



ATTACHMENT 02

NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS

- I. Definitions.** Capitalized terms shall have the following definitions. Any capitalized term contained but not defined herein shall have the meaning ascribed to it in the Solicitation.
- 1.1 Acceptance** means acceptance of goods and services as set forth in Section IX of this Master Agreement.
 - 1.2 Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
 - 1.3 “Deliverables”** shall refer to a good, product, service, solution, result, labor, or other effort being sought through this Master Agreement.
 - 1.4 “Development”** shall refer to the act of creating software, applications, or other related technology products.
 - 1.5 Embedded Software** means one or more software applications which permanently reside on a computing device.
 - 1.6 Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
 - 1.7 “IT”** shall refer to Information Technology.
 - 1.8 Lead State** means the State centrally administering any resulting Master Agreement(s) who is a party to this Master Agreement.
 - 1.9 Master Agreement** means the underlying agreement executed by and between the Lead State, acting in cooperation with NASPO ValuePoint, and the Contractor, as now or hereafter amended.
 - 1.10 NASPO** means the National Association of State Procurement Officials.
 - 1.11 NASPO ValuePoint** is a division of the National Association of State Procurement Officials (“NASPO”), a 501(c)(3) corporation. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (*i.e.*, colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract

administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.

- 1.12 OGS** means the New York State Office of General Services.
- 1.13 Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
- 1.14 Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).
- 1.15 Participating Entity or Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.
- 1.16 Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.
- 1.17 Product or Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.
- 1.18 Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.
- 1.19 Solicitation** means the Request for Proposals, Solicitation Number 23420, issued by the State of New York Office of General Services.

II. Appendices and Attachments

APPENDICES

Appendix A – Standard Clauses for New York State Contracts (Feb. 2023)

Appendix C – Federal Funding Agency Mandatory Terms and Conditions

Appendix C-AI – Standard Terms for AI Purchases for NYS Office of Information Technology Services

ATTACHMENTS

- Attachment 1 – Scope of Work
- Attachment 4 – Bidder Information Questionnaire
- Attachment 6 – Cost Proposal
- Attachment 9 – Insurance Requirements
- Attachment 12 – Report of Contract Usage
- Attachment 14 – Contractor and Reseller/Distributor Information Sheet
- Attachment 15 – NYS Participating Addendum

III. Term of Master Agreement

- 3.1 Initial Term.** The initial term of this Master Agreement is for five (5) years. The contract term shall commence after all necessary approvals and shall become effective on upon the date of OSC approval of the final, executed documents. The term of this Master Agreement may be extended beyond the initial term for an additional five years, on mutual agreement with the Contractor, in increments deemed to be in the best interests of the Lead State. Contractor may decline a contract extension offered under this section. All contracts resulting from the Solicitation shall have a coterminous end date.
- 3.2 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

IV. Order of Precedence

- 4.1 Order for Lead State.** The Master Agreement and any Order placed under this Master Agreement will consist of the following documents for the Lead State, as applicable:
- 4.1.1** Appendix A – Standard Clauses for New York State Contracts (June 2023)
 - 4.1.2** Appendix C – Federal Funding Agency Mandatory Terms and Conditions (October 2023)
 - 4.1.3** Appendix C-AI Standard Terms for AI Purchases for NYS Office of Information Technology Services
 - 4.1.4** Attachment 15 – New York State Participating Addendum;
 - 4.1.5** Attachment 9 – Insurance Requirements
 - 4.1.6** This NASPO ValuePoint Master Agreement, including all other attachments hereto;

requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g., purchase order or contract) used by the Purchasing Entity to place the Order.

- 5.3 Scope and Scope of Work Updates.** A detailed description of the scope of the Master Agreement is included in Attachment 01 – Scope of Work. At the discretion of the Lead State, and subject to agreement by the parties, the scope of this Master Agreement may be amended to include or accommodate new or updated models, versions, or technologies related to the objectives and deliverables set forth in the Solicitation. Any updates to the Scope of Work will be in the form of an amendment to the Master Agreement and is subject to approval of the NYS Office of the Comptroller.
- 5.4 Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Participating Entities incur no financial obligations on behalf of other Purchasing Entities.
- 5.5 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to pa@naspovaluepoint.org to support documentation of participation and posting in appropriate databases.

