

**PARTICIPATING ADDENDUM
NASPO ValuePoint**

PROFESSIONAL GRADE TOOLS AND DIAGNOSTIC EQUIPMENT

Administered by the State of Oklahoma (hereinafter "Lead State")

MASTER AGREEMENT

Master Agreement No: OK-MA-818-010

Hilti, Inc.

(hereinafter "Contractor")

and

State of Washington

(hereinafter "Participating State")

Washington Master Contract No.: 01017

This Participating Addendum for the above referenced Master Agreement ("Participating Addendum") is made and entered into by and between the State of Washington acting by and through the Department of Enterprise Services, a Washington State governmental agency ("Enterprise Services") and Hilti, Inc., an Oklahoma corporation ("Contractor") and is dated and effective as of January 1, 2019.

1. **SCOPE:** This Participating Addendum covers professional grade tools and diagnostic equipment led by the State of Oklahoma for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the State's chief procurement official.
2. **PARTICIPATION:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State chief procurement official. Issues of interpretation and eligibility for participation are solely within the authority of the State chief procurement official. Pursuant to this Participating Addendum, the Master Agreement may be utilized by the following ("Purchasing Entities"):
 - (a) **WASHINGTON STATE AGENCIES.** Washington state agencies, departments, offices, divisions, boards, and commission; and any the following institutions of higher education in Washington: state universities, regional universities, state college, community colleges, and technical colleges.
 - (b) **MCUA PARTIES.** The Master Agreement also may be utilized by any of the following types of entities that have executed a Master Contract Usage Agreement (MCUA) with Enterprise Services:
 - Political subdivisions (e.g., counties, cities, school districts, public utility districts);
 - Federal governmental agencies or entities;
 - Public-benefit nonprofit corporations (i.e., § 501(c) (3) nonprofit corporations that receive federal, state, or local funding); and

- Federally-recognized Indian Tribes located in the State of Washington.

3. PARTICIPATING STATE MODIFICATIONS OR ADDITIONS TO MASTER AGREEMENT:

- 3.1. **WASHINGTON’S ELECTRONIC BUSINESS SOLUTIONS (WEBS) SYSTEM:** Within seven (7) days of execution of this Participating Addendum, Contractor shall register in the Washington State Department of Enterprise Services’ Electronic Business Solutions (WEBS) System at <https://fortress.wa.gov/ga/webcust/home.html>. Contractor shall ensure that all of its information therein is current and accurate and that, throughout the term of the Master Agreement, Contractor shall maintain an accurate profile in WEBS.
- 3.2. **WASHINGTON’S STATEWIDE PAYEE DESK:** To be paid for contract sales, Contractors must register with Washington’s Statewide Payee Desk. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: [Receiving Payment from the State](#).
- 3.3. **CONTRACT SALES REPORTING.** Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.
- (a) **REPORTING.** Contractor shall report quarterly Contract sales in Enterprise Services’ [Contract Sales Reporting System](#). Enterprise Services will provide Contractor with a login password and a vendor number.
- (b) **DATA.** Each sales report must identify every authorized Purchasing Entity by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The “Miscellaneous” option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasing Entities specified herein during the term of this Participating Addendum. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.
- (c) **DUE DATES FOR CONTRACT SALES REPORTING.** Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

For Calendar Quarter Ending	Contract Sales Report Due
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

- 3.4. **VENDOR MANAGEMENT FEE:** Contractor shall pay to Enterprise Services a vendor management fee (“VMF”) of 1.5 percent on the purchase price for all contract sales (the purchase price is the total invoice price less applicable sales tax).
- (a) The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:

$$\text{Amount owed to Enterprise Services} = \text{Total contract sales invoiced (not including sales tax)} \times .0150.$$

- (b) The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
- (c) Enterprise Services will invoice Contractor quarterly based on contract sales reported by Contractor. Contractor shall not remit payment until it receives an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference the following:
 - This Washington Master Contract No.: **01017**
 - The NASPO Master Agreement No.: **OK-MA-818-010**
 - The year and quarter for which the VMF is being remitted, and
 - Contractor's name as set forth in this Contract, if not already included on the face of the check.
- (d) Contractor's failure accurately and timely to report total net sales, to submit usage reports, or remit payment of the VMF to Enterprise Services, may be cause for suspension or termination of this Participating Addendum or the exercise of any other remedies as provided by law.
- (e) Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases.
- (f) For purposes of the VMF, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

