

**MASTER AGREEMENT E194-73092-MA2191  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
MATERIAL AND CONTRACT SERVICES, INC.**

**1. SCOPE OF CONTRACT**

This is a Master Agreement ("Contract") between the Department of General Services ("DGS"), Division of Purchases and Supply ("DPS"), acting as an agent of the Commonwealth of Virginia ("Commonwealth") and Material and Contract Services, Inc. ("Contractor" or "MACS"), having its principal place of business at 5820 Stoneridge Mall Road, Suite 217, Pleasanton, CA 94588 for the provision of training services for procurement professionals consisting of training instruction, catalog courses, course customization, and course development, hereinafter referred to as "Services", pursuant to the Commonwealth's Request For Proposal #E194-1922, dated May 29, 2015 ("RFP") and the Contractor's proposal, dated July 27, 2015 in response thereto.

**2. INTERPRETATION OF CONTRACT**

For purposes of this Contract, the Commonwealth of Virginia shall be the "Lead State."

Headings are for reference purposes only and shall not be considered in construing this Contract.

The documents comprising this Contract are:

- a. This Contract, consisting of terms and conditions included herein, including all Attachments hereto;
- b. The RFP #E194-1922; and
- c. The Contractor's proposal submitted in response to the RFP. State specific Terms and Conditions will be found in the Participating Entity's Participating Addendum. State Terms and Conditions in an executed Participating Addendum will take priority in the event of conflict between those terms and conditions and this Contract.

If any term or condition of this Contract is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

**3. AUTHORIZED USERS**

This Contract is the result of a competitive solicitation and its use is optional for the following entities which are to be collectively referred to as "Authorized Users."

- a. Commonwealth of Virginia agencies, institutions of higher education, and other public bodies and entities authorized to use the Contract, pursuant to *Code of Virginia* §§ 2.2-4301 and 2.2-4304, including private institutions of higher education chartered in Virginia as defined in *Code of Virginia* §2.2-1120 and granted tax-exempt status under *Internal Revenue Code* §501(c)(3).
- b. NASPO ValuePoint Participating State governments (i.e., departments, agencies, institutions, etc.), institutions of higher education, political subdivisions (i.e., colleges,

school districts, counties, cities, etc.), the District of Columbia, territories of the U.S., and other eligible entities subject to approval of the individual state chief procurement official and compliance with local statutory and regulatory provisions.

#### **4. TERM**

This Contract shall be effective from July 19 2016 through June 30, 2018. All orders and related documents shall survive the period of performance stated in this section until such time as all orders executed prior to the expiration date of the Contract have been completely performed.

#### **5. RENEWAL OF CONTRACT**

This Contract may be renewed at the sole discretion of the Commonwealth of Virginia for up to four (4) additional one (1) year successive periods under the terms and conditions of the original Contract and upon mutual written agreement between the parties. Written notice of the Commonwealth's intention to renew will be sent approximately ninety (90) days prior to the expiration date of each contract period.

#### **6. PRICE PROTECTION/ADJUSTMENTS**

Negotiated prices and the offeror's submitted catalog prices shall be firm for a minimum of 365 days after award of the Contract. The Commonwealth acknowledges that a catalog is subject to change over time; therefore, after the first 365 days, the first catalog price adjustment request may be allowed at the time the Contractor normally publishes its annual price adjustment. Subsequent price adjustments may be allowed no earlier than 365 days from the effective date of the prior price adjustment. Contractor shall give not less than sixty (60) calendar days advance notice of any requested price increase to the Lead State Contract Administrator. "Across the board" price decreases are subject to implementation at any time and shall be immediately conveyed to the Lead State Contract Administrator.

Documentation shall be supplied with the Contractor's request for price increase which will verify that the requested price increase is general in scope and not applicable solely to this Contract. The requested price increase will be reviewed and verified for reasonableness to the satisfaction of the Lead State Contract Administrator. The following index or other appropriate indices for the latest 12 months for which statistics are available may be used as guides to determine price adjustments.

- US Department of Labor, Bureau of Labor Statistics (BLS) Consumers Price Index - All Urban Consumers (CPI-U)
- Series ID: CUUR0000SAS367, CUUS0000SAS367
- Not Seasonally Adjusted
- Area: US City Average
- Item Name: Other Services
- Base Period: 1982-84=100

The Lead State Contract Administrator will issue a Contract Modification establishing the effective date of an approved price adjustment which will be at the beginning of the calendar month following the end of the full 60-day notification period or approval date. Price increases after placement of order will not be accepted and the Contractor shall fill all orders

received prior to the effective date of the price adjustment at the old Contract prices. Should the price decrease between receipt of the order and shipment of the order, the Contractor shall invoice at the new lowest price.

If this Contract incorporates discount percentages in pricing, percentage decreases are prohibited during the term of the Contract to include all renewals; however, discount percentage increases are subject to implementation at any time and shall be immediately conveyed to the Lead State Contract Administrator. Otherwise, discount percentages will remain firm throughout the term of the Contract to include all renewals. Authorized Users will apply the discount percentage to the approved catalog in effect and incorporated as part of the Contract by the Lead State at the time the order is placed. If there is conflict in pricing between the specific items outlined in the pricing schedule and the discount structure, the lower of the two prices shall prevail.

