



**COMMONWEALTH OF VIRGINIA
DIVISION OF PURCHASES AND SUPPLY
1111 EAST BROAD STREET
RICHMOND, VA 23219**

**CONTRACT # E194-1485
INCORPORATES CONTRACT CHANGES 1-9
MODIFICATION 9 CHANGES ARE INDICATED IN RED**

CONTRACT TITLE: GROUND MAINTENANCE EQUIPMENT

1	DATE	November 5, 2015
2	CONTRACT PERIOD	November 5, 2015 through November 4, 2017
3	SUPERCEDES	N/A
4	AUTHORIZED USERS	Commonwealth of VA Agencies, Other Public Bodies, and NASPO ValuePoint Participating States
5	CONTRACTOR'S eVA VENDOR ID#	VS0000085329
6	CONTRACTOR	The Toro Company
7	CONTRACTOR CONTACT	Peter Whitacre
8	TERMS	SPCC or Net 30
9	DELIVERY	See Delivery Information
10	F.O.B.	See Transportation Charges
11	CONTRACT PRICES	See Attachment B: Price Schedule
12	DPS CONTRACT MANAGER	Katherine Bosdell, CPPB, VCO 804-786-2397 katherine.bosdell@dgs.virginia.gov

Additional copies of the contract and any associated contract changes are available on the DPS website: www.eva.virginia.gov under the State Contracts webpage.

AUTHORIZED USERS: This Contract is the result of a competitive negotiations program and its use is Optional Use for all State Agencies and for other public bodies and entities authorized to use the Contract by the *Code of Virginia* § 2.2-1120(D), to include private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code. NASPO ValuePoint Participating States are permitted to use this Contract after executing a Participating Addendum with the Contractor.

NOTE: This public body does not discriminate against faith-based organizations (*Code of Virginia*, §2.2-4343.1D), or against a bidder or offeror because of race, religion, color, sex, age, disability, national origin, status as a service disabled veteran or any other basis prohibited by state law relating to discrimination in employment. (*Code of Virginia*, §2.2-4310.A)

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1. CONTRACTOR INFORMATION

Contractor Name	eVA Vendor ID#	Location Address	Contact Information
The Toro Company "Toro"	VS0000085329	8111 Lyndale Avenue South Bloomington, MN 55123	Peter Whitacre Sales Manager, State & Local 952-887-7936 Fax: 952-887-8694 Peter.Whitacre@toro.com

2. GENERAL INSTRUCTIONS

1. **Authorized Users:** Unless otherwise instructed by the Division of Purchases and Supply (DPS), state agencies, institutions of higher education, and other public bodies and entities authorized to use the Contract by the *Code of Virginia* § 2.2-1120(D), to include private institutions of higher education chartered in Virginia and granted tax-exempt status under §501(c)(3) of the Internal Revenue Code.

NASPO ValuePoint Participating States are permitted to use this Contract after executing a Participating Addendum with the Contractor.

2. **Lead State and Contract Administrator Information:** The Commonwealth of Virginia, Department of General Services, Division of Purchases and Supply is the Lead State managing this Contract. The Contract Manager is:

Katherine Bosdell, CPPB, VCO
Statewide Contract Manager
1111 East Broad Street
Richmond, VA 23219
Email: katherine.bosdell@dgs.virginia.gov
Phone: 804-786-2397

3. **Ordering Instructions:** Commonwealth of VA agencies, institutions, and all other governmental bodies shall place all orders against this optional use term Contract through eVA. The orders will be governed by this Contract and the terms and conditions contained in the separate agreement for participation in eVA executed by the Contractor. See Section 5 for ordering instructions.

Excluded from the use of eVA for orders under this Contract are (a) over-the-counter purchases using the Small Purchase Charge Card (SPCC) made at the point of sale and picked up by the individual cardholder, and (b) purchases by NASPO ValuePoint Participating States.

4. **Contractor Distributor Information:** Commonwealth of Virginia Authorized Users must reference Attachment C: Toro Distributor List and contact the Distributor servicing their area. A Distributor may assign Orders to a Territory Representative in your area.

NASPO ValuePoint Participating States must contact Toro for a list of authorized Distributors. Any Distributor that is not listed on the authorized list provided by the Contractor cannot offer a quote to Authorized Users using the percentage of discount or terms and conditions under this Contract.

5. **Written Quotations:** Authorized Users must obtain a written quote from the Distributor that must include but not be limited to the Contract number, the Manufacturer's Published Price less the percentage of discount, description of the equipment, delivery date, the effective date of the Published Price List and warranty. **The written quote must be attached to the Purchase Order.**
6. **Purchase Order:** The Purchase Order must be processed and submitted to the **Distributor and not to the Contractor**. Purchase Orders processed and submitted to the Contractor shall be returned to the Authorized User and not filled until a revised Purchased Order is submitted.
7. **Inspection and Approval:** Inspection on delivery and invoice approval is the responsibility of the Authorized User. Equipment may be rejected if it is found to be defective or if it fails in any way to meet the specifications of the Contract. The Contractor will replace all rejected equipment within the stated lead-time or less based on availability of the equipment.