3.5. CONTRACTOR REPRESENTATIONS AND WARRANTIES. Contractor makes each of the following representations and warranties as of the effective date of this Participating Addendum and at the time any order is placed pursuant to the Master Agreement. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

- (a) **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Participating Addendum and the three (3) year period immediately preceding the effective date hereof, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- (b) **PAY EQUALITY.** Contractor represents and warrants that, as required by Washington state law (Laws of 2017, Chap. 1, § 147), during the term of this Participating Addendum for the time period of July 1, 2017 through June 30, 2019, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of

production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor’s failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Participating Addendum and Washington’s Master Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Washington Master Contract and/or any agreement entered into pursuant to this Participating Addendum.

- (c) Executive Order 18-03 – Workers’ Rights (Mandatory Individual Arbitration). Contractor represents and warrants that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Participating Addendum and Washington’s Master Contract, Contractor shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

3.6. **COMPLIANCE WITH LAW; TAXES, LICENSES, & REGISTRATION:** Contractor shall comply with all applicable law. Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to purchasers in the State of Washington, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

4. **LEASE AGREEMENTS:** Leasing, renting, or purchasing equipment is not allowed throughout the term of the Master Agreement.

5. **PRIMARY CONTACTS:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor	Participating State
Hilti, Inc. Attn: Contract Admin 5400 S. 122 nd E. Ave. Tulsa, OK 74146-6007	State of Washington Department of Enterprise Services Contracts & Procurement . P.O. Box 41411 Olympia, WA 98504-1411
Attn: Bruce Mitchell Tel: 918-872-3240 Email: bruce.mitchell@hilti.com	Attn: Melanie Williams Tel: (360) 407-9399 Email: Melanie.Williams@DES.WA.GOV

6. **SUBCONTRACTORS:** All Contractor’s Distributors authorized in the State of Washington, as shown on the dedicated Contractor NASPO ValuePoint website, are approved to provide sales and service support

to participants in the NASPO ValuePoint Master Agreement. The Contractor's Distributor's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

7. **ORDERS:** Unless the parties to the Order agree in writing that another contract or agreement applies to such order, any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement shall be deemed to be a sale under (and governed by the prices and other terms and conditions of) the Master Agreement as conditioned by this Participating Addendum.

8. **GENERAL:**

- (a) **INTEGRATED AGREEMENT; MODIFICATION.** This Participating Addendum and Master Agreement, together with its exhibits, set forth the entire agreement and understanding of the Parties with respect to the subject matter and supersedes all prior negotiations and representations. This Participating Addendum may not be modified except in writing signed by the Parties.
- (b) **AUTHORITY.** Each party to this Participating Addendum, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Participating Addendum and that its execution, delivery, and performance of this Participating Addendum has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- (c) **ELECTRONIC SIGNATURES.** A signed copy of this Participating Addendum or any other ancillary agreement transmitted by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Participating Addendum or such other ancillary agreement for all purposes.
- (d) **COUNTERPARTS.** This Participating Addendum may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Participating Addendum at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Participating Addendum.

EXECUTED as of the date and year first above written.


STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: 

Corinna Cooper

Its: Acting Statewide Goods/Services
Procurement Manager

HILTI, INC.,
AN OKLAHOMA CORPORATION

By: 

Bruce Mitchell

Its: Assistant Secretary / Contract Manager



**OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT
PROFESSIONAL GRADE TOOLS AND DIAGNOSTIC EQUIPMENT**

Office of Management and Enterprise Services

Central Purchasing Division

5005 North Lincoln Boulevard

Oklahoma City, OK 73105

And

Hilti, Inc.


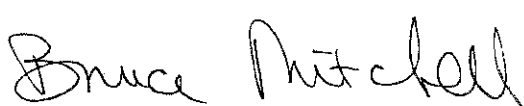
5400 South 122nd East Ave

Tulsa, OK 74112

Master Agreement Number: OK-MA-818-010

The Contractor identified below is hereby notified that a contract is being awarded to the Contractor in connection with Solicitation No. OK-MA-818, which opened November 30, 2017.

