



CITY OF FAIRFAX, VIRGINIA

Contract Number: **CTR03360**

Contract Title: **Background Screening Services**

This contract entered into this 1st day of December 2024, by Command Investigations, LLC, 1540 International Parkway, Suite 3070, Lake Mary, FL 32746 hereinafter called the "Contractor" and City of Fairfax, VA, 22030.

WITNESSETH that the Contractor and City of Fairfax, VA, in consideration of the mutual covenants, promises and agreements herein contained, agree as follows:

1. **SCOPE OF CONTRACT:** The Contractor shall provide Background Screening Services to the City of Fairfax as set forth in the Contract Documents.
2. **PERIOD OF PERFORMANCE:** The initial term for this Master Agreement shall be for two (2) years and is effective from December 1, 2024, through November 30, 2026, with three (3) additional one-year renewal periods.

RENEWAL OPTIONS:

FROM:	12/1/2026	TO:	11/30/2027
FROM:	12/1/2027	TO:	11/30/2028
FROM:	12/1/2028	TO:	11/30/2029

3. **PAYMENT TERMS:** NET 30

4. **PRIMARY CONTACT:**

The primary contact individual for this contract are as follows:

CONTRACT CONTACT INFORMATION

NAME	John Lawrence
TELEPHONE	803-908-0355
EMAIL	john@simplified-screening.com

5. **THE MASTER AGREEMENT herby consists of the following:**

- (1) This signed form;
- (2) Attachment 2 – Scope of Work;
- (3) Attachment 4 – RfxPremier master Terms and Conditions;
- (4) Attachment 12 – City of Fairfax Terms and Conditions;
- (5) Invitation for Proposal # 66851, including all exhibits and addendums;
- (6) Command Investigations, LLC Proposal, including all clarifications, negotiations, to RFP # 66851.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed intending to be bound thereby.

CONTRACTOR:

FAIRFAX CITY, VA:

By: Marci Reading

By: Patricia Innocenti
Patricia Innocenti

Title: Vice President of Business Development

Title: Purchasing Agent

Note: This public body does not discriminate against faith-based organizations in accordance with the *Code of Virginia*, § 2.2-4343.1 or against a bidder or offeror because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.



Attachment 2 SCOPE OF WORK

I. OVERVIEW AND DEFINITIONS

The City of Fairfax, Virginia is seeking proposals from qualified background screening providers to conduct comprehensive pre-employment background checks and ongoing workforce monitoring services. The selected vendor(s) shall be responsible for providing pre-employment background checks such as, but not limited to, criminal record checks (county, state, national), employment verification, education verification, professional license verification, credit checks (for specific roles), motor vehicle record checks (for driving positions), social media screening, and global screening services (for international candidates). Additionally, the Contractor shall offer ongoing workforce monitoring capabilities, including periodic re-screening of current employees, continuous monitoring for criminal records updates, and customizable monitoring packages based on role or risk level. Finally, the Contractor shall provide pre-employment background checks for contractor employees such as those with access to government technology systems (i.e., staff augmentation services), custodial services (in sensitive work areas).

The Contractor shall ensure that the information obtained is compliance with the U.S. Equal employment Opportunity Commission standards. All screening information shall be conducted in compliance with the Fair Credit Reporting Act (FCRA). Applicants shall be provided with a copy of their rights under the FCRA. All information collected shall not be retained by the Contractor. It must be disposed of in a secure manner (physical and electronic record destruction).

Contract services shall not include an "investigative report," that is, a report based on personal interviews concerning a person's character, general reputation, personal characteristics, and lifestyle.

Background Screening activities are intended to validate and confirm that the applicant's reported background and job history are consistent with what was originally reported by the applicant. A Participant Entity may perform various types of Background Screening per applicant(s). A Participant Entity shall have the option to select one (1) or more types of Background Screening for an applicant.

Proposals should include detailed information about the Contractor's background screening capabilities, pricing structure, technological solutions, compliance measures, and customer support services. Proposals will be evaluated based on factors such as comprehensiveness of services, compliance with legal and industry standards, technological capabilities and integrations, pricing and value for services, customer support and service levels, and company reputation and industry experience.