3. ADDITIONAL INFORMATION

1. **Renewals:** The initial term of the Contract is three (3) years with two (2) successive two-year renewal periods. At a reasonable time (approximately four to six months) prior to the expiration, the decision as to whether to renew will be made by the Contract Manager.
2. **Complaints:** Any complaint that is because of a violation or breach of the Contract provisions shall be reported on an official DPS “PROCUREMENT COMPLAINT FORM” (Form # DGS-41-024). To facilitate notification, this form shall be completed by the Authorized User and sent to the Contractor with a copy sent to DPS at the address shown on the form. Contractors shall also use this form to initiate complaints concerning Authorized Users. This form may be downloaded from the internet at www.eva.virginia.gov by clicking on “I Buy for Virginia” and then on “Procurement Complaint Form”. Complaints between the Authorized User and the Contractor will be resolved in accordance with the terms of the Contract.
3. **Services and Service Agreements:** Services are not included under this Contract; however, an Authorized User may negotiate with the Distributor to acquire a price for a service maintenance agreement for purchased equipment.
4. **Clean Air Act for Off Road Vehicles using Diesel Fuel - Tier 4:** All equipment that is provided under this Contract that falls under the Clean Air Act for Off Road Vehicles using Diesel Fuel - Tier 4 must be provided in accordance to any regulations set forth to meet the Code of Federal Regulation (CFR) for Tier 4 effective January 1, 2013. The US Environmental Protection Agency mandated a progressive series of emissions standards for all new off-road diesel engines, which are known as the Tier 4 Emission Standards.
5. **Price List and Catalogs:** Contractor and Distributors are required upon request of any Authorized User to provide a price list, catalogs and descriptive literature within five (5) business days of the request.
6. **Delivery:** Refer to Attachment B: Price Schedule under the “Delivery” column for delivery information on specific equipment models. In the event the item is not in stock and/or the delivery timeframe cannot be met, the Contractor or Distributor shall contact the Authorized User to ascertain whether a back order is acceptable or to cancel the order. In the event a delivery is not received within the Contract delivery period, the Contractor may be held in default in accordance with the terms of the Contract. The Authorized User, after due oral or written notice, may procure the equipment from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs.
7. **Transportation Charges:** All equipment shall be delivered FOB DESTINATION within the contiguous United States or if applicable, to the port of embarkation within the contiguous United States for NASPO ValuePoint Participating Entities outside of the contiguous United States, for all orders equal to or greater than the minimum order of \$500 when shipped to a single or multiple destinations. Orders for less than the minimum order will be shipped prepaid with transportation charges added to the invoice as a separate line item. Transportation charges levied by the Contractor for orders equal to or greater than the minimum order when shipped to a single or multiple destinations may be cause for removal of the Contractor from the Contract. The Contractor shall not add freight charges for partial shipments or back orders to an invoice where the original total price of an order exceeded the minimum order of \$500.

8. **Returns:** Any equipment delivered damaged or does not meet Contract specifications may be returned at the discretion of the Authorized User and the Contractor. Authorized Users must contact the Distributor within 30 days for a Return Goods Authorization (RGA) prior to returning the equipment to the Contractor or Distributor. The Contractor or Distributor shall issue a credit for the returned goods immediately upon receipt of the equipment at their designated facility. The Contractor or Distributor shall not charge Authorized Users for returns in the event that the Contractor shipped incorrect equipment or the items did not meet the Contract specifications.

The Commonwealth of Virginia General Terms and Conditions and this Contract’s Special Terms and Conditions take precedent over any return policy statements of the Contractor in the event of a conflict.

9. **Equipment Trade-In Information:** Authorized Users that wish to trade-in equipment toward the purchase of new equipment under the Contract may do so if permitted by their internal policies. The description and price of the new equipment and the trade-in value must be itemized on the Authorized User’s Purchase Order.

a. Commonwealth of Virginia Distributors:

- Turf Equipment and Supply Corporation (TESCO): TESCO is unable to accept trade-ins for Category 5, items 8, 9, and 10 and Category 6 items 1 and 2. For all other Categories by line items, Authorized Users that wish to trade-in equipment toward the purchase of new equipment under this Contract from TESCO may do so if permitted by their internal policies. The trade-in value will be determined by negotiation between the Authorized User and TESCO. The description and price of the new equipment and the trade-in value will be itemized on the Authorized User’s Purchase Order and TESCO will invoice the Authorized User for the Contract price less the trade-in value.
- Smith Turf and Irrigation (STI): Authorized Users that wish to trade-in equipment toward the purchase of new equipment under this Contract from STI may do so if permitted by their internal policies. The trade-in value will be determined by negotiation between the Authorized User and STI. The description and price of the new equipment and the trade-in value will be itemized on the Authorized User’s Purchase Order and STI will invoice the Authorized User for the Contract price less the trade-in value.

b. NASPO ValuePoint Participating States must contact their authorized Distributor for trade-in information.

10. **Quantity Discounts:** Toro has offered the following multiple Unit Discounts excluding Frontier Products. Add the Contract discount to the multiple unit discount (ex: Discount + Multiple Unit Discount = Total Contract Discount). Discounts are based on the following schedule:

Quantity	Discounts	Published Price List
3 – 5 basic units	1%	Current approved PPL
5 – 7 basic units	2%	Current approved PPL

The Contractor may offer additional discounts based on volume in conjunction with any promotional discount that is in effect at the time of order.

11. **WSCA-NASPO Name Change:** On March 30, 2015 WSCA-NASPO officially changed its name to NASPO ValuePoint. References in this document to the former name may remain unchanged.

12. **Contract Modifications (all modifications are incorporated into this document):**

Modifications to the Contract (i.e., increases or decreases in pricing, delivery terms or additional options, etc.) must be approved in writing by DPS prior to issuing a purchase order.

Modification 1: Effective date: February 1, 2013

The following price increase for The Toro Company is hereby changed to incorporate Toro's current published price lists for all items covered under this Contract as follows:

Effective February 1, 2013, The Toro Company's Published Price List November 1, 2012 will be in effect; however, Toro's firm percentage of discounts shall apply to all prices per Category and Line Items per ATTACHMENT B: PRICING SCHEDULE. All other Terms and Conditions of the original Contract remains unchanged.