5.6 Participating Entities.

- 5.6.1** If not proscribed by law or by the chief procurement official of the state in which the entity is located, an entity may be eligible to execute a Participating Addendum directly with Contractor. Such entities may include:
- 5.6.1.1** Political subdivisions, public agencies, and service districts;
 - 5.6.1.2** Public and private educational institutions, including K-12 public, charter, and private schools; institutions of higher education; and trade schools;

promotional literature, regardless of the medium, referring to an awarded Master Agreement must be reviewed and approved by the Commissioner prior to issuance. In addition, Contractor shall not use, for any purpose, the New York State of Opportunity registered trademark or the New York State coat of arms without prior written approval from the Lead State.

- 5.10 No Representations.** The Contractor shall not make any representations of NASPO ValuePoint, the Lead State, any Participating Entity, or any Purchasing Entity's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent.

VI. NASPO ValuePoint Provisions

- 6.1 Applicability.** NASPO ValuePoint is not a party to the Master Agreement. The terms set forth in Section V are for the benefit of NASPO ValuePoint as a third-party beneficiary of this Master Agreement.

6.2 Administrative Fees

6.2.1 NASPO ValuePoint Fee. Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of two-fifths of one percent (0.4% or 0.004) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee must be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping) invoiced during the preceding quarter, excluding sales to Purchasing Entities located within the state of New York. The NASPO ValuePoint Administrative Fee is not negotiable and shall be included as part of all pricing incorporate now and hereafter into this Master Agreement.

6.2.2 Compliance Incentive. For each quarter that Contractor is fully compliant with the requirements described in Sections 5.3.2 and 5.3.3, the NASPO ValuePoint Administrative Fee owed by Contractor under Section 5.2.1 shall be reduced to one-third of one percent (0.33% or 0.0033) of Contractor's invoiced sales for that quarter.

6.2.2.1 Determination of Compliance. NASPO shall have the sole discretion to determine whether Contractor's submissions are compliant with the reporting requirements of Sections 5.3.2 and 5.3.3. Within thirty (30) days of the applicable reporting deadline, NASPO shall notify Contractor of any submission deemed

noncompliant. Absent such notice, NASPO shall apply a credit to the NASPO ValuePoint Administrative Fee as described in Section 5.2.2.2. If Contractor's good-faith submission is deemed noncompliant, Contractor may still qualify for the incentive if Contractor engages with NASPO to bring its submission within ten (10) business days of notification of non-compliance. NASPO reserves the right to modify any determination of compliance based on subsequently obtained information.

6.2.2.2 Application of Incentive. The incentive identified in 5.2.2 will be applied as a credit towards the NASPO ValuePoint Administrative Fee due to NASPO in the quarter immediately following the determination of compliance. Any incentive credit due to Contractor in excess of a payment due shall be applied towards the NASPO ValuePoint Administrative Fee due to NASPO in the following quarter. Any incentive credit due to Contractor after expiration of this Master Agreement, where Contractor holds no Master Agreement resulting from a re-solicitation of this Portfolio, shall be remitted by NASPO to Contractor as a one-time payment.

6.2.3 Interest on Late Payment. If the Contractor does not pay the NASPO ValuePoint Administrative Fee within sixty (60) days following the end of each calendar quarter as required by Section 5.2.1, then Contractor shall accrue interest on the unpaid amounts at the rate of 1% per month.

6.2.4 Administrative Fee Updates. NASPO ValuePoint reserves the right to update the NASPO ValuePoint Administrative Fee. If the NASPO ValuePoint Administrative Fee is updated, any renewals exercised shall be contingent upon Contractor's acceptance of the updated NASPO ValuePoint Administrative Fee.

6.2.5 New York State Fee. Contractor shall pay to the Lead State a New York Administrative Fee of three-quarters of one percent (0.75% or 0.0075) and is based on all sales of products and services to any Purchasing Entity located within the state of New York (less any charges for taxes or shipping). The payment method, payment schedule, and reporting requirements for such fees shall be incorporated into New York's Participating Addendum. The New York Administrative Fee is not negotiable.

6.2.6 Participating Entity Fees. A Participating Entity may also require payment of an additional administrative fee by Contractors to the Participating Entity based on sales to Purchasing Entities within the Participating Entity's jurisdiction. The rate or amount, payment method, payment schedule, and reporting requirements for such fees shall be incorporated into the Participating Entity's Participating Addendum.

6.2.6.1 Unless otherwise negotiated by the Participating Entity, Contractor may adjust the Master Agreement pricing incorporated into the Participating Addendum by an amount not to exceed the Participating Entity's fee. Any such adjustment shall be clearly identified in the Participating Addendum and will have no effect on the NASPO ValuePoint administrative fee, pricing in the Master Agreement, or pricing offered to Purchasing Entities outside the Participating Entity's jurisdiction. This Subsection 5.2.6.1. does not apply to New York's Participating Addendum.