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

STATE OF OKLAHOMA	CONTRACTOR
<p>Ferris J. Barger, State Purchasing Director</p>  <p>By:</p>	<p>Hilti, Inc.</p>  <p>By: Bruce Mitchell</p>
<p>Date: 6/29/18</p>	<p>June 29, 2018 Date:</p>
<p>State Purchasing Director</p>	<p>Title: Assistant Secretary</p>

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

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OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

SUMMARY

1. **Scope of Work Defined.** The purpose of this Master Agreement is to memorialize terms of the contract under which Participating States/Purchasing Entities can obtain Professional Grade Tools and Diagnostic Equipment in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The objective is to obtain best value, and in some cases achieve more favorable pricing, than is obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities.
2. **Categories of Products Offered.** This Master Agreement will offer the following categories of products: Professional Grade Tools and Diagnostic Equipment
3. **Contract Documents and Master Agreement Order of Precedence.** Any Order placed under this Master Agreement is governed by and subject to the following contract documents, the terms of which are hereby incorporated:
 - A. Participating Entity's Participating Addendum ("PA");
 - B. Oklahoma NASPO ValuePoint Master Agreement;
 - i. Summary;
 - ii. General Terms, Conditions, and Instructions;
 - iii. Exhibit A, NASPO ValuePoint Terms and Conditions;
 - iv. Exhibit B, Scope of Work; and
 - v. Exhibit C, Pricing.
 - C. A Purchase Order issued against the Master Agreement;
 - D. Request for Proposal; and
 - E. Exhibit D, Contractor's Terms and Conditions Contained in Contractor's Response as Revised and Accepted by the Lead State.

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

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT
EXHIBIT A
GENERAL TERMS AND CONDITIONS

1. **Period of Performance.** The initial term of this Master Agreement shall be 2 (two) years with an option, upon mutual written agreement, to renew for up to three (3) additional renewal periods. The Master Agreement may be extended for a seasonable period of time, not to exceed six (6) months, if in the judgement of the Lead State a follow-on, competitive procurement will be unavoidable delayed beyond the planned date of execution of the follow-on master agreement.

2. **Contract Administrator.** The Lead State Contract Administrator identified below is the single point of contact in connection with this Master Agreement and all questions concerning the procurement process, contractual requirements, changes and any other questions that may arise related to this Master Agreement. The Lead State Contract Administrator designated by the State of Oklahoma, OMES Central Purchasing is:

Lisa Bradley, Statewide Initiatives Lead
State of Oklahoma, OMES Central Purchasing
5005 N. Lincoln Blvd., Suite 300
Oklahoma City, OK 73105
Lisa.Bradley@omes.ok.gov
Phone: 405/522-4480

3. **Authorized Users.** Any Purchasing Entity, as defined herein, may make acquisitions under this Master Agreement.

4. **Definitions**
“Lead State” means the State conducting this cooperative procurement, evaluation, and award centrally administering any resulting Master Agreement(s).
“Offeror” means the company or firm who submits a proposal in response to this Request for Proposal.
“Proposal” means the official written response submitted by an Offeror in response to this Request for Proposal.
“Request for Proposals” or “RFP” means the entire solicitation document, including all parts, sections, exhibits, attachments, and Amendments.

5. **Certification of Non-Debarment.** Contractor certifies to the best of its knowledge and belief, that the Contractor and its principals or participants:
 - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal, State or local department or agency;
 - B. Have not within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) contract; or for violation of Federal or State antitrust statutes or commission of embezzlement, theft,

forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

- C. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses listed above this certification; and
- D. Have not with a three-year period preceding this application/proposal had one or more public (Federal, State or local) contracts terminated for cause or default. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to its solicitation response.

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

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

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

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

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

9. **Oklahoma Open Records Act.** This Master Agreement and all proposal and other materials submitted in response to Request for Proposal OK-MA-818 are the property of the State of Oklahoma and subject to the Oklahoma Open Records Act.