Modification 2: Effective date: February 19, 2013

This change notice is being issued to incorporate Toro's territorial maps for their Distributors for the Commonwealth of Virginia. The original maps were part of ATTACHMENT C. All other Terms and Conditions of the original Contract remains unchanged.

Modification 3: Effective date: August 29, 2013

The following price change in Attachment B: Pricing Schedule-Revised is to correct the Unit Price After Discount for the equipment listed below:

Toro 74903: Professional Z5000 – Zero turn type rotary blade riding mower for small to medium size area general mowing and lawn area maintenance; Model # 74903 – Manufacturer's Order Codes 74903. The current Unit Price After Discount is \$7582.40 and the corrected Unit Price After Discount is \$7699.30. Except for the change provided herein, all other terms and conditions of this Contract remain unchanged and in full force and effect.

Modification 4: Effective date: May 9, 2014

This Contract is hereby modified by the following changes. Except for the changes provided herein, all other terms and conditions of this Contract remain unchanged and in full force and effect. See Attachment B: Price Schedule for pricing and discounts.

Description of Modifications:

Add:

1. Category 4 Item 7: Workman HDX Automatic Model #07390 2WD Gas
Workman HD Model #07384 2WD Gas
2. Category 6 Item 1: Toro 18.5 HP Kawasaki FS w/48" Turbo Force Deck Stand Model #74538
Toro 23 HP Kawasaki FS w/48" Turbo Force Deck Stand Model #74548
3. Category 14 Item 3: Greens Pro 1240 Roller Model #44912

Modification 5: Effective date: March 1, 2015

This MODIFICATION #5 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth," and The Toro Company, hereinafter referred to as "Contractor" or "Toro", relating to the modification of Contract E194-1485 effective November 4, 2012, as amended, hereinafter referred to as "Contract". This Modification is hereby incorporated into and made an integral part of the Contract. The purpose of this Modification is to document both parties' agreement to allow non-Toro manufactured equipment (non-contract/Allied equipment) to be purchased on the same purchase order as equipment purchased pursuant to the Contract. This change is effective on March 1, 2015.

Currently the contract does not permit non-contract/Allied equipment on the same purchase order as the original Toro equipment purchase; therefore, an Agency must issue multiple purchase orders to procure equipment needed to operate Toro equipment within the safety guidelines of the State and Agency to allow the equipment to function as needed. The addition of non-contract/Allied equipment will complete or enhance the operation or provide an additional level of safe operation of the Toro equipment.

Toro equipment is considered to be the functional base to which varied attachments/implements are added in order to perform Agency-provided services.

Non-contract/Allied equipment are products, implements, attachments, accessories, parts, and bundles not manufactured by Toro (but in some instances may be branded Toro) that are requested by the Agency to complete the Toro equipment being purchased.

The following are typical examples of these procurements:

- a. Agency purchasing a contracted base model unit wants a service parts package to take care of the first required oil change on the unit.
- b. Agency needs to purchase a Toro mower and a non-contract/Allied snow plow to make the unit a more versatile year-round product.
- c. Agency has a requirement for mounted non-contract/Allied lighting packages on equipment for safety and visibility purposes.

Non-contract/Allied equipment as defined in this Modification may be included on a purchase order as long as the equipment is related to and compatible with the contract equipment being purchased. Stand-alone non-contract/Allied equipment purchases shall not be permitted.

To the extent non-contract/Allied equipment is sold by an authorized Toro dealer, the price will be negotiated between the Toro dealer and the Agency. Non-contract/Allied equipment must be specified on the purchase order as “non-contract” items. Agencies must comply with their State’s procurement policies and procedures for the purchase of non-contract/Allied equipment.

The Toro Company confirms that to the extent non-contract/Allied equipment is included on a purchase order with Toro equipment, The Toro Company will not void any applicable Toro equipment warranty(ies), provided that the following conditions are met:

- a. Non-contract/Allied equipment is properly mounted or installed by an authorized Toro dealer or other installer approved by The Toro Company;
- b. Any warranty claim for Toro equipment is warrantable under the terms and limitations of the applicable Toro product warranty(ies); and
- c. The Agency provides supporting documentation upon request by The Toro Company for verification of warranty claim.

The foregoing is the complete and final expression of the parties’ agreement to modify Contract E194-1485 and cannot be modified, except by a writing signed by the duly authorized representatives of both parties. All other terms and conditions remain unchanged.

Modification 6: Effective date: April 1, 2015

This MODIFICATION #6 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth," and The Toro Company, hereinafter referred to as "Contractor" or “Toro”, relating to the modification of Contract E194-1485 effective November 4, 2012, as amended, hereinafter referred to as “Contract”. This Modification is hereby incorporated into and made an integral part of the Contract. This Modification is effective on April 1, 2015. The purpose of this Modification is to document both parties’ agreement to:

1. Incorporate The Toro Company equipment models, pricing, discounts and Published Price Lists dated November 1, 2013 and November 1, 2014 in Attachment B: Price Schedule.
2. Remove the following Request for Proposal (RFP) Submission Terms and Conditions:
 - a. Ethics in Public Contracting
 - b. Mandatory Use of State Forms
 - c. Clarification of Terms
 - d. Qualifications of Offerors
 - e. Use of Brand Names
 - f. Announcement of Award
 - g. Bid Price Currency

The foregoing is the complete and final expression of the parties' agreement to modify Contract E194-1485 and cannot be modified, except by a writing signed by the duly authorized representatives of both parties. All other terms and conditions remain unchanged.