## **7. ETHICS IN PUBLIC CONTRACTING**

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

## **8. QUALIFICATIONS OF CONTRACTOR**

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

## **9. TESTING AND INSPECTION**

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

## **10. CHANGES TO THE CONTRACT**

Changes can be made to the Contract in any of the following ways:

- A. The parties may agree in writing to modify the scope of the Contract. An increase or decrease in the price of the Contract resulting from such modification shall be agreed to by the parties as a part of their written agreement to modify the scope of the Contract.
- B. The Purchasing Entity may order changes within the general scope of the Contract at any time by written notice to the Contractor. Changes within the scope of the Contract include, but are not limited to, things such as services to be performed, the method of packing or shipment, and the place of delivery or installation. The Contractor shall comply with the notice upon receipt. The Contractor shall be compensated for any additional costs incurred as the result of such order and shall give the Purchasing Entity

a credit for any savings. Said compensation shall be determined by one (1) of the following methods:

1. By mutual agreement between the parties in writing; or
2. By agreeing upon a unit price or using a unit price set forth in the Contract, if the work to be done can be expressed in units, and the Contractor accounts for the number of units of work performed, subject to the Purchasing Entity's right to audit the Contractor's records and/or to determine the correct number of units independently; or
3. By ordering the Contractor to proceed with the work and keep a record of all costs incurred and savings realized. A markup for overhead and profit may be allowed if provided by the Contract. The same markup shall be used for determining a decrease in price as the result of savings realized. The Contractor shall present the Purchasing Entity with all vouchers and records of expenses incurred and savings realized. The Purchasing Entity shall have the right to audit the records of the Contractor as it deems necessary to determine costs or savings. Any claim for an adjustment in price under this provision must be asserted by written notice to the Purchasing Entity within thirty (30) days from the date of receipt of the written order from the Purchasing Entity. If the parties fail to agree on an amount of adjustment, the question of an increase or decrease in the Contract price or time for performance shall be resolved in accordance with the procedures for resolving contractual disputes provided by the Contractual Disputes clause of this Contract or, if there is none, in accordance with the disputes provisions of the Commonwealth of Virginia *Vendors Manual*. Neither the existence of a claim nor a dispute resolution process, litigation or any other provision of this Contract shall excuse the Contractor from promptly complying with the changes ordered by the Purchasing Entity or with the performance of the Contract generally.

## **11. NONDISCRIMINATION OF CONTRACTORS**

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

## **12. DEBARMENT STATUS**

The Contractor certifies that it is not currently debarred by the Commonwealth of Virginia from submitting a response for the type of goods and/or services covered by the original solicitation or any resulting contract. Contractor further certifies that it is not debarred from filling any order or accepting any resulting order, or that it is not an agent of any person or

entity that is currently debarred by the Commonwealth of Virginia.

### 13. AVAILABILITY OF FUNDS

It is understood and agreed between the parties herein that the entity shall be bound hereunder only to the extent of the funds available or which may hereafter become available for the purpose of this Contract.

### 14. MANDATORY ACCEPTANCE OF SMALL PURCHASE CHARGE CARD (SPCC)

Purchasing charge cards offer Authorized Users the opportunity to streamline their procedures for procuring and paying for small dollar goods and/or services. Contractor should note that acceptance of payment by purchase card is **mandatory (unless waived by the Lead State within 90 calendar days of contract award or when executing a Participating Addendum.**

Purchase card service fees may be negotiated prior to executing a Participating Addendum.

Charge Card Levels: The amount of data passed for each charge card payment depends on the level at which the charge card is established. Payment for orders issued against the contract(s) must allow for the Purchase Order Number to be passed at the time of charge so that the Purchase Order Number is received by the card platform and passed to the Card provider. The levels are delineated below:

Level 1 - vendors provide basic charge card purchase information, including but not limited to the data listed below. By passing "Basic Data", the vendor has a standard interchange cost.

- Supplier Name
- Merchant Category Code
- Date
- Total Purchase Amount

**Level 2 (Mandatory in the Commonwealth of Virginia)** - vendors provide additional information to the Level 1 elements, including but not limited to the data listed below. By passing Level 2 detail, the vendor will receive lower interchange costs.

- Customer Code
- Vendor Tax ID

Level 3 (Optional) - vendors provide line item detail, in addition to the Level 1 and Level 2 elements, including but not limited to the data listed below. By passing Level 3 data which is considered superior data, the vendor will receive the lowest interchange costs.

- Item Description
- Item Quantity
- Item Unit of Measure
- Product Code
- Freight Amount
- Extended line Item Amount

## **15. PROMOTIONAL DISCOUNTS**

For any special or promotional sale prices, reductions, or other discounts provided to any Authorized User eligible to use this Contract, Contractor shall immediately extend and provide notification of such sale prices or discounts to all Authorized Users during the term of the Contract. Such notice shall also advise the duration of the specific sale or discount price. The Lead State Contract Administrator shall be provided notice in advance of any such promotional discount being extended to any Authorized User that is eligible to utilize this Contract.

## **16. CATALOGS**

The Contractor's catalogs furnished with the RFP response shall become a part of the Contract, and/or as negotiated. Contractor's name and address should appear on all catalogs. Where a price list shows more than one column of prices, the Contractor shall clearly identify the column, which represents the gross prices charged to the Commonwealth and Participating Entities. Upon request, the Contractor shall furnish catalogs for items awarded directly to the Commonwealth and Participating Entities within three (3) business days.

## **17. QUANTITIES**

No minimum or maximum level of sales volume is guaranteed or implied in this Contract, nor is there a guarantee of the number of individual Purchase Orders which might be issued nor the dollar amount of any individual Purchase Order or charge card purchase or their aggregate amount.