6.3 NASPO ValuePoint Summary and Detailed Usage Reports

6.3.1 Sales Data Reporting. In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). By placing an Order under this Master Agreement, a Purchasing Entity agrees to have their data (i) included in reports submitted by Contractor to NASPO ValuePoint and (ii) used by NASPO ValuePoint as set forth in this Master Agreement without limitation, unless otherwise requested in writing by the Purchasing Entity and agreed to in writing by NASPO. Timely and complete reporting of Sales Data by Contractor is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and

otherwise use reports, data, and information provided under this section.

- 6.3.2 Summary Sales Data.** “Summary Sales Data” is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.
- 6.3.3 Detailed Sales Data.** “Detailed Sales Data” is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.
- 6.3.4 Sales Data Crosswalks.** Upon request by NASPO ValuePoint, Contractor shall provide to NASPO ValuePoint tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data (“Crosswalks”). Customer Crosswalks must include a list of existing and potential Purchasing Entities and identify for each the appropriate customer type as defined by NASPO ValuePoint. Product Crosswalks must include Contractor’s part number or SKU for each Product in Bidder’s catalog and identify for each the appropriate Master Agreement category (and subcategory, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. Contractor shall work in good faith with NASPO ValuePoint to keep Crosswalks updated as Contractor’s customer lists and product catalog change.

6.3.5 Executive Summary. Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

6.3.6 Obligation to Act in Good Faith. The parties acknowledge that this Master Agreement and its terms and pricing have been negotiated for the benefit of the parties, NASPO ValuePoint, Participating Entities, and Purchasing Entities. Apart from a Participating Addendum or Order, Contractor shall not intentionally induce a potential Participating Entity or Purchasing Entity to enter into a separate agreement, the pricing and terms of which are derived from this Master Agreement, for the purpose of avoiding compliance with Contractor's obligations under Section V. Nothing in this Section 5.3.6 shall prohibit Contractor from contracting with an entity with substantially similar pricing and terms if such pricing and terms are independently negotiated with the entity or are consistent with pricing and terms ordinarily offered by Contractor to public sector customers.

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

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

6.4.2 Onboarding Plan. Upon request by NASPO ValuePoint, Contractor shall, as Participating Addendums are executed, provide plans to launch the program for the Participating Entity. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the scope and terms of the Master Agreement as available to the Participating Entity and eligible Purchasing Entities.

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

6.5 NASPO ValuePoint eMarketPlace

- 6.5.1** The NASPO ValuePoint cooperative provides an eMarketPlace for public entities to access a central online platform to view and/or purchase the goods, services, and solutions available from NASPO ValuePoint's cooperative Master Agreements. This eMarketPlace is provided by NASPO at no additional cost to the Contractor or public entities. Its purpose is to facilitate the connection of public entities with Contractors who meet the requisite needs for a good, service, or solution by that entity through a NASPO ValuePoint Master Agreement.
- 6.5.2** Contractor shall cooperate in good faith with NASPO, and any third party acting as an agent on behalf of NASPO, to integrate Contractor's industry presence by either an electronic hosted catalog, punchout site, or providing eQuotes through the NASPO eMarketPlace, per the Implementation Timeline as further described below.
- 6.5.3** Regardless of how Contractor's presence is reflected in the eMarketPlace (*i.e.*, hosted catalog, punchout site, or eQuote), Contractor's listed offerings must be strictly limited to Contractor's awarded contract offerings through the NASPO award. Products and/or services not authorized through the resulting NASPO

cooperative contract should not be viewable by NASPO ValuePoint eMarketPlace users. Furthermore, products and/or services not authorized through a Participating Addendum should not be viewable by NASPO ValuePoint eMarketPlace users utilizing that Participating Addendum. The accuracy of Contractor's offerings through the eMarketPlace must be maintained by Contractor throughout the duration of the Master Agreement.

