance of the Master Agreement or Participating Addendum, as applicable.
30. **Defaults and Remedies.**

- A.** The occurrence of any of the following events shall be an event of default under this Master Agreement:
- i.** Nonperformance of contractual requirements; or
  - ii.** A material breach of any term or condition of this Master Agreement; or
  - iii.** Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
  - iv.** 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
  - v.** Any default specified in another section of this Master Agreement.
- B.** Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.
- C.** If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:
- i.** Exercise any remedy provided by law; and
  - ii.** Terminate this Master Agreement and any related Contracts or portions thereof; and
  - iii.** Impose liquidated damages as provided in this Master Agreement; and
  - iv.** Suspend Contractor from being able to respond to future bid solicitations; and
  - v.** Suspend Contractor's performance; and
  - vi.** Withhold payment until the default is remedied.
- D.** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to

an Order placed by the Purchasing Entity. Nothing in this Master Agreement shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

- 31. Waiver of Breach.** Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.
- 32. Debarment.** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement.
- 33. Indemnification**
- A.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.
- B.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.
- C.** The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
- i.** Provided by the Contractor or the Contractor's subcontractor, subsidiary or affiliate;
  - ii.** Specified by the Contractor to work with the Product;

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

- iv. reasonably expected to be used in combination with such product, system or method.

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

34. **No Waiver of Sovereign Immunity.** In no event shall this Master Agreement, any Participating Addendum or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court. This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state’s sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

35. **Governing Law and Venue.**

A. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity’s or Purchasing Entity’s State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum is solely and exclusively in the Purchasing Entity’s State.

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

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

- 36. Assignment of Antitrust Rights.** Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.
  
- 37. Contract Provisions for Orders Utilizing Federal Funds.** Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.



# OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

## EXHIBIT B – SCOPE OF WORK

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1. **Scope and General Information.** This Master Agreement provides a competitively bid contractual vehicle for Participating Entities to purchase construction equipment including equipment with warranty work and replacement parts. The Product line within scope of this Master Agreement and pricing offered at a “catalog discount” and includes a multi-unit discount. Pricing and the percentage discount are set forth at Attachments C-1 and C-2 to Exhibit C hereto. Approved distributors through which a Purchasing Entity may purchase products and the distributor coverage area are set forth in Attachment D-1 to Exhibit D hereto. Each Contractor shall ensure the Lead State Contract Administrator is provided with up to date information regarding the status of approved distributors. New distributors should be added by providing a replacement list of authorized distributors to the Lead State Contract Administrator. The Lead State Contract Administrator should be notified in writing, via email, of any distributors that should be removed from the list of approved distributors. Distributors may provide service nationally or locally. Each state represented by NASPO ValuePoint that chooses to participate in this Master Agreement independently has the option of deploying only resellers approved by the Participating Entity. The Participating Entity that chooses to exercise this option may define the process to add and remove resellers in its Participating Addendum.

2. **Motor Vehicle Licensing.** The Contractor certifies that all required Motor Vehicle Commission licenses are in place and current and copies of all such licenses, if requested, will be submitted with each Participating Addendum. Additional license requirements for Participating Entities will be addressed in each state’s Participating Addendum.

The Contractor shall maintain all required motor vehicle licensing during the term of the contract and furnish copies at any time upon request by the Lead State Contract Administrator or a Purchasing Entity. Failure to adhere to this requirement may result in termination, in whole or in part, of this Master Agreement for cause. Contracts for motor vehicles to be sold may be made only with properly licensed Motor Vehicle Dealers.

3. **Warranty and Buy Back.** The Contractor shall correct ordering errors without further cost to the Purchasing Entity.

The Contractor agrees the Products shall be covered by all commercial warranties the Contractor provides for such products, and rights and remedies provided therein are in addition to and do not limit any rights afforded by any other clause of this Master Agreement. A copy of the Contractor’s warranties applicable to its products is set forth at Attachment D-2 to Exhibit D. If Contractor changes its warranty with respect to a Product, Contractor shall promptly provide a replacement copy to the Lead State Contract Administrator and clarify which Products are covered by the revised warranty. Contractor also agrees to provide a copy of the warranty applicable to replacement parts purchased. All equipment warranties shall start on the later of the date of delivery or the date of Acceptance and shall be for the full term of said warranty.

The Contractor warrants that at the time of delivery, all equipment purchased under this Master Agreement will be free from defects in material or workmanship and will conform to the specifications and all other requirements of this Master Agreement.

The Contractor shall furnish all necessary supervision, labor, equipment, tools, parts, materials, and supplies needed for the warranty repair work. All persons utilized in the performance of this Master Agreement shall be authorized by the Contractor and be fully qualified to perform the warranty work required. Warranty work shall be performed by certified or trained or authorized service technicians.

All warranty work performed and parts/materials supplied shall meet original equipment manufacturer (OEM) warranty requirements. Equivalent substitutions must be approved in writing by the Purchasing Entity contact person prior to installation. Warranty work performed not meeting specifications or found to be defective, shall not be accepted. The Contractor shall be required to make repairs or corrections at no additional cost to the Purchasing Entity. Repairs made that are covered by a warranty shall not be paid for by the Purchasing Entity.