10. **Changes in Contractor Company Status, Equipment or Contact.** The Contractor shall notify the Lead State Contract Administrator of any changes in the company status, such as mergers, sell offs and changes in the contact information of the Contractor. The Contractor may add new Products to products available under this Master Agreement subject to the prior written approval of the Lead State. The price discount may not be decreased. The Contractor shall also provide prior written notice of any

discontinued products or replacement models. The Contractor shall be available at all times during normal business hours for contact from Lead State Contract Administrator.

11. **Invoices.** In addition to requirements in an applicable Participating Addendum, to ensure prompt payment, the Contractor will provide necessary training for the dealer network to make sure all invoices include the following information:
 - A. Purchase order number if applicable;
 - B. Make, model, and VIN number of equipment;
 - C. Name of Purchasing Entity;
 - D. Description of equipment purchased or warranty services performed and/or parts, material and supplies provided;
 - E. The Contractor's suggested retail price less any trade-in allowance if applicable, contract percentage discount off, freight cost, set-up fees, any allied or incidentals, and the final price for each item delivered;
 - F. Name of company who provided the products/services; and
 - G. If requested by the Purchasing Entity for its accounting purposes, a copy of the current, dated Supplier's Price List showing the equipment price.

12. **Leasing or Alternative Financing Methods.** The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

13. **Master Agreement Order of Precedence.** The order of precedence of contract documents is set forth in Section 3 of the Summary above.

14. **Definitions.**
 - A. **Acceptance** is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product. Acceptance shall occur not later than thirty (30) calendar days after the date of delivery of the products to the Participating or Purchasing Entity.
 - B. **Contractor** means the person or entity delivering Products under the terms and conditions set forth in this Master Agreement.
 - C. **Embedded Software** means one or more software applications which permanently reside on a computing device.
 - D. **Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

- E. Lead State** means the State centrally administering any resulting Master Agreement(s).
 - F. Master Agreement** means this agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.
 - G. NASPO ValuePoint** is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c) (3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.
 - H. Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.
 - I. Participating Addendum** means a bilateral agreement executed by the Contractor and a Participating Entity incorporating this Master Agreement and any other terms and conditions, e.g. ordering procedures, specific to the Participating Entity.
 - J. Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.
 - K. Product** means any equipment, software (including Embedded Software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.
 - L. Purchasing Entity** means a state government (as well as the District of Columbia and U.S. territories) including a department, agency, institution and similar governmental entity thereof, an institution of higher education, city, county, district, or other political subdivision of a state and other eligible entities, subject to approval of the individual state procurement director and compliance with statutory and regulatory requirements,, that issues a Purchase Order and becomes financially committed to the purchase.
 - M. Resale** means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services.
- 15. 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.
- 16. Participants and Scope.**
- A.** Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The terms of this

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

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

participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; the Participating Entity must ensure it has the requisite procurement authority to execute a Participating Addendum.

- G. Subject to any specific conditions included in the solicitation or Contractor's proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not participate in the Resale of Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

17. Administrative Fees.

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

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

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

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

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

- B.** Detailed Sales Data. Contractor shall also report detailed sales data by:
- i.** State;
 - ii.** Entity/customer type, e.g. local government, higher education, K12, non-profit;
 - iii.** Purchasing Entity name;
 - iv.** Purchasing Entity bill-to and ship-to locations;
 - v.** Purchasing Entity and Contractor Purchase Order identifier/number(s);
 - vi.** Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices);
 - vii.** Purchase Order date;
 - viii.** Ship Date; and
 - ix.** Line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is set forth at Attachment A-1 and may be amended from time to time.
- C.** Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, social security numbers or any other numerical identifier, may be submitted with any report
- D.** Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

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

19. 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.