- 6.5.4** Contractor agrees that NASPO controls which Master Agreements appear in the eMarketPlace and that NASPO may elect at any time to remove any of Contractor's offerings from the eMarketPlace.
- 6.5.5** Contractor is solely responsible for the accuracy, quality, and legality of Contractor's Content on the eMarketPlace. "Content" means all information that is generated, submitted, or maintained by Contractor or otherwise made available by Contractor on the eMarketPlace, including Contractor catalogs. Contractor's Content shall comply with and accurately reflect the terms and pricing of this Master Agreement.
- 6.5.6** Contractor's use of the eMarketPlace shall comply with the eMarketPlace's Terms of Use.
- 6.5.7** Contractor is solely responsible for the security and accuracy of transactions facilitated through the eMarketPlace, including the assessment, collection, and remittance of any sales tax.
- 6.5.8** Lead State reserves the right to approve all pricing, catalogs, and information on the eMarketPlace. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices required by the Master Agreement.
- 6.5.9** NASPO Participating Entities may have their own procurement system, separate from the NASPO eMarketPlace, that enables the use of certain NASPO Master Agreements. In the event one of these entities elects to use this NASPO ValuePoint Master Agreement (available through the eMarketPlace) but publish to their own eMarketPlace, Contractor agrees to work in good faith with the entity and NASPO to implement the catalog.
- 6.5.10** In the event a Participating Entity has entity-specific catalog requirements set forth in its Participating Addendum (e.g., entity-specific pricing, restrictions in the scope of offerings, etc.), Contractor shall ensure its eMarketPlace Content for that

Participating Entity accurately reflects and is compliant with these requirements.

6.5.11 Implementation Timeline: Following the execution of Contractor's Master Agreement, NASPO will provide a written request to Contractor to begin the onboarding process into the eMarketPlace. Contractor shall have fifteen (15) days from receipt of written request to work with NASPO to set up an enablement schedule, at which time the technical documentation for onboarding shall be provided to Contractor. The schedule will include future calls and milestone dates related to test and go live dates.

6.5.11.1 Contractor's NASPO eMarketPlace account with eQuoting functionality shall minimally be established within thirty (30) days following the written request.

6.5.11.2 Contractor shall deliver either a (1) hosted catalog or (2) punchout site, pursuant to the mutually agreed upon enablement schedule.

6.5.11.3 NASPO will work with Contractor to decide which structures between hosted catalog, punchout site, and/or eQuoting as further described below will be provided by Contractor.

6.5.11.3.1 Hosted Catalog. By providing a hosted catalog, Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to NASPO, such as a tab delimited text file. Contractor is solely responsible for ensuring the most up-to-date versions of its product/service offerings approved by the Lead State under this Master Agreement are reflected in the eMarketPlace.

6.5.11.3.2 Punchout Site. By providing a punchout site, Contractor is providing its own online catalog, which must be capable of being integrated with the eMarketPlace as a Standard punchout via Commerce eXtensible Markup Language (cXML). Contractor shall validate that its online catalog is up-to-date. The site must also return detailed UNSPSC codes for each line item.

6.5.11.3.3 eQuoting. NASPO will work with Contractor to set up participation and use to provide eQuotes

through the NASPO eMarketPlace. This requirement would be in addition to any requirement to provide a hosted catalog or punchout site.

6.5.12 Hosted catalogs and punchout sites will provide all of the eMarketPlace standard data elements/information including, but not limited to, the following:

- 6.5.12.1** The most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with this Master Agreement;
- 6.5.12.2** A Lead State contract identification number for this Master Agreement;
- 6.5.12.3** Detailed product line item descriptions;
- 6.5.12.4** Pictures illustrating products, services, or solutions where practicable; and
- 6.5.12.5** Any additional NASPO, Lead State, or Participating Addendum requirements.

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

6.7 Canadian Participation. Subject to the approval of Contractor, any Canadian provincial government or provincially funded entity in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec, or Saskatchewan, and territorial government or territorial government funded entity in the Northwest Territories, Nunavut, or Yukon, including municipalities, universities, community colleges, school boards, health authorities,

housing authorities, agencies, boards, commissions, and crown corporations, may be eligible to use Contractor's Master Agreement.

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

VII. Pricing, Payment & Leasing

- 7.1 Pricing.** The prices contained in this Master Agreement or offered under this Master Agreement are shown on Attachment 06, *Cost Proposal* and represent the not-to-exceed price to any Purchasing Entity.

7.1.1 Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead State.

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

- 7.2 Price Updates.** Contractor may update its pricelist as follows:

7.2.1 Following the first twenty-four (24) months from the Master Agreement start date, the Contractor shall be permitted to update its pricelist one (1) time. There shall be no price increases permitted in the initial two years of the Master Agreement term. The Contractor may be permitted to update its pricelist one (1) time at first renewal after the initial term.

7.2.2 Contractor shall be permitted to reduce its pricing at any time during the term of the Master Agreement, without prior approval from OGS.