Modification #7: Effective Date: June 5, 2015

This MODIFICATION #7 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth," and The Toro Company, hereinafter referred to as "Contractor" or "Toro", relating to the modification of Contract E194-1485 effective November 4, 2012, as amended, hereinafter referred to as "Contract". This Modification is hereby incorporated into and made an integral part of the Contract. This Modification is effective on June 5, 2015. The purpose of this Modification is to document both parties' agreement to:

Add equipment to Category 10 Item 1: Toro Proforce Blower 44553 DOT Approved Trailer

The foregoing is the complete and final expression of the parties' agreement to modify Contract E194-1485 and cannot be modified, except by a writing signed by the duly authorized representatives of both parties. All other terms and conditions remain unchanged.

Modification #8: Effective Date: August 1, 2015

This MODIFICATION #8 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth," and The Toro Company, hereinafter referred to as "Contractor" or "Toro", relating to the modification of Contract E194-1485 effective November 4, 2012, as amended, hereinafter referred to as "Contract" or "Agreement". This Modification is hereby incorporated into and made an integral part of the Agreement. This Modification is effective on August 1, 2015. The purpose of this Modification is to document both parties' agreement to revise terms and conditions due to regulatory changes.

1. **Reference:** Contract E194-1485, both parties hereby agree to revise the "eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS" General Term and Condition as follows:

The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet eProcurement solution by completing the free eVA Vendor Registration. All bidders or offerors must register in eVA and pay the Vendor Transaction Fees specified below; failure to register will result in the bid/proposal

being rejected.

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

a. For orders issued July 1, 2014 and after, the Vendor Transaction Fee is:

- i. DSBSD-certified Small Businesses: 1%, capped at \$500 per order.
- ii. Businesses that are not DSBSD-certified Small Businesses: 1%, capped at \$1,500 per order.

b. For orders issued prior to July 1, 2014 the vendor transaction fees can be found at www.eVA.virginia.gov.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

2. **Reference:** Contract E194-1485, both parties hereby agree to revise the “DEBARMENT STATUS” General Term and Condition as follows:

By participating in this procurement, the vendor certifies that they are not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by this solicitation, Vendor further certifies that they are not debarred from filling any order or accepting any resulting order, or that they are an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.

3. **Reference:** Contract E194-1485, both parties hereby agree to revise the “PRICE ESCALATION/DE-ESCALATION” Special Term and Condition as follows to allow discount percentage increases:

The Commonwealth recognizes that various manufacturers’ published price lists are subject to change at different times during the year. The first price adjustments against the manufacturer’s published price list after contract award will be allowed at the time the Contractor normally publishes its annual price adjustments; thereafter, annual price adjustments may be allowed no earlier than 365 days from the date of the last approved price adjustment. The Consumer Price, Producer Price or other appropriate indices will be used as a guide when reviewing price adjustments.

The Contractor shall submit price adjustment requests to the Contract Manager and allow no less than 60 days for review and approval. Approved price adjustments will be effective at the beginning of the month following the end of the full 60-day period or approval date at the discretion of the Contract Manager. The Contractor must submit documentation with the price adjustment request indicating the amount of the adjustment, proposed effective date, any general changes in the price of materials, and verification that the requested price adjustment is general in scope and not applicable just to the Commonwealth of Virginia.

Price decreases are subject to implementation at any time and shall be immediately conveyed to the Contract Manager. Should the price decrease between receipt of the order and shipment of the order, the Contractor shall invoice at the new lowest price. The percentage discounts shall not decrease throughout the term of the contract and renewal periods; however, the Commonwealth reserves the right to accept higher percentage discounts for equipment.

The Contract Manager will issue a contract modification to the Contractor of the approved price and percentage discount adjustments and the effective date and post a notice in eVA.

4. **Reference:** Contract E194-1485, both parties hereby agree to add the “AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH” General Term and Condition as follows:

A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

- 5. Reference:** Contract E194-1485, both parties hereby agree to add the “ETHICS IN PUBLIC CONTRACTING” General Term and Condition as follows:

The Contractor certifies that the Contract has been entered into without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

The foregoing is the complete and final expression of the parties’ agreement to modify Contract E194-1485 and cannot be modified, except by a writing signed by the duly authorized representatives of both parties. All other terms and conditions remain unchanged.

Modification #9: Effective Date: November 5, 2015

This MODIFICATION #9 is an Agreement between the Commonwealth of Virginia, hereinafter referred to as "State" or "Commonwealth," and The Toro Company, hereinafter referred to as "Contractor" or “Toro”, relating to the modification of Contract E194-1485 effective November 4, 2012, as amended, hereinafter referred to as “Contract” or “Agreement. This Modification is hereby incorporated into and made an integral part of the Agreement and is effective on November 5, 2015.

- A. **Reference:** Contract E194-1485, “Renewal of Contract.”

Both parties hereby agree to renew the above-referenced Contract for an additional two (2) year period, beginning November 5, 2015 through November 4, 2017.

- B. **Reference:** Contract E194-1485, Both parties hereby agree to revise the “Transportation Charges” to read as follows:

All equipment shall be delivered FOB DESTINATION within the contiguous United States or if applicable, to the port of embarkation within the contiguous United States for NASPO ValuePoint Participating Entities outside of the contiguous United States, for all orders equal to or greater than the minimum order of \$500 when shipped to a single or multiple destinations. Orders for less than the minimum order will be shipped prepaid with transportation charges added to the invoice as a separate line item. Transportation charges levied by the Contractor for orders equal to or greater than the minimum order when shipped to a single or multiple destinations may be cause for removal of the Contractor from the Contract. The Contractor shall not add freight charges for partial shipments or back orders to an invoice where the original total price of an order exceeded the minimum order of \$500.