20. NASPO ValuePoint eMarket Center

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

- 21. Right to Publish.** Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior written approval for the release of any information that pertains to the potential work

or activities covered by the Master Agreement. The Contractor shall not make any representations of NASPO Value Point's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

- 22. Price and Rate Guarantee Period.** All prices and rates must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for price or rate adjustment must be for an equal guarantee period, and must be made at least 30 days prior to the effective date. Requests for price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to prices or rates will be allowed.
- 23. Individual Customers.** Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement which include the General Terms and Conditions, the NASPO ValuePoint Terms and Conditions, and the applicable Participating Addendum and will have the same rights and responsibilities for its purchases as the Lead State has in the Master Agreement including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for its purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually and shall have no right of setoff.
- 24. Ordering.**
- A.** Master Agreement Order and Purchase Order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
 - B.** Purchasing Entities may define project-specific requirements and informally compete the requirement among awarded companies on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in a Participating Addendum and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which awarded Contractors are solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, considering cost and other factors.
 - C.** Each Purchasing Entity will identify and utilize its own appropriate purchasing procedures and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.
 - D.** Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document in compliance with the law of the Purchasing Entity.
 - E.** Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
 - F.** All Orders pursuant to this Master Agreement, at a minimum, shall include:

- i. The description and quantity of services or supplies being delivered;
 - ii. The place and requested time of delivery;
 - iii. A billing address;
 - iv. The name, phone number, and address of the Purchasing Entity representative;
 - v. The price per hour or other pricing elements consistent with this Master Agreement; and
 - vi. The Master Agreement identifier.
- G.** All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.
- H.** Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.
- I.** Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

25. Shipping and Delivery

The prices are the delivered price to any Purchasing Entity, All deliveries shall be F.O.B. destination, freight pre-paid, with all standard ground 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 Buyer except as to latent defects, fraud, and contractors 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.

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 offeror. If damage does occur, it is the responsibility of the Offeror to immediately notify the Purchasing Entity placing the Order.

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 item description, brand and manufacturer product number, quantity, and the Ordering Entity's Purchase Order number.

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

27. Inspection and Acceptance.

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

B. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantial impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

C. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements and reduce the contract price to reflect the reduced value of services performed.

D. The warranty period shall begin upon Acceptance.

E. Acceptance Testing is a process to ascertain that the Product meets the standard of performance prior to Acceptance by the Purchasing Entity. If Acceptance Testing is applicable, this subsection applies to Products, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in this Master Agreement or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product does not meet the standard of performance, the Purchasing Entity may, at its option:

- i. declare Contractor to be in breach and terminate the Order;
- ii. demand replacement Product from Contractor at no additional cost to Purchasing Entity;
or
- iii. continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor.

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

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

29. Warranty. Notwithstanding any other provision of the Contract, the parties agree to the following provisions concerning the Contractor's warranty. The Contractor warrants for a period of one year from the date of Acceptance that:

- A. the Product performs according to all specific claims that the Contractor made in its response to the solicitation;
- B. the Product is suitable for the ordinary purposes for which such Product is used;
- C. the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment;
- D. the Product is designed and manufactured in a commercially reasonable manner; and
- E. the Product is free of defects.

Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

30. Title of Product. Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity,

Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

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

32. Insurance.

- A.** Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- B.** Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:
 - i.** Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate and
 - ii.** Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- C.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur
- D.** Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that:
 - i.** names the Participating States identified in the Request for Proposal as additional insureds;
 - ii.** provides that written notice of cancellation shall be delivered in accordance with the policy provisions; and

- iii. provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory.

Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

- E. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, result in this Master Agreement's termination or, at the sole option of any Participating Entity, the termination of any Participating Addendum.
- F. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

33. Records Administration and Audit.

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

34. Confidentiality, Non-Disclosure, and Injunctive Relief.

- A. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that

is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to:

- i.** any Purchasing Entity's records;
- ii.** personnel records; and
- iii.** information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information").

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

- i.** is or becomes (other than by disclosure by Contractor) publicly known;
- ii.** is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement;
- iii.** is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement;
- iv.** is obtained from a source other than Purchasing Entity without the obligation of confidentiality;
- v.** is disclosed with the written consent of Purchasing Entity; or
- vi.** is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

- B.** Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination or expiration of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in

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

- C. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.
- D. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

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

36. Assignment/Subcontracts.

- A. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.
- B. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint.

37. Changes in Contractor Representation. The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing this Master Agreement in writing within ten (10) calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's Proposal. The Contractor agrees to propose replacement key personnel having sufficient education, training, and experience.