## **18. PRIME CONTRACTOR RESPONSIBILITIES**

The Contractor shall have prime responsibility for completely and solely supervising and directing all work performed, goods provided and/or services provided under this Contract, and for all subcontractors the Contractor may utilize. Subcontractors that perform work under this Contract shall be responsible to the prime contractor. Contractor agrees that it shall be fully and solely responsible for the acts and omissions of its subcontractors and of any persons employed by them as the Contractor is for the acts and omissions of its own employees.

## **19. SUBCONTRACTS**

No portion of the work shall be subcontracted without prior written consent of the Lead State. In the event that the Contractor desires to subcontract some part of the work specified herein, the Contractor shall furnish the Lead State Contract Administrator the names, qualifications and experience of its proposed subcontractors. The Contractor shall, however, remain fully liable and responsible for the work to be done by its subcontractors and shall assure compliance with all requirements of the Contract.

## **20. CONTRACTOR ACCESS TO AUTHORIZED USER LOCATIONS AND SECURITY PROCEDURES**

Authorized Users shall grant to the Contractor such access to its location as may be necessary or appropriate for Contractor to perform its obligations under this Contract,

subject to all security measures. For any Authorized User location, the Contractor may be required to undergo additional security procedures and requirements that may include but not be limited to: records verification, submission of photos and/or fingerprints, etc. Contractor may at any time, for any Authorized User location, be required to undertake the execution and completion for each Contractor's individual employee, the requirement of the submission of additional forms that the Authorized User would consider reasonable for security measures. These forms may include the individual employee's agreement that all Authorized User information that is garnered while at the Authorized User's site is confidential and proprietary. Any unauthorized release of proprietary information by the Contractor or Contractor's employees shall constitute a breach of this Contract, and subject to any remedies the Authorized User is entitled to thereby. Contractor may be responsible for any fees associated with the security screening process.

## **21. EXCLUSIVITY OF TERMS AND CONDITIONS**

No employee or agent of the Commonwealth or Authorized Users shall be required to sign or execute any additional contract, license or other contract containing contractual terms and conditions, excluding the Participating State Participating Addendum. Notwithstanding the afore-mentioned, any documents signed by persons other than the Commonwealth's authorized representative shall have no validity or effect upon the Contract.

## **22. INSURANCE**

By signing a contract, the Contractor certifies that it and any subcontractors will maintain this insurance coverage during the entire term of the Contract. For work within the Commonwealth, all insurance coverage will be provided by insurance companies authorized to sell insurance by the Virginia State Corporation Commission.

### **MINIMUM INSURANCE COVERAGES AND LIMITS REQUIRED FOR MOST CONTRACTS:**

- a. Workers' Compensation - Statutory requirements and benefits. Coverage is compulsory for employers of three or more employees, to include the employer. Contractors who fail to notify the Commonwealth of increases in the number of employees that change their workers' compensation requirements under the *Code of Virginia* during the course of the contract shall be in noncompliance with the contract.
- b. Employer's Liability - \$100,000.
- c. Commercial General Liability - \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Commercial General Liability is to include bodily injury and property damage, personal injury and advertising injury, products and completed operations coverage. The Commonwealth of Virginia must be named as an additional insured and so endorsed on the policy.
- d. Automobile Liability - \$1,000,000 combined single limit. (Required only if a motor vehicle not owned by the Commonwealth is to be used in the contract. Contractor must assure that the required coverage is maintained by the Contractor or third party owner of such motor vehicle.)

## **23. LOBBYING AND INTEGRITY**

The Contractor shall not, in connection with this or any other contract or agreement with the Commonwealth or Authorized Users, directly or indirectly (1) offer, confer, or agree to confer any pecuniary benefit on anyone as consideration for any state officer or employee's decision, opinion, recommendation, vote, other exercise of discretion, or violation of a known legal duty; or (2) offer, give, or agree to give anyone any gratuity for the benefit of or at the direction or request of any state officer or employee.

Upon request of the Lead State, the Contractor shall provide any type of information the agency deems relevant to the Contractor's integrity or responsibility to provide the services or goods described herein.

## **24. CANCELLATION OF CONTRACT**

The Commonwealth reserves the right to cancel and terminate any resulting contract, in part or in whole, without penalty, upon 60 calendar days written notice to the Contractor. In the event the initial contract period is for more than 12 months, the resulting contract may be terminated by either party, without penalty, after the initial 12 months of the contract period upon 60 calendar days written notice to the other party. Any contract cancellation notice shall not relieve the Contractor of the obligation to deliver and/or perform on all outstanding orders issued prior to the effective date of cancellation.

## **25. ADDITION AND DELETION OF SERVICES**

This Contract may be modified in order to add and/or delete courses and services as new and updated courses and services are developed and implemented. The Lead State Contract Administrator must be notified of the added and/or deleted courses and services and pricing must be provided. Contract modifications will not be required for the addition of courses and services that are consistent with pre-established categories and discount structure. In the event that the Contractor adds courses or services that differ sufficiently from the pre-established categories and discount structure covered in the Contract, the Commonwealth and Contractor may negotiate to modify the contract to establish a new category. Contract modification will be required to add the negotiated courses and services to the contract. Contract modifications must be in writing and signed by the duly authorized representatives of both parties.

## **26. AUTHORIZED REPRESENTATIVES**

This Contract may be modified in accordance with *Code of Virginia* §2.2-4309. No modifications to this Contract shall be valid unless in writing and signed by the duly authorized representatives delineated on the next page, or their duly authorized designees. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.