Before actual warranty work begins, ownership of the equipment shall be established to ensure the equipment in need of repair belongs to the Purchasing Entity requesting the service. The following information shall be provided in order to determine ownership of the equipment:

- A. name of Purchasing Entity and division, if applicable;
- B. make, model, and VIN of equipment; and
- C. control number of Purchasing Entity (Inventory number).

Repair facilities that will perform warranty work under this Master Agreement shall be identified as the Contractor's dealer network. As the manufacturer, the Contractor is responsible for insuring that the facilities are able to adhere to the contract requirements for warranty work performance.

Equipment that will remain in the Contractor's possession overnight and/or for extended periods shall be stored in a safe and secure location for protection from theft and environmental dangers. The Contractor shall be responsible for the proper care and custody of any such equipment in the Contractor's possession.

In connection with replacement parts sold to a Purchasing Entity, Contractor shall provide a copy of any applicable buy-back, trade-in or exchange policy and applicable warranty at the time of purchase.

4. **Quality of Parts.** Parts associated with products available under this Master Agreement shall be name brand, nationally advertised merchandise and equivalent substitutions may only occur with the prior written approval of the Purchasing Entity. After market repair, rebuilt or remanufactured parts must be equal to or exceed Contractor's OEM specifications. Repair parts must be packaged and distributed under the respective nationally known name brands and may be required to be OEM repair parts. Contractor agrees its dealers or distributors network shall provide a complete line of OEM parts for all models of equipment available from such dealer or distributor. Preservation, packaging,

and packing and marking will be in accordance with best commercial practice to provide adequate protection against shipping damage.

5. **Delivery.** Delivery on parts is to be made within 30 calendar days and delivery of equipment shall be made within 120 calendar days after receipt of order unless other arrangements are made between the Purchasing Entity and the Contractor. Earlier deliveries are encouraged however there shall be no change in contract price or discount terms because of the earlier delivery. Some ordering entities will have the capacity to pick up equipment from the dealer.

All equipment shall be delivered new, unused, assembled, serviced, oiled and ready for immediate use, unless otherwise requested by the Purchasing Entity. Liability for product delivery remains with the Contractor until delivered and accepted.

Delivery shall be made in accordance with instructions on the Order from each Purchasing Entity. If there is a discrepancy between the Order and what is listed in this Master Agreement, the Contractor shall seek clarification from the Purchasing Entity and/or the Lead State Contract Administrator.

Delivery to a Purchasing Entity is to be Free On Board Destination (to the Destination stated in the Order) freight prepaid and added. Any allowable freight, shipping and handling costs and set-up fees paid by a Purchasing Entity are to be annotated on the quote/invoice as a separate line item. Quotes shall show the Contractor's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidental costs and the final price for each item delivered.

Allied and incidental items requested by a Purchasing Entity shall comply with its state or other government regulations. Allied equipment may only be sold in connection with the sale of an item within scope of this Master Agreement. Items must be clearly labeled on the Order or quote as allied.

Allied and incidental items are attachments, accessories, parts or bundles not manufactured by the Contractor that are requested by a Purchasing Entity to complete the purchase of equipment within scope of this Master Agreement (but not to substantially convert the Product).

# OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

## EXHIBIT C - PRICING

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The pricing structure for this Master Agreement is a percentage discount off the Contractor's catalogue pricing and multi-unit discounts are offered, as reflected in the attached Attachments C-1 (prices) and C-2 (percentage discount). Additional terms related to pricing are set forth in the General Terms and Conditions and Exhibits A and B of this Master Agreement.

Contractor offers the following multi-unit discounts:

Multiple Unit discount: 1% (In addition to the equipment discount) based on 2 – 3 Units purchased

Multiple Unit discount: 2% (In addition to the equipment discount) based on 4 -5 Units purchased

Multiple Unit discount: 3% (In addition to the equipment discount) based on 6-9 Units purchased

Multiple Unit discount: 4% (In addition to the equipment discount) based on 10+ Units purchased

# OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

## EXHIBIT– D - CONTRACTOR’S TERMS AND CONDITIONS CONTAINED IN CONTRACTOR’S RESPONSE AS REVISED AND ACCEPTED BY THE LEAD STATE

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Approved distributors through which a Purchasing Entity may purchase products and the distributor coverage area is located at Attachment D-1.

Product information and specifications offered by Contractor hereunder are set forth at <https://www.casece.com/northamerica/en-us/products/backhoe-loaders/overview/models/580n-ep>.

The Contractor’s Base Warranty, and the CASE Protection Plan for an extended warranty, is applicable to lightweight equipment. Heavy equipment is covered by the CASE ProCare warranty. All warranty details are set forth at Attachment D-2. For avoidance of doubt, terms related to warranty that are set forth elsewhere in this Master Agreement or a Participating Addendum shall take precedence over the Contractor warranty to the extent there is a conflict.

No other terms and conditions contained in Contractor’s Bid are accepted by the Lead State for inclusion in the Contract.