7.2.3 Pricelist updates are effective upon notification from OGS that the update has been approved. Revised pricelists shall be posted by OGS on the OGS Contract website within five (5) Business Days after approval, or as soon as possible thereafter.

- 7.3 CPI Price Update.** Following the first twenty-four (24) months of the Master Agreement and at the first renewal after the initial term, a Contractor may request a price adjustment (increase or decrease) based upon fluctuations in the National Consumer Price Index - All Urban Consumers (CPI-U), Not Seasonally Adjusted, U.S. City Average, All Items (Series ID: CUUR0000SA0); as published by the U.S. Department of Labor, Bureau of Labor Statistics, Washington, D.C. 20212. To view

the Series Report, enter the Series ID at <https://data.bls.gov/series-report>, click “Next,” and then “Retrieve Data.”

- 7.3.1 The Contractor is solely responsible for notifying OGS that the Contractor wishes to receive the CPI adjustment and to submit a request for the adjusted rate on the applicable Bid Opening anniversary date; and Contractor shall provide a copy of the index and other supporting documentation necessary to support the increase or decrease to the OGS Contract administrator, electronically via e-mail. The Lead State shall not be barred from making the appropriate adjustment in the case of a decrease determined in accordance with the above methodology.
- 7.3.2 Price adjustments using the CPI involve changing the base price by the percent change in the level of the CPI for the current year compared to the previous year. This is calculated by first determining the index point change between the two (2) readings, and then the percent change. The price adjustment shall be calculated as follows: Take the CPI value for the [e.g., “January” (month that is 3 months prior to bid opening month)] prior to the current Bid Opening anniversary date and subtract the CPI value for the [e.g., “January” (same month as above)] prior to the previous Bid Opening anniversary date. The difference is then divided by the previous period CPI value and this result is then multiplied by 100 to equal the percent change which is the price adjustment value. This percentage change (increase or decrease) shall be applied to the next Contract year, upon release of a Contract Addendum from OGS Procurement Services.
- 7.3.3 The following example illustrates the computation of percent change for a hypothetical April 2027 Bid Opening calculation:

CPI for current period (January 2027)	330.000
Less CPI for previous period (January 2026)	325.000
Equals index point change	5.000
Divided by previous period CPI	325.000
Equals (result of 5.00/325.000 rounded to nearest thousandth)	0.015
Result multiplied by 100	.015 x 100

Equals percent change/ price adjustment value	1.5
--	------------

- 7.4 Payment.** Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.
- 7.5 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.

VIII. Ordering

- 8.1 Order Numbers.** Master Agreement order and purchase order numbers must be clearly shown on all acknowledgments, packing slips, invoices, and on all correspondence.
- 8.2 Quotes.** Purchasing Entities may define entity-specific or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an “as needed” basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity’s rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost, and other factors considered.
- 8.3 Applicable Rules.** Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities’ rules, policies,

and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

- 8.4 Required Documentation.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- 8.5 Term of Purchase.** Orders may be placed consistent with the terms of this Master Agreement and applicable Participating Addendum during the term of the Master Agreement and Participating Addendum.
- 8.5.1** Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to one (1) year past the then-current termination date of this Master Agreement.
- 8.5.2** Notwithstanding the previous, Orders must also comply with the terms of the applicable Participating Addendum, which may further restrict the period during which Orders may be placed or delivered.
- 8.5.3** Financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- 8.5.4** Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor shall perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Master Agreement, or in any manner inconsistent with this Master Agreement's terms.
- 8.5.5** Orders for any separate indefinite quantity, task order, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.
- 8.6 Order Form Requirements.** All Orders pursuant to this Master Agreement, at a minimum, must include:
- 8.6.1** The services or supplies being delivered;
- 8.6.2** A shipping address and other delivery requirements, if any;
- 8.6.3** A billing address;
- 8.6.4** Purchasing Entity contact information;

repair any damage to the building interior (e.g., scratched walls, damage to the freight elevator, etc.) caused by Contractor or Contractor's carrier will be the responsibility of the Contractor. Immediately upon becoming aware of such damage, Contractor shall notify the Purchasing Entity placing the Order.

- 9.4 Packaging.** All products must be delivered in the manufacturer's standard package. Costs must include all packing and/or crating charges. Cases must be of durable construction, in good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton must be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

X. Inspection and Acceptance

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

- 10.2 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.

- 10.3 Inspection.** All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, and NASPO ValuePoint, at reasonable times, to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement.

10.3.1 Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use.

10.3.2 Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

- 10.4 Failure to Conform.** If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance,

the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.