- C. **Reference:** Contract E194-1485, Both parties hereby agree to add “Summary Sales Data Reporting” to read as follows:

The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO

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

- D. **Reference:** Contract E194-1485, Both parties hereby agree to add “NASPO ValuePoint Administrative Fee” to read as follows:

The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-half of one percent (0.5% or 0.005) 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.

The foregoing is the complete and final expression of the parties’ agreement to modify Contract E194-1485 and cannot be modified, except by a writing signed by the duly authorized representatives of both parties. All other terms and conditions remain unchanged.

4. SCOPE OF WORK

The purpose of this Contract is for the purchase of grounds maintenance equipment per Attachment A: Specifications at the prices indicated in Attachment B: Price Schedule. The goods and services are available on an as-needed basis under the same cost and terms and conditions agreed to in the Master Ordering Term Agreement to all Contract Participants

5. COMMODITY INFORMATION & PRICING

CONTRACT USE INSTRUCTIONS

I. PRICING INSTRUCTIONS:

Step 1. Attachment A: Approved Equipment Specifications by Category and Item Number

Search the specifications in Attachment A to determine the basic unit of the equipment needed. Identify the Category and Item Number of the desired specifications.

Step 2. Attachment B: Price Schedule:

- a. Using the Category and Item Number identified in Attachment A, proceed to Attachment B for Model Numbers, Manufacturer's Published Price, Contract Pricing, and Delivery information. Contract Pricing is derived from the Manufacturers Published Price less a firm-fixed percentage of discount. Only the manufacturer's equipment model numbers listed on Attachment B are covered under this Contract. If the equipment model number is not listed, it is not covered under this Contract and the percentage of discount and terms and conditions will not apply.
- b. Contact the Contractor or Distributor to:
 - Determine if the equipment needed is covered under this Contract;
 - Configure the basic unit with additional attachments/implements to meet the Authorized User's needs; and
 - Obtain a written quote that must include the Contract number, the Manufacturer's Published Price less the percentage of discount, the effective date of the Published Price List and delivery date.

Commonwealth of Virginia Authorized Users must contact the Distributor that is identified in Attachment C for their area and may be referred to a local Territory Representative for price quotes, delivery and trade-in information.

NASPO ValuePoint Participating States must contact Toro for a list of authorized Distributors.

Any Distributor that is not listed on Attachment C or provided by the Contractor cannot offer a quote to Authorized Users using the percentage of discount and terms and conditions under this Contract.

II. ORDERING, DELIVERY AND INVOICING

Commonwealth of Virginia Authorized Users must refer to ordering information on the next page.

Step 3. Ordering: After receipt of a written quote from the Distributor or Territory Representative, the Authorized User **must process a Purchase Order directly to the Distributor (not the Contractor)** and attach the quote. The Distributor will notify the Territory Representative of the Purchase Order.

Delivery: The Distributor will assign a Territory Representative to deliver, set-up and service the equipment.

Invoicing: The Distributor will invoice the Authorized User's agency for the equipment ordered.

**COMMONWEALTH OF VIRGINIA STATE AGENCIES, OTHER PUBLIC BODIES AND ENTITIES
eVA ORDERING, DELIVERY AND INVOICING**

Commonwealth of Virginia Authorized Users shall create a non-catalog order in eVA **directly to the Distributor (i.e., TESCO or STI and not to the Contractor)**. The order shall include at a minimum the quote number, Distributor name and address, Contract item number, full item description, Contract price and the delivery date.

The exact Contract Number **must** be inserted in the Contract number field for each line item of the eVA order and the Distributor quote should be electronically attached. Purchase orders not bearing the correct Contract number in the appropriate location will be non-compliant and may not be considered a purchase against this Contract. Any Purchase Order received from an Authorized User that does not include the above minimum information must be rejected by the Contractor. The Contractor must notify the Authorized User to modify the Purchase Order in eVA to include the minimum information required. Orders shall not be filled by the Contractor until the Purchase Order has been revised to include the minimum information required.

Sample eVA Screen

The screenshot shows the eVA system interface for creating a non-catalog item. The header includes the eVA logo and navigation tabs: My Home, My Orders/My UPs, My Approvals, and My Quick Quote Req's. Below the header is a menu bar with options: Create, Search, Manage, Recent, and Preferences. The main content area displays the item ID PR606256: asdfadf and a status bar showing Items:0 Total:0. A message states: "If you cannot locate the item you want in the catalog, request a non-catalog item using the fields below. Non-catalog items may take longer to process because your purchase order will be processed as a non-catalog item." The form fields are as follows:

- Full Description: * Description with Quote Number Referenced (Annotated with "Description with Quote Number Referenced")
- Commodity Code: See NIGP Code (Annotated with "NIGP Code")
- Supplier: (No Preference)
- Contact: (no value)
- Reg. Type:
- Supplier Part Number:
- Contract List: (Pick from List)
- Contract #: Contract Number (Annotated with "Contract Number")
- Supplier Auxiliary Part ID:
- Quantity: 1
- Unit of Measure: each
- Price: *\$0.00000 USD
- Amount: \$0.00000 USD

GENERAL TERMS AND CONDITIONS

The following are the general terms and conditions for the Commonwealth of Virginia. Go to www.naspovaluepoint.org for the NASPO ValuePoint terms and conditions.