**MATERIAL AND CONTRACT SERVICES, INC.**

Dan P. Plute  
President  
5820 Stoneridge Mall Road, Suite 217  
Pleasanton, CA 94588  
Tel.: 925-460-0397  
Fax: 925-227-1669  
Email: [dplute@macservices.us](mailto:dplute@macservices.us)

**COMMONWEALTH OF VIRGINIA**

Katherine Bosdell, CPPB, VCO  
Lead State Contract Administrator  
1111 East Broad Street  
Richmond, VA 23219  
Tel.: 804-786-2397  
Fax: 804-786-5413  
Email: [katherine.bosdell@dgs.virginia.gov](mailto:katherine.bosdell@dgs.virginia.gov)

**UNDER NO CIRCUMSTANCES SHALL ANY AUTHORIZED USER OR OTHER ENTITY HAVE THE AUTHORITY TO MODIFY THIS CONTRACT WITHOUT WRITTEN CONSENT OF THE AUTHORIZED REPRESENTATIVES, EXCLUDING THE PARTICIPATING STATE PARTICIPATING ADDENDUM.**

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.**

**MATERIAL AND CONTRACT SERVICES, INC**

**COMMONWEALTH OF VIRGINIA**

BY:

Dan P. Plute  
Signature

BY:

Katherine A. Bosdell

NAME:

DAN P. PLUTE  
Printed Name

NAME:

Katherine A. Bosdell, CPPB, VCO

TITLE:

President

TITLE:

Lead State Contract Administrator/  
DPS Statewide Strategic Sourcing Officer

DATE:

7-5-16

DATE:

7/19/2016

**ATTACHMENT A  
TO  
CONTRACT E194-73092-MA2191  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
MATERIAL AND CONTRACT SERVICES, INC.**

**NASPO VALUEPOINT MASTER AGREEMENT TERMS AND CONDITIONS**

Attachment "A" is hereby incorporated into and made an integral part of Contract E194-73092-MA2191 between the Commonwealth of Virginia and Material and Contract Services, Inc. In the event of any discrepancy between Attachment "A" and the Master Agreement, the provisions of the Master Agreement shall control.

**1. Master Agreement Order of Precedence**

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

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) The Contract, excluding Commonwealth of Virginia terms and conditions that by their terms are not applicable only to entities in the Commonwealth of Virginia;
- (3) A Purchase Order issued against the Master Agreement;
- (4) The Statement of Work;
- (5) The Solicitation or, if separately executed after award, the Lead State's bilateral agreement that integrates applicable provisions;
- (6) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

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

**2. Definitions**

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

**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.

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

**Master Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended. Also referred to as the "Contract" by the Commonwealth of Virginia, that is, the bilateral agreement executed by the Contractor and Lead State that incorporates these terms and

conditions.

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

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

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

**Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

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

**Product** means any equipment, software, documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

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

## **NASPO VALUEPOINT PROGRAM PROVISIONS**

### **3. Term of the Master Agreement**

- a. Provisions governing term of the Contract are in section 4 of the body of the Contract.
- b. The Master Agreement may be extended for a reasonable period of time, not to exceed six months, if in the judgment of the Lead State a follow-on, competitive procurement will be

unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

#### **4. Amendments**

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

#### **5. Participants and Scope**

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. 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.

b. Use of specific NASPO ValuePoint 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.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. Financial obligations of 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. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program

requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarket Center; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

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

## **6. Administrative Fees**

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee 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.

## **7. NASPO ValuePoint Summary and Detailed Usage Reports**

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. **Summary Sales Data.** The Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool

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

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

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

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

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

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

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

b. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of

marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.

#### **9. NASPO ValuePoint eMarket Center**

In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provided customers information regarding the Contractors website and ordering information.

At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

#### **10. Right to Publish**

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior 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.

#### **11. [Reserved]**

#### **12. Individual Customers**

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for 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.

### **ADMINISTRATION OF ORDERS**

#### **13. Ordering**

a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

b. Purchasing Entities may define project-specific requirements and informally compete the requirement among 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.

c. 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.

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

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

- (1) The services or supplies being delivered;
- (2) The place and requested time of delivery;
- (3) A billing address;
- (4) The name, phone number, and address of the Purchasing Entity representative;
- (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.



#### **14. Shipping and Delivery.**

a. See Attachment B, Section 4.E for the cost of shipping course materials. 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.

b. 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 other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

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

#### **15. Laws and Regulations**

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

#### **16. Inspection and Acceptance.**

a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

b. All Products are subject to inspection at reasonable times and places, in accordance with industry practices, before Acceptance.

c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. The requirement to cure such deficiencies shall not be based solely on a participant's failing to achieve course goals, course exams, or certification tests associated with the training provided.

d. The warranty period shall begin upon Acceptance.

e. Acceptance Testing is not explicitly set out in the Master Agreement

#### **17. Payment**

Payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per

month on the outstanding balance, unless a different 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, except as negotiated in a Participating Addendum.