10.5 Acceptance Testing. Purchasing Entity may establish a process, in keeping with industry standards, to ascertain whether the Product meets the standard of performance or specifications prior to Acceptance by the Purchasing Entity.

10.5.1 The Acceptance Testing period will be thirty (30) calendar days, unless otherwise specified, starting from the day after the Product is delivered or, if installed by Contractor, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing.

10.5.2 If the Product does not meet the standard of performance or specifications during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met.

10.5.3 Upon rejection, the Contractor will have fifteen (15) calendar days to cure. If after the cure period, the Product still has not met the standard of performance or specifications, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

10.5.4 Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section.

10.5.5 No Product will be deemed Accepted and no charges will be paid until the standard of performance or specification is met.

XI. Warranty

11.1 Applicability. Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section X will apply.

11.2 Warranty. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the Solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is

used, (c) the Product is suitable for any special purposes identified in the Solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects.

- 11.3 Breach of Warranty.** Upon breach of the warranty set forth above, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made.
- 11.4 Rights Reserved.** The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages.
- 11.5 Warranty Period Start Date.** The warranty period will begin upon Acceptance, as set forth in Section IX and shall survive the termination of this Master Agreement.

XII. Product Title

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

XIII. Indemnification

- 13.1 General Indemnification.** Unless otherwise agreed upon in a Participating Addendum or Order, the Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, personal injury, or damage to tangible property arising from any act, error, or omission of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to performance under this Master Agreement. The Lead State, Participating Entities, or Purchasing Entities may join in an action, claim, suit, or proceeding at its expense, if it determines there is an issue involving a significant public interest.
- 13.2 Intellectual Property Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO ValuePoint, the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use infringes Intellectual Property rights of another person or entity ("Intellectual Property Claim").
- 13.2.1** The Contractor's obligations under this section will not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
- 13.2.1.1** provided by the Contractor or the Contractor's subsidiaries or affiliates;
 - 13.2.1.2** specified by the Contractor to work with the Product;
 - 13.2.1.3** reasonably required to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
 - 13.2.1.4** reasonably expected to be used in combination with the Product.
- 13.2.2** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly

and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of the Intellectual Property Claim. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible.

- 13.2.3** The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of the Intellectual Property Claim and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim.
- 13.2.4** Unless otherwise set forth herein, Section 12.2 is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

XIV. Insurance

- 14.1 Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Participating Entity may negotiate alternative Insurance requirements in its Participating Addendum.
- 14.2 Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- 14.3 Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:
- 14.3.1** Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence and \$2 million general aggregate;

- 14.3.2** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- 14.4 Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.
- 14.5 Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Participating State as secondary and noncontributory.
- 14.6 Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XIII, except the endorsement is provided to the applicable Participating State or Participating Entity.
- 14.7 Furnishing of Certificates.** Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
- 14.8 Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XV. General Provisions

15.1 Records Administration and Audit

- 15.1.1** The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as will adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a

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

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

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

15.2 Confidentiality, Non-Disclosure, and Injunctive Relief

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

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

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

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

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

15.2.2.1 Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information.

15.2.2.2 Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense

cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person.

15.2.2.3 Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information.

15.2.2.4 Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits, and evidence of the performance of this Master Agreement.

15.2.2.5 Contractor's obligations shall survive termination of this Master Agreement. Contractor further agrees to take commercially reasonable steps to inform its agents, subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

15.2.3 Injunctive Relief. Contractor acknowledges that Contractor's breach of Section 14.2 would cause irreparable injury to the Purchasing Entity that cannot be adequately compensated in monetary damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

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

15.2.5 NASPO ValuePoint. The rights granted to Purchasing Entities and Contractor's obligations under this section will also extend to NASPO ValuePoint's Confidential Information, including but

not limited to Participating Addenda, Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line-item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

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

15.3 Assignment/Subcontracts

15.3.1 Contractor shall not assign, sell, transfer, convey, subcontract or sublet or otherwise dispose of rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State in accordance with Section 138 of the New York State Finance Law.