- A. **VENDORS MANUAL:** This contract is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at www.eva.virginia.gov under the “I Sell to Virginia” tab.
- B. **APPLICABLE LAWS AND COURTS:** This contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The agency and the Contractor are encouraged to resolve any issues in controversy arising from the award of the contract or any contractual dispute using Alternative Dispute Resolution (ADR) procedures (*Code of Virginia*, § 2.2-4366). ADR procedures are described in Chapter 9 of the *Vendors Manual*. The Contractor shall comply with all applicable federal, state and local laws, rules, and regulations.
- C. **ANTI-DISCRIMINATION:** The Contractor certifies to the Commonwealth that it will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and § 2.2-4311 of the Virginia Public Procurement Act (VPPA). Faith-based organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (*Code of Virginia*, § 2.2-4343.1E).

In every contract over \$10,000 the following provisions 1 and 2 apply:

- 1. During the performance of this contract, the Contractor agrees as follows:
 - a. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
 - b. The Contractor, in all proposals or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
 - c. Notices, advertisements, and proposals placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.
 - 2. The Contractor will include the provisions of 1 above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.
- D. **ETHICS IN PUBLIC CONTRACTING:** The Contractor certifies that the Contract has been entered into without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

- E. IMMIGRATION REFORM AND CONTROL ACT OF 1986: Contractor certifies that it does not and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986.
- F. DEBARMENT STATUS: Contractor certifies that it is not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by the original solicitation or any resulting contract. Contractor further certifies that it is not debarred from filling any order or accepting any resulting order, or that it is an agent of any person or entity that is currently debarred by the Commonwealth of Virginia.
- G. ANTITRUST: By entering into a contract, Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said contract.
- H. Deleted.
- I. Deleted.
- J. PAYMENT:
1. To Prime Contractor:
 - a. Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/contract. All invoices shall show the state contract number and/or purchase order number; social security number (for individual contractors) or the Federal Employer Identification Number (for proprietorships, partnerships, and corporations).
 - b. Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days.
 - c. All goods or services provided under this contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the contract price, regardless of which public agency is being billed.
 - d. The following shall be deemed the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
 - e. Unreasonable Charges. Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges, which it considers unreasonable, and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty-days (30) of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges which are not in dispute (*Code of Virginia*, § 2.2-4363).
 2. To Subcontractors:
 - a. A Contractor awarded a contract under this proposal is hereby obligated:
 - i. To pay the subcontractor(s) within seven (7) days of the contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the

subcontractor(s) under the contract; or
ii. To notify the agency and the subcontractor(s), in writing, of the contractor's intention to withhold payment and the reason.

- b. The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (2) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier contractor performing under the primary contract. A contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.
- c. Each prime contractor who wins an award in which provision of a SWAM procurement plan is a condition to the award, shall deliver to the contracting agency or institution, on or before request for final payment, evidence and certification of compliance (subject only to insubstantial shortfalls and to shortfalls arising from subcontractor default) with the SWAM procurement plan. Final payment under the contract in question may be withheld until such certification is delivered and, if necessary, confirmed by the agency or institution, or other appropriate penalties may be assessed in lieu of withholding such payment.
- d. The Commonwealth of Virginia encourages contractors and subcontractors to accept electronic and credit card payments.

K. Deleted.

L. **QUALIFICATIONS OF CONTRACTOR:** The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the Contractor to perform the services/furnish the goods. The Commonwealth reserves the right to inspect, without advance notice, Contractor's physical facilities at any time during the initial term and any subsequent renewal periods, to satisfy questions regarding the Contractor's capabilities.

M. **TESTING AND INSPECTION:** The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

N. **ASSIGNMENT OF CONTRACT:** A contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

O. **CHANGES TO THE CONTRACT:** Changes can be made to the contract in any of the following ways:

The parties may agree in writing to modify the terms, conditions, or scope of the contract. Any additional goods or services to be provided shall be of a sort that is ancillary to the contract goods or services, or within the same broad product or service categories as were included in the contract award. Any increase or decrease in the price of the contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the contract.

The Purchasing Agency may order changes within the general scope of the contract at any time by written notice to the contractor. Changes within the scope of the contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The contractor shall comply with the notice upon receipt, unless the contractor intends to claim an adjustment to compensation, schedule, or other contractual impact that would be caused by complying with such notice, in which case the contractor shall, in writing, promptly notify the Purchasing Agency of the adjustment to be sought, and before proceeding to comply with the notice, shall await the Purchasing Agency's written decision affirming, modifying, or revoking the prior written notice. If the Purchasing Agency decides to issue a notice that requires an adjustment to compensation, the contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Agency a credit for any savings. Said

compensation shall be determined by one of the following methods:

By mutual agreement between the parties in writing; or

By agreeing upon a unit price or using a unit price set forth in the contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Purchasing Agency's right to audit the Contractor's records and/or to determine the correct number of units independently; or

By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Purchasing Agency with all vouchers and records of expenses incurred and savings realized. The Purchasing Agency shall have the right to audit the records of the Contractor, as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Agency within thirty (30) days from the date of receipt of the written order from the Purchasing Agency. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the contract price or time for performance shall be resolved in accordance with the procedures for resolving disputes provided by the Disputes Clause of this contract or, if there is none, in accordance with the dispute provisions of the Commonwealth of Virginia Vendors Manual. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this contract shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Agency or with the performance of the contract generally.

- P. **DEFAULT:** In case of failure to deliver goods or services in accordance with the contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies, which the Commonwealth may have.
- Q. **TAXES:** Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request. Deliveries against this contract shall usually be free of federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.
- R. Deleted.
- S. **TRANSPORTATION AND PACKAGING:** Contractor certifies and warrants that the price offered for FOB destination includes only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.
- T. **INSURANCE:** Contractor certifies it will have the following insurance coverages. For construction contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the Code of Virginia. The Contractor further certifies that the Contractor and any subcontractors will maintain this insurance coverage during the entire term of the contract and that all insurance coverage will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:

1. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the Code of Virginia during the course of the contract shall be in noncompliance with the contract.
2. Employer's Liability - \$100,000.
3. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial

General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.