## **18. 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.

## **19. [Reserved]**

## **20. License of Intellectual Property**

- a. Catalog-Priced Training Courses. The Contractor retains ownership of all intellectual property rights in catalog-priced training materials. The Contractor grants the Purchasing Entity a non-exclusive license to use the catalog-priced training materials purchased under this agreement in trainings. While any such license must allow the Purchasing Entity to use the catalog-priced training materials in trainings, additional terms and conditions of the license may be supplied by the catalog terms and conditions identified in the Contractor's proposal, if any.
- b. Customized Courses. For specially prepared case studies or scenarios incorporated into catalog-priced training materials at the request of the Purchasing Entity, the Contractor grants the Purchasing Entity a non-exclusive, perpetual, royalty-free, irrevocable, unlimited license to publish, translate, reproduce, modify, deliver, perform, display, and dispose of such case studies or scenarios delivered under this Master Agreement.
- c. Developed Courses. The Contractor and Purchasing Entity shall negotiate the price and scope of any course that is priced as a developed course. In negotiated orders for developed courses, the Contractor shall identify any pre-existing course materials owned by a third-party that have been incorporated into the developed course and obtain, on behalf of the Purchasing Entity, the third-party's written consent for the use of such materials by the Purchasing Entity. The Contractor acknowledges that, to the extent permitted by law, any developed course materials created under this agreement shall be considered a work made for hire and that the Purchasing Entity shall be considered the owner of any developed course materials.

## **GENERAL PROVISIONS**

### **21. Insurance**

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

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as specified in section 22 of the body of the Contract.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides for written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

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

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master

Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of 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.

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

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

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

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (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.

b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders 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 State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing

Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

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

#### **24. Public Information.**

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

#### **25. Assignment/Subcontracts**

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

b. The Lead State reserves the right to assign its respective rights or duties regarding negotiation or contract administration to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint. But, except for the foregoing, the Lead State may not assign, transfer or delegate any right or obligation under this Master Agreement to any other party or person without the prior written consent of the Contractor.

#### **26. Changes in Contractor Representation**

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

#### **27. Independent Contractor**

The Contractor shall be an independent contractor. Contractor shall have 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 agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

## **28. Cancellation**

Cancellation of the Contract by the Lead State is governed by section 24 of the body of the Contract. A Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit.

## **29. 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 war which is beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

## **30. Defaults and Remedies**

a. Defaults in performance owed to the Lead State shall be governed by section I of the Commonwealth's Participating Addendum. With respect to other Participating or Purchasing Entities, the occurrence of any of the following events shall be an event of default under this Master Agreement:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this Master Agreement; or
- (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; or
- (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
- (5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Participating Entity or Purchasing Entity shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Participating Entity or Purchasing Entity 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 Entity, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Participating Entity or Purchasing Entity shall have the right to exercise any or all of the following remedies:

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and

- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

### **31. Waiver of Breach**

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

### **32. Debarment**

The debarment certification in section 12 of the body of the Contract 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.

### **33. Indemnification**

a. To the extent permitted by law, the Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

(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:

- (a) Provided by the Contractor or the Contractor's subsidiaries or affiliates;
- (b) Specified by the Contractor to work with the Product; or

(c) 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

(d) It would be reasonably expected to use the Product in combination with such product, system or method.

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

#### **34. No Waiver of Sovereign Immunity**

In no event shall this Master Agreement, any Participating Addendum or any 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.

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

#### **35. Governing Law and Venue**

a. The procurement, evaluation, and award of the Master Agreement shall 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 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. Provisions for alternative dispute resolution in section K of the Commonwealth's Participating Addendum apply only to the Commonwealth of Virginia and its Virginia Authorized Users defined in section 3a of the body of the Contract.

b. 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.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

### **36. Assignment of Antitrust Rights**

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

### **37. Contract Provisions for Orders Utilizing Federal Funds.**

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

**ATTACHMENT B  
TO  
MASTER AGREEMENT E194-73092-MA2191**

**BETWEEN THE  
COMMONWEALTH OF VIRGINIA AND MATERIAL AND CONTRACT SERVICES, INC.**

Attachment "B" is hereby incorporated into and made an integral part of Contract E194-73092-MA2191 between the Commonwealth of Virginia and Material and Contract Services, Inc. In the event of any discrepancy between this Attachment "B" and the Master Agreement, the provisions of the Master Agreement shall control.

**1. LISTING OF GOODS AND SERVICES**

All requirements stated in the Commonwealth's RFP #E194-1922 and the Solution, as applicable and as delineated in Contractor's proposal, including all goods and services, and integral products to the Solution submitted in response thereto, for the provision of training services for procurement professionals consisting of training instruction, catalog courses, course customization, and course development as delineated therein, in accordance with the following, or as otherwise stipulated in any Modification to this Contract.

**2. PRICING SCHEDULE**

The pricing schedule is a model with multiple delivery platforms, course names, lengths of training time, and number ranges of students. Services outside of the model will require negotiations between the Participating Entity and the Contractor because of the diversity of an entity's needs such as delivery method, a stand-alone class or a program of classes, number of students, and course customization. Prices shown in the table include the items below; however, do not include travel and travel-related expenses:

- a. Training instructor salary and fees;
- b. Cost of exams; and
- c. Production and preparation of any reports.