II. MASTER AGREEMENT OBJECTIVES

The Contractor shall provide comprehensive background screening services including, but not limited to, the following:

1. Social Security Number Verification (SSN)
 - Perform SSN search
 - Listing of all known aliases generated by SSN trace
 - Listing of all known addresses for past five (5) years as returned by the SSN trace
2. Criminal History Background Checks
 - County/State/Federal criminal record searches
 - Sex offender registry searches
 - Nationwide database searches (e.g. terrorist watch lists)
 - International criminal record searches (if applicable)

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3. Motor Vehicle Record Checks
 - Driving record/history searches
 - Validation of driver's license status
 - Compliance with agency-specific driving record criteria
4. Financial/Credit Checks
 - Credit reports from national credit bureaus
 - County/State/Federal bankruptcy and tax lien searches
 - Identification of potential issues affecting security clearance
5. Education and Employment Verification
 - Confirmation of claimed degrees/diplomas
 - Verification of attendance and dates at educational institutions
 - Verification of employment history, position(s) held, dates
 - Verification of military experience
 - Verification of professional references
6. Professional License/Certification Verification
 - Validation of active/inactive professional licenses
 - Verification of any disciplinary actions or sanctions
7. Social Media Screening (if required)
 - Searches of publicly accessible online information
 - Identification of potential security, ethical, or suitability concerns
8. Comprehensive Background Investigation Reports
 - Consolidation of all screening components into a comprehensive report
 - Delivered via a secure online portal or method approved by the agency
 - Adherence to defined turnaround times based on screening level
9. Adjudication Services (optional)
 - Applying Agency criteria to background results
 - Making "Favorable/Unfavorable" recommendations
 - Providing documentation to support adjudication decisions.
10. Income verification
 - Employment History Verification: The background screening company will verify the applicant's stated employment history, including the names of employers, job titles, dates of employment, and reasons for leaving each position. This process helps to identify any gaps or inconsistencies in the reported employment history.
 - Discrepancy Resolution: If there are any discrepancies between the information provided by the applicant and the verified information from the employer, the screening company will follow up to resolve the discrepancies. This may involve requesting additional documentation or clarification from the applicant or the employer.

The Contractor shall have the ability to customize screening packages and integrate additional checks as required. All services must comply with relevant laws and accreditations.

III. CONTRACTOR RESPONSIBILITIES AND TASKS

A. Participating Entity Terms and Conditions

The Contractor must understand each Participating Entity reserves the right to negotiate additional terms and conditions in its Participating Addendum. Offer shall submit a statement that

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they understand they may be required to negotiate these additional terms and conditions when executing a Participating Addendum.

B. Insurance

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

1. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below: (1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate; Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
2. Offeror / 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.
3. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
4. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order

C. Changes in Contractor Contact

The Contractor shall notify the Contract Administrator of any changes in the company status, such as mergers, sell-offs, discontinuation of equipment, addition of equipment lines and changes in the contact information of the Contract. The Contract Administrator shall be able to contact the Contractor at all times during business hours.

D. Quarterly Reporting

The Contractor shall submit a quarterly sales report directly to RFXPremier no later than thirty (30) days following the end of each quarter.

E. Administrative Fees

1. The Contractor shall pay RFXPremier, or its assignee, RFXPremier Administrative Fee of one percent (1.00%) no later than sixty (60) days following the end of each calendar quarter. The RFXPremier Administrative Fee shall be submitted quarterly and is based on all sales and services under the Master Agreement. The RFXPremier Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with the proposal.
2. Additionally, a Participating Addendum may also require payment of an additional administrative fee by Contractors to a Participating Entity based on sales to Purchasing Entities within the jurisdiction of the Participating Entity. **Unless otherwise negotiated by the Participating Entity**, Contractor may adjust the Master Agreement pricing incorporated into the Participating Entity's Participating Addendum by an amount not to exceed the Participating Entity's fee. Such adjustments will have no effect on the RFXPremier administrative fee, pricing in the Master Agreement, or pricing offered to Purchasing Entities outside the jurisdiction of the Participating Entity.

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IV. LEAD ENTITY RESPONSIBILITIES AND TASKS

A. Adjustment in Pricing

The Lead Entity Contract Administrator and Sourcing Team shall review the Contractor request for a price or rate adjustment at least forty-five (45) days prior to the effective date. The Lead Entity Contact Administrator shall notify the Contractor their requested price or rate adjustment was approved. If rejected the Lead Entity Contract Administrator shall request the Contractor to resubmit their price or rate adjustment for approval at least thirty (30) days prior to the effective date.