4. Automobile Liability - \$1,000,000 combined single limit.

U. Deleted.

V. DRUG-FREE WORKPLACE: During the performance of this contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all proposals or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

W. NONDISCRIMINATION OF CONTRACTORS: A Contractor shall not be discriminated against in the solicitation or award of this contract because of race, religion, color, sex, national origin, age, disability, faith based organizational status, any other basis prohibited by state law relating to discrimination in employment or because the it employs ex-offenders unless the state agency, department or institution has made a written determination that employing ex-offenders on the specific contract is not in its best interest. If the award of this contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

X. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION, CONTRACTS, AND ORDERS: The eVA Internet electronic procurement solution, website portal www.eVA.virginia.gov, streamlines and automates government purchasing activities in the Commonwealth. The eVA portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet eprocurement solution by completing the free eVA Vendor Registration. All Contractors must maintain its eVA registration and pay the Vendor Transaction Fees specified below; failure to be registered may result in the Commonwealth terminating the contract.

Vendor transaction fees are determined by the date the original purchase order is issued and the current fees are as follows:

- a. For orders issued July 1, 2014 and after, the Vendor Transaction Fee is:
 - i. DMBE-certified Small Businesses: 1%, capped at \$500 per order.
 - ii. Businesses that are not DMBE-certified Small Businesses: 1%, capped at \$1,500 per order.
- b. For orders issued prior to July 1, 2014 the vendor transaction fees can be found at www.eVA.virginia.gov.

The specified vendor transaction fee will be invoiced, by the Commonwealth of Virginia Department of General Services, approximately 30 days after the corresponding purchase order is issued and payable 30 days after the invoice date. Any adjustments (increases/decreases) will be handled through purchase order changes.

- Y. AVAILABILITY OF FUNDS: It is understood and agreed between the parties herein that the agency shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this agreement.
- Z. Deleted.
- AA. Deleted.
- BB. AUTHORIZATION TO CONDUCT BUSINESS IN THE COMMONWEALTH: A Contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Code of Virginia or as otherwise required by law. Any business entity described above that enters into a contract with a public body pursuant to the Virginia Public Procurement Act shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract. A public body may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

7. SPECIAL TERMS AND CONDITIONS

The following are the special terms and conditions for the Commonwealth of Virginia. Go to www.naspovaluepoint.org for the NASPO ValuePoint terms and conditions.

- A. **MANDATORY ACCEPTANCE OF SMALL PURCHASE CHARGE CARD:** The Contractor must accept payment by the Commonwealth of Virginia's small purchase charge card that is in effect at the time of order unless waived by DPS within 90 days of contract award. Payment for orders issued against the Contract must allow the Purchase Order Number to be passed at the time of charge so that the Purchase Order Number is received by the card platform and passed to the Card provider. Contractor's card account must be at Level 2 which is mandatory or Level 3 which is optional.
- B. **EQUIPMENT REPLACEMENTS, SUBSTITUTION & OBSOLETE ITEMS:** Substitution of a manufacturer product, brand, or equipment after award of this Contract is expressly prohibited unless approved in writing by the DPS Contract Officer. The agency at its discretion may require the Contractor to provide a substitute item of equivalent or better quality, subject to the approval by the Contract Officer at the same contracted percentage of discount(s), if the product for which the contract was awarded becomes unavailable or obsolete to the Dealer/Distributor. Upon notification by the Manufacturer or the Distributor stating that a product is being discontinued, the Contractor must contact the Contract Officer in writing. Any obsolete or discontinued items must have written approval from the Contract Officer prior to making new/replacement product available to the Authorized Users. Upon written approval from the Contract Officer, the Contractor may offer the new product as a direct or comparable replacement to all agencies and Authorized Users. A Contract Modification will incorporate the new Published Price List that contains the new equipment at the time of renewal annually. The Contractor must offer the same percentage of discount based on the Contract award for all replacements for obsolete/discontinued items or equipment. Approval is contingent upon compliance with the following conditions:
1. The Contractor requests approval in writing to the Contract Officer.
 2. The replacement equipment must offer the same or greater specifications than the product being replaced. The replacement equipment shall meet or exceed all performance level minimum specifications including accessories.
 3. The replacement equipment must be offered at the same percentage of discounts for the term of the Contract.
 4. The equipment offered in response to this solicitation should be the "newest product model" of the equipment available from the Manufacturer. Ground maintenance equipment advertised as standard equipment in the current Manufacturers Published Price List shall be furnished as standard equipment. No prototype, demo products, or rebuilt product will be accepted.
- C. **EQUIPMENT/SERVICES:** Contractor must provide warranty service and aftermarket services, if requested by an agency (for equipment purchased under this Contract) through their local Distributor network by location at the established service rate(s). The service rates are not subject to the manufacturer's Contract discount(s). Service rates shall be quoted by the Contractor or Dealer and approved by the Authorized User or agency's authorized personnel prior to processing a Purchase Order. The Commonwealth of Virginia and its users, and any NASPO VALUEPOINT Participating State, must be provided "aftermarket" service for equipment purchased under this Contract. The brands offered by the Contractor must have a minimum of three (3) authorized service Dealers in each state. One of the factory authorized services Dealer should be in the area of the user's location to provide services.
- D. **CONTRACT PARTICIPATION:** Contractors that accept NASPO VALUEPOINT's Cooperative Participating Addendum Agreement should accept the NASPO VALUEPOINT Agreement in its entirety. Each state that wishes to participate in this Contract must submit their Cooperative Participating Addendum Agreement directly to the Contractor for acceptance.
1. The NASPO VALUEPOINT suggested Terms & Conditions outlines the requirements of the consortium on an as-needed basis under the same terms and conditions including the firm percentage of discounts pricing in this Contract Award of the Commonwealth of Virginia or NASPO VALUEPOINT Participating Addendums. This Contract is being awarded with the understanding and agreement that it is for the sole convenience of the NASPO VALUEPOINT Participating Entities. The NASPO VALUEPOINT Participating Entities reserve the right to obtain like goods from other sources at the NASPO VALUEPOINT Participating Entity's discretion.