Type of Delivery	Course Name	Length of Time	Number of Students			
Classroom	Name of Course	One Day	12-19 Students	20 + Students	50+** ***	100+** ***
	MACS Catalog Courses		\$350.00	\$297.00	\$280.00	\$265.00
Asynchronous Online Course	Name of Course	# Contact Hours	1–19 seats	20+ seats	50+ seats	100+ seats
	All MACS Online Courses		\$160.00	\$135.00	\$130.00(e)	\$125.00(f)
Synchronous Online Course	Name of Course	# Contact Hours	12–19 seats	20+ seats	50+ seats	100+ seats
	All MACS Online Courses		\$175.00	\$150.00	\$142.00(e)	\$133.00(f)
Asynchronous	Name of Webinar	One Contact Hour	1-19 seats	20+ seats	50+ seats	100+ seats
	All MACS Online Courses		\$175.00	\$150.00	\$142.00(e)	\$133.00(f)
Synchronous	Name of Webinar	One Contact Hour	12–19 seats	20+ seats	50+ seats	100+ seats
	All MACS Online Courses		\$175.00	\$150.00	\$142.00(e)	\$133.00(f)

- a. Asynchronous means learners are engaged in an online course on their own schedule.
- b. Synchronous means learners and instructors are engaged in an online course at the same time.
- c. \*\* Multiple classes for a set time period could occur to accommodate larger number of students.
- d. \*\*\*A participant may elect to extend the course days or training course hours. An additional one-day fee may apply. ISM and APICS Certification Training Programs: Cost per module per student - \$500.00
- e. Current classroom training programs conversion to on-line course is a one-time fee of \$1500.00. Not all MACS classroom courses may be available as on-line classes.

### **3. DISCOUNT STRUCTURE**

- A. 10% discount for course attendees above 75 for the same course schedule.
- B. 15% discount for course attendees above 125 for the same course schedule.
- C. Contractor will provide a 5% discount on the per hour rate when the dollar value of the contract exceeds \$300,000 in a 12 month period or contract year.
- D. Invoice payment discount: Contractor payment terms are 1%, 20, net 30; therefore, a discount of 1% will apply if the invoice payment is received within 20 days of the invoice date.

### **4. GENERAL INFORMATION**

- A. Class Size: A minimum of 15 attendees for instructor led on-site classes; 12 attendees for synchronous on-line training courses; and 10 attendees for asynchronous online training courses. Current on-line programs are a maximum of 120 minutes. Higher costs will apply for multi-day courses and courses exceeding 120 minutes duration. Courses must be completed within a 120 calendar day period.

Contractor will work with Participating Entities to provide flexibility in structuring courses. A fixed price for up to a definitive number of attendees may be possible and would be negotiated between the Contractor and Participating Entity.

- B. Section 508 Compliance Standards: Upon contract award, Contractor will retain an expert on 508 training and structure its on-line and classroom training courses to comply with the mandate.
- C. Licenses: Students will have access to the material for at least 120 days after registering. In some cases, modules or multiple virtual classrooms are scheduled and must be viewed over a period in multiple sessions. Contractor will consider extending the view time for asynchronous courses.
- D. Train the Trainer Program: Contractor does not offer courses or instructional media to Train the Trainer but has the resources, experiences and knowledge to develop Train the Trainer courses. Contractor's classroom and online classes are structured to the presenter's instructional methods, the content is very specific, and course flow and presentation style is based on the expertise and the experience of the individual instructors.
- E. Training Materials: All course materials will be e-mailed, faxed or sent via mail service to the Participating Entity at least one (1) week before the course and can be reproduced in a manner of its choosing. All course materials are copyrighted intellectual property of the instructor and/or Contractor and are only available for the use of the actual paid registrant.

Contractor will not charge more than the most cost effective method to mail the material. If the cost is less than \$25.00, Contractor will absorb the cost of mailing.

- F. Customization of Materials: Contractor has the capability to work with a Participating Entity's technology instructional designer or can hire a technology instructional designer to design online courses. Contractor's cost for a designer would be passed to the entity requesting this service. Contractor can provide course development with an instructional designer. Contractor can provide customization of scenarios/exercises for current materials which may not require an instructional designer.

Contractor's fee to custom design and prepare procurement training classes is \$400.00 per hour. Customization of course materials may require additional cost. Courses have been developed to address issues at the state and local government level. Contractor will conduct surveys of the Participating Entity to establish learning objectives and to ascertain the level of experience and expertise of attendees. If adjustments to content are necessary, they will be made prior to the event. If the course attendees are predominantly entry to junior level practitioners, content will be scaled back to the learning objectives of the participants. There is no additional charge for this service.

- G. Co-Branding Materials: Participating entities may put their brand on customized course materials only by specific agreement from MACS and the instructor. Contractor prefers to have the customized training material be branded by the person preparing the material. The Participating Entity may use its logo or name on the subject matter but must include a statement about the instructor who developed and prepared the material.
- H. Course Library: The Contractor's training course catalog is accessible at [www.macservices.us](http://www.macservices.us). Participating Entities will have full access to the catalog.
- I. Marketing Efforts: Contractor agrees to attend the annual NASPO *How to Market to State Governments Meeting* at its own cost.

## 5. GENERAL REQUIREMENTS AND LOGISTICS

- A. Class Cancellation Requirements:

- 1. Prior Notice Cancellation:

- a. Participating Entities will provide class cancellation notice at least thirty (30) calendar days prior to a scheduled training date and must not be charged any fees by the Contractor. In the event a scheduled class is cancelled by a Participating Entity with less than a thirty (30) calendar day notice, the Contractor will be paid for one day at

the Contractor's flat rate fee per registered learner. Participating Entity may reschedule the class upon mutual agreement with the Contractor.