B. Contract Extensions

The Lead Entity Contract Administrator shall give the Contractor written notice of its intent whether to exercise each renewal option no later than ninety (90) days before the end of the Contract's then-current term.



Attachment 4 SAMPLE MASTER AGREEMENT

Attachment A: RFxPremier Master Agreement Terms and Conditions

I. Definitions

- 1.1 **Acceptance** is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.
- 1.2 **Contractor** means a party to this Master Agreement, whether a person or entity, that delivers goods or performs services under the terms set forth in this Master Agreement.
- 1.3 **Embedded Software** means one or more software applications which permanently reside on a computing device.
- 1.4 **Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- 1.5 **Lead Entity** means the agency centrally administering any resulting Master Agreement(s).
- 1.6 **Master Agreement** means the underlying agreement executed by and between the Lead Entity, acting in cooperation with RFxPremier Program, and the Contractor, as now or hereafter amended.
- 1.7 **RFxPremier** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. RFxPremier 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. RFxPremier is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.
- 1.8 **Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
- 1.9 **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).
- 1.10 **Participating Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.
- 1.11 **Participating State** means a state that has executed a Participating Addendum or has indicated an intent to execute a Participating Addendum.
- 1.12 **Product or Products and Services** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Product includes goods and services.
- 1.13 **Purchasing Entity** means a state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

II. Master Agreement Order of Precedence

- 2.1 **Initial Term.** The initial term of this Master Agreement is for two (2) years. The term of this Master Agreement may be amended beyond the initial term for three (3) additional one-year periods at the Lead Entity's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance. The Lead Entity

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may, prior to execution, adjust the effective date or duration of the initial term or renewal period of any Master Agreement for the purpose of making the Master Agreement coterminous with others.

- 2.2 Amendment Limitations.** The terms of this Master Agreement will not be waived, altered, modified, supplemented, or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.
- 2.3 Amendment Term.** The term of the Master Agreement may be amended past the initial term and stated renewal periods for a reasonable period of time, not to exceed six (6) months, if in the judgment of the Lead Entity a follow-on competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection will not be deemed to limit the authority of a Lead Entity under its state law to otherwise negotiate contract extensions.

III. Master Agreement Order of Precedence

- 3.1 Order.** Any Order placed under this Master Agreement will consist of the following documents:
- 3.1.1** A Participating Entity's Participating Addendum ("PA");
 - 3.1.2** RFXPremier Master Agreement, including all attachments thereto;
 - 3.1.3** Statement of Work;
 - 3.1.4** Schedules and Attachments expressly incorporated into this contract;
 - 3.1.5** The Solicitation or, if separately executed after award, the Lead Entity's bilateral agreement that integrates applicable provisions;
 - 3.1.6** Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.
- 3.2 Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment. No terms on either party's Purchase Orders, Invoices, Ordering Documents, Website, Browse-Wrap, Shrink-Wrap, Click-Wrap, Clickthrough, or other Non-Negotiated Terms and Conditions provided with any contract activities will constitute a part or amendment of this Agreement or is binding for any purpose. All such other Terms and Conditions have no force and effect and are deemed rejected, even if access to or use of the contract activities requires affirmative acceptance of such Terms and Conditions.
- 3.3 Participating Addenda.** Participating Addenda will not be construed to diminish, modify, or otherwise derogate any provisions in this Master Agreement between the Lead State and Contractor. Participating Addenda will not include a term of agreement that exceeds the term of the Master Agreement.

IV. Participants and Scope

- 4.1 Requirement for a Participating Addendum.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed.

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- 4.2 Applicability of Master Agreement.** The RFXPremier Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.
- 4.3 Authorized Use.** Use of specific RFXPremier cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
- 4.4 Obligated Entities.** Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities.
- 4.5 Notice of Participating Addendum.** Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.
- 4.6 RFXPremier.** RFXPremier is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.
- 4.7 Participating Entity.** Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through RFXPremier. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- 4.8 Resale.** "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing

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Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

- 4.9 Individual Customers.** Except as may otherwise be agreed to by the Purchasing Entity and Contractor, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement and as the Participating Entity has in the Participating Addendum, including but not limited to any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