15.3.2 The Lead State reserves the right to assign any rights or duties as allowed by New York State law.

15.4 Changes in Contractor Representation or Key Personnel. The Contractor shall provide a sufficient number of customer service employees who are knowledgeable and responsive to Participating Entity needs and who can effectively service the Master Agreement. Contractor shall also provide an Emergency Contact in the event of an emergency occurring after business hours or on weekends or applicable State or Federal holidays. The Contractor must, within ten (10) calendar days, notify the Lead State in writing of any changes in the Contractor's key administrative personnel managing the Master Agreement. The Lead State reserves the right to approve or reject changes in key personnel, as identified in the Contractor's proposal. The Contractor shall propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

15.5 Contractor shall provide a minimum of one (1) dedicated Contract Administrator to support the updating and management of the Master Agreement on a timely basis. Information regarding the Customer Service,

Emergency Contact, and Contract Administrator shall be set forth in Attachment 04, *Bidder Information Questionnaire*. Contractor must notify OGS within five (5) Business Days if its Contract Administrator, Emergency Contact, or Customer Service employees change, and provide an interim contact person until the position is filled. Changes shall be submitted electronically via e-mail to the OGS Contract Management Specialist.

- 15.6 Independent Contractor.** Contractor is an independent contractor. Contractor has no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and shall not hold itself out as an agent except as expressly set forth herein or as expressly set forth in an applicable Participating Addendum or Order. In no manner are the subcontractors, agents, officers or employees of Contractor to be considered employees of the Lead State, Participating States, other Participating Entities, or Purchasing Entities, and therefore are not entitled to any of the benefits associated with employment.
- 15.7 Cancellation.** Unless otherwise set forth herein, this Master Agreement may be canceled at any time by the OGS Commissioner for convenience upon sixty (60) calendar days' or other longer period as specified by written notice, without penalty or other early termination charges due. Further, any Participating Entity may cancel its participation upon thirty (30) days' written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision will not affect the rights and obligations attending Orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.
- 15.8 Force Majeure.** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or acts of war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement upon determining such delay or default will reasonably prevent successful performance of the Master Agreement.
- 15.9 Defaults and Remedies**
- 15.9.1** The occurrence of any of the following events will be an event of default under this Master Agreement:

- 15.9.1.1** Nonperformance of contractual requirements;
 - 15.9.1.2** A material breach of any term or condition of this Master Agreement;
 - 15.9.1.3** Any certification, representation or warranty by Contractor in response to the Solicitation or in this Master Agreement that proves to be untrue or materially misleading;
 - 15.9.1.4** A member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.
 - 15.9.1.5** 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
 - 15.9.1.6** Any default specified in another section of this Master Agreement.
- 15.9.2** Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of thirty (30) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure will not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.
- 15.9.3** If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this

Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

- 15.9.3.1** Any remedy provided by law;
- 15.9.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;
- 15.9.3.3** Assessment of liquidated damages as provided in this Master Agreement;
- 15.9.3.4** Suspension of Contractor from being able to respond to future bid solicitations;
- 15.9.3.5** Suspension of Contractor's performance; and
- 15.9.3.6** Withholding of payment until the default is remedied.

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

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

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

15.12 Responsibility. The Contractor shall at all times during the Master Agreement term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Master Agreement, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Master Agreement activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Master Agreement.

The Contractor agrees that if it is found by the State that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Master Agreement.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Master Agreement may be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Master Agreement by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination. In case of such termination, Purchasing Entities may complete the contractual requirements in any manner they may deem advisable and pursue available legal or equitable remedies for breach.

15.13 Withholding. If allowed by applicable law, in any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Purchasing Entity.

15.14 No Waiver of Sovereign Immunity

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

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

15.15 Governing Law and Venue

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

15.15.2 Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in a court of competent jurisdiction in the state serving as Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement will be in a court of competent jurisdiction in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a

Participating Addendum will be in a court of competent jurisdiction in the Purchasing Entity's state.

15.15.3 If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively in a court of competent jurisdiction 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.

15.16 Master Agreement Dispute Resolution Procedures. It is the policy of the Lead State to provide interested parties, as defined in the OGS Dispute Resolution Procedures, with an opportunity to administratively resolve disputes, complaints or inquiries related to contract awards and contract administration. The Lead State encourages interested parties to seek resolution of disputes through consultation with OGS staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Dispute Resolution Procedures may be obtained by contacting the Lead State. OGS reserves the right to change the procedures set forth in the Dispute Resolution Procedures without seeking an amendment to the Master Agreement.

15.17 Participating Addendum Dispute Resolution Procedures. Disputes arising under a Participating Addendum or Purchase Order will be resolved pursuant to the dispute resolution policy of the Participating Entity or Purchasing Entity or as otherwise provided in the Participating Addendum or Purchase Order.

15.18 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.

15.19 Survivability. Unless otherwise explicitly set forth in a Participating Addendum or Order, the terms of this Master Agreement as they apply to the Contractor, Participating Entities, and Purchasing Entities, including

but not limited to pricing and the reporting of sales and payment of administrative fees to NASPO ValuePoint, shall survive expiration of this Master Agreement and shall continue to apply to all Participating Addenda and Orders until the expiration thereof.