- b. In the event that a scheduled class is cancelled by a Participating Entity within seven (7) calendar days of class start time, the Contractor will be paid for the cost of the class. If the Contractor has incurred instructor travel costs, travel-related costs, and lodging required for the instructor to return back to the customary place of origin, Contractor will be reimbursed in accordance with limitations and travel reimbursement policies delineated in the Participating Entity's travel regulations. Participating Entity may reschedule the class upon mutual agreement with the Contractor.
  - c. In the event a scheduled class is cancelled by the Contractor with less than a ten (10) calendar day notice, Participating Entity will not be responsible for any payment(s). Participating Entity may reschedule the class upon mutual agreement with the Contractor.
- 2. No Prior Notice Cancellation: In the event an instructor is unable to provide training, and no suitable substitute is agreed upon with a Participating Entity, Contractor shall reimburse registered learners for all costs (i.e., travel, per diem, lodging, airfare, taxi, etc.) incurred as a result of failure by the Contractor's training instructor to provide Services. Participating Entity may reschedule the class upon mutual agreement with Contractor.
- 3. Inclement Weather Class Cancellation: Participating Entities will not pay the Contractor for a scheduled training class cancellation because of closure from inclement weather. In the event that a scheduled class is cancelled by a Participating Entity because of inclement weather within 24 hours of class start time and the instructor has departed to travel to the class, the Contractor will be paid for instructor travel costs, travel-related costs, and lodging required for the instructor to return back to the customary place of origin in accordance with the limitations and travel reimbursement policies delineated in the Participating Entity's travel regulations. A Participating Entity may reschedule the class upon mutual agreement with the Contractor.
- B. Instructor Travel: Contractor (not the training instructor) must submit the travel and related expense invoice to the Participating Entity for reimbursement. Travel related expenses must be in accordance with the limitations and travel reimbursement policies delineated in the Participating Entity's travel regulations, and submitted on the same invoice as the training class fees. Contractor is responsible for obtaining and understanding the Participating Entity's applicable travel regulations. Participating Entity will pay the Contractor and not the training instructor for travel and related expenses. A Participating Entity reserves the right to negotiate payment of travel and related expenses.

- C. Contractor must train and supply the training instructors, furnish course materials to training instructors and learners, and pay and reimburse training instructors, to include but not limited to travel, lodging, salary and fees.
- D. Substitutions: Substitutions of training instructors or course materials shall not be made without the Participating Entity's prior approval and should be requested no less than 10 business days prior to the scheduled class date(s). Participating Entity reserve the right to request resumes for substitute training instructors and at its discretion, to reject any substitute training instructor if qualifications or prior experience are insufficient.
- E. Training Materials judged by the Authorized Users to be unacceptable may be rejected. All costs associated with rejection are the responsibility of the Contractor.
- F. Contractor should deliver course materials needed for classrooms five to ten calendar days prior to the begin date of the training. Contractor should test technical access of synchronous online courses with the Participating Entity prior to the "go-live" date.
- G. Contractor must provide all course materials for learners as part of the course offering unless a separate agreement and/or arrangement is made with a Participating Entity.
- H. Contractor must provide a designated customer service representative(s) available to respond to all Participating Entities inquiries within one (1) business day.
- I. Multi-Accounts within a Participating State: Contractor must process and maintain multiple individual accounts for unique users within a Participating State and Participating Entity.
- J. The Contractor must be available to attend one annual meeting with the Lead State Contract Administrator to discuss performance and customer service related issues and other contract matters. The Lead State reserves the right to schedule additional meetings as it deems necessary.

## **6. PARTICIPATING ENTITY REQUIREMENTS**

Unless otherwise agreed upon between the Participating Entity and Contractor, the Participating Entity will be responsible for providing the following:

- A. Training Area: Participating Entity will provide or make available, training locations as may be necessary or appropriate for the Contractor to perform the obligations under the Contract.
- B. Technical Requirements: Participating Entity will provide or make available the technical requirements (e.g., internet, VOIP, etc.) as may be necessary to conduct the training.

- C. Marketing: Marketing of courses to the target audience within the areas contracted for the performance of Services.
- D. Registration: Registration requirements to fully accomplish all tasks required for accountability needed for training and collection of all fees, as applicable.

## **7. PERFORMANCE MEASUREMENTS AND INSTRUCTOR EVALUATION REPORTING INSTRUCTIONS**

Contractor shall submit reports verifying compliance to the following performance measurements to the Participating Entities for whom Services were provided:

- A. All completed training courses shall be evaluated via customer service surveys or other method conducted by the Contractor on a 1 (Needs Improvement) – 5 (Excellent) scale. Evaluations, whether written or electronic, must be solicited from learners and training instructors for each program to determine, at a minimum, that:
  - 1. Stated learning objectives were attained;
  - 2. Course materials were relevant and contributed to the achievement of the learning objectives;
  - 3. Time allotted to the learning activity was appropriate; and
  - 4. Individual training instructors were effective.
- B. A success rate of seventy-five percent (75%) or higher on an appropriate course assessment such as a test with the criteria based on learning outcomes for the learners completing a course.

Contractor must contact Participating Entity to resolve any issues when the customer service surveys fall below 3.5 and appropriate course assessments fall below an average of 75%.

- C. Training Instructor Evaluation: Contractor shall provide reports as mutually agreed upon by the Participating Entity and the Contractor to document/reinforce the learning process. Contractor must submit a written statement of information and suggestions based on the training instructor's experience for improvements to the overall training program to include any information that may require revision, deletions or additions to course materials based on class discussion or observation, as applicable. The statement should be submitted to the Participating Entity no later than thirty (30) calendar days after the training was held.

## **8. ORDERING PROCEDURES**

A Participating Entity selecting a contractor from a contract will consider the contractor's availability, experience, and pricing; therefore, pricing may not be the sole determining factor in the selection of a contractor.