V. RFXPremier Provisions

5.1 Administrative Fees

- 5.1.1 RFXPremier Fee.** Contractor shall pay to NASPO ValuePoint, or its assignee, a RFXPremier Administrative Fee of one percent (1.00%) no later than sixty (60) days following the end of each calendar quarter. The RFXPremier 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 RFXPremier Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with a vendor's response to the Lead Entity's solicitation.
- 5.1.2 Participating Entity Imposed Fees.** Some Entity's may require an additional fee be paid directly to the Entity only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the RFXPremier Administrative Fee percentage, or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The RFXPremier Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

5.2 RFXPremier Summary and Detailed Usage Reports

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



- 5.2.2 Reportable Sales Data.** Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, social security numbers or any other numerical identifier, may be submitted with any report.
- 5.2.3 Executive Summary.** Contractor shall provide the RFXPremier Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. RFXPremier Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.
- 5.2.4 Timely Submission.** Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead Entity and RFXPremier shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

5.3 RFXPremier Cooperative Program Marketing, Training, and Performance Review

- 5.3.1 Staff Education.** Contractor agrees to work cooperatively with RFXPremier personnel. Contractor agrees to present plans to RFXPremier for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of RFXPremier procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.
- 5.3.2 Onboarding Plan.** Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.
- 5.3.3 Annual Contract Performance Review.** Contractor agrees to participate in an annual contract performance review at a location selected by the Lead Entity and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.
- 5.3.4 Use of RFXPremier Logo.** Contractor acknowledges that the RFXPremier logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- 5.3.5 Most Favored Customer.** Contractor agrees, within 30 days of their effective date, to notify the Lead Entity and RFXPremier of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this master agreement. Upon request of the Lead Entity or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.



- 5.3.6 Cancellation.** The Lead Entity expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead Entity may, in its discretion, cancel the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead Entity may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead Entity or Contractor to cancel the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.
- 5.3.7 Right to Publish.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead Entity prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

VI. Pricing, Rate Guarantee Period, and Payment.

- 6.1 Pricing.** The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Purchasing Entity.
- 6.1.1** All prices and rates must be guaranteed for the initial term of the Master Agreement.
- 6.1.2** Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at sixty (60) days prior to the effective date.
- 6.1.3** Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead Entity.
- 6.1.4** No retroactive adjustments to prices or rates will be allowed.
- 6.2 Payment.** Payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.
- 6.3 Leasing or Alternative Financing Methods.** The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

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VII. Ordering

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



- 7.6.5 Pricing consistent with this Master Agreement and applicable Participating Addendum and as may be adjusted by agreement of the Purchasing Entity and Contractor;
 - 7.6.6 A not-to-exceed total for the products or services being ordered; and
 - 7.6.7 The Master Agreement number or the applicable Participating Addendum number, provided the Participating Addendum references the Master Agreement number.
- 7.7 **Communication.** All communications concerning administration of Orders placed must be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- 7.8 **Contract Provisions for Order Utilizing Federal Funds.** Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

VIII. Shipping and Delivery

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

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IX. Inspection and Acceptance

- 9.1 Laws and Regulations.** Any and all Products offered and furnished must comply fully with all applicable Federal, State, and local laws and regulations.
- 9.2 Applicability.** Unless otherwise specified in the Master Agreement, Participating Addendum, or ordering document, the terms of this Section IX will apply. This section is not intended to limit rights and remedies under the applicable commercial code.
- 9.3 Inspection.** All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead Entity or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
- 9.4 Failure to Conform.** If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.
- 9.5 Warranty Period.** The warranty period shall begin upon Acceptance.
- 9.6 Acceptance Testing.** Acceptance Testing may be explicitly set out in a Master Agreement to ensure conformance to an explicit standard of performance. Acceptance Testing means the process set forth in the Master Agreement for ascertaining that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is prescribed, this subsection applies to applicable Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in this Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, 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. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be deemed Accepted and no charges shall be paid until the standard of performance is met. The warranty period shall begin upon Acceptance.



X. Warranty

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

XI. Insurance

- 11.1 Term.** Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- 11.2 Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:
- 11.2.1** Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- 11.2.2** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- 11.3 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.
- 11.4 Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead Entity 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.