- 15.20 Expenses.** Participating Entities are not liable for any costs incurred by Contractor in the preparation and production of a proposal for work pursuant to this Master Agreement.
- 15.21 Employees, Subcontractors and Agents.** All employees, subcontractors, or agents of the Contractor performing work under the Master Agreement must be trained staff or technicians who meet or exceed the professional, technical, and training qualifications set forth in the Master Agreement or the Purchase Order, and must comply with all security and administrative requirements of the Participating Entity that are communicated to the Contractor. The Participating Entity reserves the right to conduct a security background check or otherwise approve any employee, subcontractor, or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, technical or training qualifications, quality of work or change in security status or non-compliance with Participating Entity's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Master Agreement or the Purchase Order. The Participating Entity reserves the right to reject and/or bar from any facility for cause any employee, subcontractor, or agent of the Contractor.
- 15.22 Compliance with Laws.** Contractor represents and warrants that it shall secure all notices and comply with all applicable laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Master Agreement.
- 15.23 Cooperation with Third Parties.** The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Purchasing Entity, as necessary to ensure delivery or performance of Product.
- 15.24 Default – Participating Entity or Purchasing Entity.** A breach by a Participating Entity or Purchasing Entity shall not be deemed a breach of the Master Agreement. Rather, any such breach shall be deemed a breach of the Participating Entity's obligations under its Participating Addendum, or the Purchasing Entity's obligations under its Purchase Order.

- 15.25 Consequential, Indirect or Special Damages.** The Lead State, Contractor, Participating Entities and Purchasing Entities shall not be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from performance, including, without limitation, damages resulting from loss of use or loss of profit by the Lead State, Contractor, Participating Entities and Purchasing Entities, or by others.
- 15.26 Extension of Use.** This Master Agreement may be extended to additional Participating Entities upon the execution of a Participating Addendum by the Participating Entity. Political subdivisions and other authorized entities within each participating state or governmental jurisdiction may also participate in this Master Agreement if such state normally allows participation by such entities.
- 15.27 No Exclusivity.** The Lead State, Participating Entities, and Purchasing Entities reserve the right to obtain the same or similar Deliverables from other sources when in their best interest and permitted by applicable law, rule, or policy.
- 15.28 Estimated Quantities.** This Master Agreement is an estimated quantity contract, also referred to as indefinite delivery/indefinite quantity contract. No specific quantities are represented or guaranteed, and the Lead State provides no guarantee of individual Authorized User participation. The Contractor must furnish all quantities actually ordered at or below the awarded prices.
- 15.29 Performance Bonds.** There are no bonds for this Contract. The Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract is required at any time during the term of this Contract.
- 15.30 Modification of Contract Terms.** The terms and conditions set forth in this Contract shall govern all transactions under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Lead State and Contractor. The Contractor may, however, offer any Purchasing Entity more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Purchasing Entity by the Contractor at the time of such offer. Other than where such terms are more advantageous for the Authorized User than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against a Purchasing Entity unless authorized by the Lead State. No such

alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, “shrink wrap” terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, Purchase Orders or other documents forwarded by the Contractor for payment, notwithstanding the Purchasing Entity’s subsequent acceptance of Product, or that the Purchasing Entity has subsequently processed such document for approval or payment.

15.31 Ethics Compliance. Contractor and its employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. Failure to comply with those provisions may result in termination of this Contract and/or other civil or criminal proceedings as required by law.

15.32 Contract Documents; Electronic Format. The Lead State requires Contractor to submit all documents related to the Solicitation, Master Agreement or the Lead State’s Participating Addendum to the Lead State in an electronic format, including electronic copies of documents that require original signatures. Documents requested by the Lead State should be submitted in the format specified by OGS, which may include a requirement for an electronic signature that has been generated by software (e.g., DocuSign or Adobe Acrobat Sign). Contractor is responsible for retaining all copies and originals (if applicable) of documents submitted to OGS for the term of the Master Agreement and any extensions thereof, and for a period of six (6) years after the term of the Master Agreement has ended. This requirement includes both electronic documents, and original paper documents with required original signatures that have been scanned and submitted electronically. Contractor shall submit such retained documents to OGS upon request. If Contractor seeks to assign the Master Agreement during the term, Contractor shall provide all documents relating to the bid and Master Agreement that it has retained to the successor Contractor (transferee/assignee) upon OGS consent to the assignment.