- A. **REQUEST FOR SERVICES:** When a need has been identified, a Participating Entity will contact a contractor to provide a quote. Contractor should provide a written price quote within three (3) business days of receiving a quote request. There shall be no commitment on the part of either party nor is any payment authorized to the contractor until the execution of an order.
- B. **PROPOSED QUOTE:** Pricing shall be based on the requirements in Attachment B Section 2. Any quote submitted by a contractor should clearly state in detail:
1. Master Agreement number;
  2. Description of the services to be performed and course materials;
  3. Third party purchased optional instruction materials (e.g., DISC, MBTI, etc.);
  4. Quantity (e.g., days, hours, amount of course material provided, etc.);
  5. Any additional discount offered; and
  6. Itemized and total price.

Quotes shall be valid for a minimum of ninety (90) calendar days. Participating Entities reserve the right to obtain additional quotes and negotiate pricing from other contractors or any other service provider.

- C. **ORDERS:** Authorized Users are solely limited to issuing orders for Services available under this Contract and may order Services by one of the following methods:
1. For purchases within the Commonwealth of Virginia, all Authorized Users must issue orders through the Commonwealth's eVA e-procurement website portal;
  2. Participating Entity e-Procurement system: A Participating Entity may issue orders through its own entity-specific e-Procurement system or through any other system that is mutually agreeable between the parties; or
  3. Purchase Order (PO): An official and duly authorized purchase order form or other appropriate commitment document issued by a Participating Entity.

Any Order executed prior to termination or expiration of the Contract, shall survive such expiration or termination, and the provisions of this Contract shall continue to have full force and effect for the duration of any Order term.

- D. **ORDER CHANGES:** Any changes to an Order after submission to the Contractor must be made by the Authorized User. Both parties shall agree in writing to any changes in the scope of work and any increase or decrease in the price that may result as a consequence of the changes. Only the Authorized User has the right to issue a change to an Order and no Order changes may be made verbally.

## **9. USAGE REPORTING AND PAYMENT REQUIREMENTS**

Contractor shall submit the following report in electronic format during the Contract term and any renewal period at no additional cost. Failure to comply with reporting and payment requirements described in this section may result in payment(s) for training services being withheld until compliance is confirmed. Participating Entities may require other reports and reserve the right to pursue other appropriate remedies for Contractor's failure to comply with the reporting and payment requirements.

- A. NASPO ValuePoint Summary and Detailed Usage Reports: Contractor shall be required to provide quarterly summary and detailed usage reports to NASPO ValuePoint. Refer to Attachment A Section 7 for information on reporting requirements.

- B. FOR ALL SALES OF PRODUCTS AND SERVICES UNDER ANY MASTER AGREEMENT:

NASPO ValuePoint Administrative Fee: Contractor shall pay an administrative fee to NASPO ValuePoint. Refer to Attachment A Section 6 for information on administrative fees.

Participating States may have administrative or similar fee(s) which will be included on Participating State Participating Addendums and are in addition to the NASPO ValuePoint Administrative Fee described above. Neither party will be required to enter into a Participating Addendum if no acceptable agreement can be negotiated.

## **10. INVOICING AND METHODS OF PAYMENT**

- A. INVOICES: Fully detailed invoices shall be submitted to the Participating Entity at the invoice address designated on the Order after all services and/or course materials covered by the invoice have been provided. No invoice may include any additional fees or charges, except as allowed by Contract provisions, without prior approval from the Participating Entity. Invoices should provide at a minimum:

1. Name of Participating Entity;
2. Name of Participating Entity contact;
3. Customer number, if applicable;
4. Master Agreement number;
5. Purchase Order number;
6. Invoice date;
7. Invoice number;
8. Instructor name;
9. Description and dates of the services provided;
10. Description of course materials provided; and
11. Itemized and total price.

**B. METHODS OF PAYMENT:**

1. Payment will be made to the Contractor within thirty (30) calendar days of receipt of a valid invoice for all goods and services provided and/or delivery of goods and services, whichever is later; however, payment terms may be negotiated.
2. Payment may be made by any other duly authorized official payment method or charge card as mutually agreed upon between any Authorized User and the Contractor.

**11. LEAD STATE POINT OF CONTACT**

The Commonwealth of Virginia is the Lead State and issuing office for this Master Agreement and all subsequent modifications and amendments relating to it. The Lead State Contract Administrator and point of contact is identified below:

Katherine Bosdell, CPPB, VCO  
Lead State Contract Administrator/DPS Statewide Strategic Sourcing Officer  
Commonwealth of Virginia  
Department of General Services, Division of Purchases and Supply  
1111 East Broad Street  
Richmond, VA 23219  
Email: [katherine.bosdell@dgs.virginia.gov](mailto:katherine.bosdell@dgs.virginia.gov)  
Phone: 804-786-2397

**12. CONTRACTOR POINTS OF CONTACT**

**Primary Contact**

Dan P. Plute  
President  
5820 Stoneridge Mall Road, Suite 217  
Pleasanton, CA 94588  
Tel.: 925-460-0397  
Email: [dplute@macservices.us](mailto:dplute@macservices.us)

**Billing/Administration**

Evelyn Beauchamp  
Accounting Supervisor  
5820 Stoneridge Mall Road, Suite 217  
Pleasanton, CA 94588  
Tel.: 925-460-0397  
Email: [accountant@macservices.us](mailto:accountant@macservices.us)

**Reporting Contact**

Steve McCredie  
Training Manager  
5820 Stoneridge Mall Road, Suite 217  
Pleasanton, CA 94588  
Tel.: 925-460-0397  
Email: [smccredie@macservices.us](mailto:smccredie@macservices.us)