2. Participating NASPO VALUEPOINT Entities:

- i. Upon the award of a Contract and the request and acceptance of a participating NASPO VALUEPOINT Entity, the Contractor shall provide each participating NASPO VALUEPOINT Entity with a list of Dealers authorized to sell the approved equipment listed herein on that Manufacturers Published Price List for that state by assigned territories, if applicable. These documents should be required only at the time a NASPO VALUEPOINT Participating State has been accepted by a Contractor and added as a Participating State under the Contract by a written Modification to this Contract by the Commonwealth' DPS Contract Officer.
- ii. Participating NASPO VALUEPOINT Entities that agree to participate in this Contract Award shall receive the Contractor's contracted firm percentages of discounts. The Dealers list received from the Contractor for that state shall include at a minimum the following information: Contract number, Contact name, Phone number, Fax number and Email address.

- E. **FINANCIAL WARRANTY:** Contractor shall ensure that the prices, discounts, incentives, and other financial terms (collectively, the "financial deal") applicable to purchases under this Contract is always at least as favorable to the purchaser as the financial deal that the Contractor or its affiliates make available to any public body in Virginia for the same good(s)/service(s) outside this Contract. Throughout the term of this Contract, if Contractor (or any affiliate) makes a better financial deal available to a public body in Virginia for any good(s)/service(s) available under this Contract, Contractor shall immediately notify DGS of the details and, at DGS's option, sign an amendment to this Contract, so that an equivalent financial deal for the affected good(s)/service(s) is also available as an option under this Contract.

Contractor may request exemption if the better financial deal was for a spot purchase, and DGS shall grant such request if DGS in good faith finds that the spot purchase involved special circumstances affecting cost that would make it unfair to apply an equivalent financial deal outside of that spot purchase. Upon DGS's request (and annually on August 1), Contractor shall submit to DGS an affidavit certifying full compliance with this Section. The Contractor (and any affiliate) shall waive any contractual or other right that inhibits any public body in Virginia from disclosing to DGS or others the financial terms made available to the public body and upon request from DGS, Contractor shall ensure that a signed confirmation of the waiver is provided to the public body and DGS. As used in this Section, an affiliate is any entity that controls, is controlled by, or is under common control with, the Contractor.

- F. **WARRANTY:** Equipment furnished under this Contract is warranted for a minimum of one year after receipt of Equipment or by the most favorable commercial warranty offered by the Contractor given to any customer for such goods or services. The Contractor's equipment sold under this Contract comes with a standard 12-month warranty. Authorized Users may purchase an extended warranty services agreement at the Dealer's standard extended warranty service rate agreed upon by the Authorized Users and Contractor's preferred dealer prior to purchase of the new equipment.
- G. **MATERIAL SAFETY DATA SHEETS:** The Contractor shall provide Material Safety Data Sheets and descriptive literature, if applicable, upon request.
- H. **SPECIAL EDUCATION OR PROMOTIONAL DISCOUNTS:** The Contractor shall extend any special educational or promotional sale prices or discounts immediately to the Commonwealth during the term of this Contract. Such notice shall also advise the duration of the specific sale or discount price.
- I. **RENEWALS:** The initial term of the Contract is three (3) years. This contract contains two (2) successive two-year renewal periods, and at a reasonable time (approximately four to six months) prior to the expiration, the decision as to whether to renew will be made by the Contract Officer.
- J. **SUMMARY SALES DATA REPORTING:** The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

- K. **NASPO VALUEPOINT ADMINISTRATIVE FEE:** The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-half of one percent (0.5% or 0.005) 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.
- L. **PRICE ESCALATION/DE-ESCALATION:** The Commonwealth recognizes that various manufacturers' published price lists are subject to change at different times during the year. The first price adjustments against the manufacturer's published price list after contract award will be allowed at the time the Contractor normally publishes its annual price adjustments; thereafter, annual price adjustments may be allowed no earlier than 365 days from the date of the last approved price adjustment. The Consumer Price, Producer Price or other appropriate indices will be used as a guide when reviewing price adjustments.

The Contractor shall submit price adjustment requests to the Contract Manager and allow no less than 60 days for review and approval. Approved price adjustments will be effective at the beginning of the month following the end of the full 60-day period or approval date at the discretion of the Contract Manager. The Contractor must submit documentation with the price adjustment request indicating the amount of the adjustment, proposed effective date, any general changes in the price of materials, and verification that the requested price adjustment is general in scope and not applicable just to the Commonwealth of Virginia.

Price decreases are subject to implementation at any time and shall be immediately conveyed to the Contract Manager. Should the price decrease between receipt of the order and shipment of the order, the Contractor shall invoice at the new lowest price. The percentage discounts shall not decrease throughout the term of the contract and renewal periods; however, the Commonwealth reserves the right to accept higher percentage discounts for equipment.

The Contract Manager will issue a contract modification to the Contractor of the approved price and percentage discount adjustments and the effective date and post a notice in eVA.