- 11.5 **Participating Entities.** Contractor shall provide to Participating States and Participating Entities the same insurance obligations and documentation as those specified in Section XII, except the endorsement is provided to the applicable Participating State or Participating Entity.
- 11.6 **Furnishing of Certificates.** Contractor shall furnish to the Lead Entity copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
- 11.7 **Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

XII. General Provisions

12.1 Records Administration and Audit

- 12.1.1 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 shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.
- 12.1.2 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.
- 12.1.3 The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead Entity to review compliance with those obligations.

12.2 Confidentiality, Non-Disclosure, and Injunctive Relief

- 12.2.1 **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. 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"). Any reports or other documents or items (including software) that result



from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (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

- 12.2.2 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. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead Entity immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.
- 12.2.3 Injunctive Relief.** Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.
- 12.2.4 Purchasing Entity Law.** These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.
- 12.2.5** The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, defined to include Participating Addenda, as well as 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

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exercising an audit, inspection, or examination pursuant to section 23. To the extent permitted by law, Contractor shall notify the Lead Entity of the identify of any entity seeking access to the Confidential Information described in this subsection.

12.3 Assignment/Subcontracts

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

12.3.2 The Lead Entity reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as RFXPremier and other third parties.

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

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

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

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

12.8 Defaults and Remedies

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

12.8.1.1 Nonperformance of contractual requirements;

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

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- 12.8.1.3** Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading;
- 12.8.1.4** Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- 12.8.1.5** Any default specified in another section of this Master Agreement.
- 12.8.2** Upon the occurrence of an event of default, the Lead Entity shall issue a written notice of default, identifying the nature of the default, and providing a period of fifteen (15) calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead Entity, 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.
- 12.8.3** If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

 - 12.8.3.1** Any remedy provided by law;
 - 12.8.3.2** Termination of this Master Agreement and any related Contracts or portions thereof;
 - 12.8.3.3** Assessment of liquidated damages as provided in this Master Agreement;
 - 12.8.3.4** Suspension of Contractor from being able to respond to future bid solicitations;
 - 12.8.3.5** Suspension of Contractor's performance; and
 - 12.8.3.6** Withholding of payment until the default is remedied.
- 12.8.4** Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in an Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions will be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

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- 12.9 Waiver of Breach.** Failure of the Lead Entity, 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 Entity, 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.
- 12.10 Debarment.** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.
- 12.11 No Waiver of Sovereign Immunity**
- 12.11.1** In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead Entity, 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.
- 12.11.2** This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.
- 12.12 Governing Law and Venue**
- 12.12.1** The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead Entity sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall 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 shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.
- 12.12.2** Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.
- 12.12.3** If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead Entity for claims relating to the procurement, evaluation, award, or contract

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performance or administration if the Lead Entity 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.

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

XIII. Indemnification

- 13.1 General Indemnification.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.
- 13.2 Intellectual Property Indemnification.** Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers 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 ("Intellectual Property Claim") of another person or entity.
- 13.2.1** The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:
- 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; or
 - 13.2.1.3** Reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
 - 13.2.1.4** Reasonably expected to use the Product in combination with such product, system or method.
- 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 it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense,

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information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

**ATTACHMENT 12
CITY OF FAIRFAX, VA
GENERAL TERMS AND CONDITIONS**

IMMIGRATION REFORM AND CONTROL ACT OF 1986: By entering into a written contract with the City of Fairfax, the Contractor certifies that the Contractor 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.

ANTI-DISCRIMINATION: 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 and b) the contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an equal opportunity employer.

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.

APPLICABLE LAWS AND COURTS: This contract shall be governed in all respects by the laws of the Commonwealth of Virginia, without regard to its choice of law provisions, and any litigation with respect thereto shall be brought in the circuit courts of the Commonwealth.

DRUG FREE WORKPLACE: During the performance of a contract, the contractor agrees to provide a drug-free workplace for the contractors, employees in accordance with §2.2-4312 of the Code of Virginia. 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

INDEMNIFICATION: Contractor agrees to indemnify the City of Fairfax, its officers, agents, and employees for any loss, liability, cost, or reasonable settlement cost incurred as a result of any claims, damages and actions of any kind or nature, whether at law or in equity, arising from or caused by the use of any materials, goods, or equipment of any kind or nature furnished by the

contractor/any services of any kind or nature furnished by the contractor, provided that such liability is not attributable to the sole negligence of the using agency or to failure of the using agency to use the materials, goods, or equipment in the manner already and permanently described by the contractor on the materials, goods or equipment delivered.