38. Independent Contractor. The Contractor is an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating Entities or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

39. Cancellation. Unless otherwise stated, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for

Products delivered and Accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate.

40. Force Majeure. Neither party to this Master Agreement shall be held responsible for delay or default caused by unusually severe weather, fire or other casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement, and a Participating Entity may terminate a Participating Addendum, after determining such delay or default will reasonably prevent successful performance of the Master Agreement or Participating Addendum, as applicable.

41. Defaults and Remedies.

A. The occurrence of any of the following events shall be an event of default under this Master Agreement:

- i.** Nonperformance of contractual requirements; or
- ii.** A material breach of any term or condition of this Master Agreement; or
- iii.** Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- iv.** Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- v.** Any default specified in another section of this Master Agreement.

B. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

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

- i.** Exercise any remedy provided by law; and
- ii.** Terminate this Master Agreement and any related Contracts or portions thereof; and

- iii. Impose liquidated damages as provided in this Master Agreement; and
- iv. Suspend Contractor from being able to respond to future bid solicitations; and
- v. Suspend Contractor's performance; and
- vi. Withhold payment until the default is remedied.

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

42. 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.

43. Debarment. The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement.

44. Indemnification

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

- B.** The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.
- C.** The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

 - i.** Provided by the Contractor or the Contractor's subcontractor, subsidiary or affiliate;
 - ii.** Specified by the Contractor to work with the Product;
 - iii.** Reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
 - iv.** reasonably expected to be used in combination with such product, system or method.
- D.** The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

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

sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

46. Governing Law and Venue.

- A. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum is solely and exclusively in the Purchasing Entity's State.
- B. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

47. 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.

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

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT B – SCOPE OF WORK

1. INTRODUCTIONS

The State of Oklahoma, as the "Lead State" and on behalf of NASPO ValuePoint, offers this Contract for the purchase of Professional Grade Tools and Diagnostic Equipment for State and Local Government Agencies. The State of Oklahoma, and interested States, expect to purchase up to an estimated \$100 million on tools along with diagnostic equipment annually. This will include the necessary attachments, accessories, and any related software upgrades for tools and any diagnostic equipment purchased. There is no guaranteed amount of purchases or utilization of the resultant contract.

2. PRODUCT CATEGORIES

For the purpose of this RFP, there will be two product categories defined below which may be awarded. It is the intent to establish multiple awards throughout the categories, and all offerors are encouraged to compete in as many levels as possible. The State of Oklahoma reserves the right to eliminate any category not meeting full expectations from the final award.

3. PRODUCT CATEGAORY DEFINITIONS

3.1 Professional Grade Tools – used here as a term to distinguish from general use or consumer Grade products. It is intended to communicate a more durable product with the expectation that it will work better and longer in an environment where it is used more regularly. Built for extended heavy and repeated use, more rugged and tends to not malfunction as quickly. Also associated with better features and options which result in a high end result. Excellent and extended warranties for product repairs are usually in place versus throw away and replace options.

3.2 Diagnostic Equipment – used for discovering what is wrong with things that do not work properly. Non-medical equipment. Can include automotive, electrical, plumbing, and other specialized areas which require unique diagnostic analysis for evaluation and repair.

4. SERVICE LEVEL REQUIREMENTS AND EXPECATIONS

4.1 Reporting [Negotiated]

Periodic Reports identifying the Supplier's fill rate and performance against other metrics will be required and submitted at the Lead States request.

4.2 Service Fees

The Supplier will not invoice service fees or additional costs to the Participating Entity during the term of the contract. For instance, there will be no small order, minimum order, special order, shipping

(except as Rush delivery as specified in the Cost Proposal), hazardous materials, pallet, fuel charges or surcharges.

4.3 Delivery

Standard orders must be delivered to end users within 5 business days after receipt of order, unless product is a special order item. Rush orders to end users must be delivered next day after receipt of order.

4.3.1 Acceptable hours for deliveries vary by location, and some facilities do not accept palletized deliveries. It is the Supplier's responsibility to determine the acceptable delivery times and packing requirements for each customer at the time the order is placed.

4.4 Response Time

The supplier should respond to all communications no later than one business day.

4.5 Fill Rate

The Supplier should maintain a Fill Rate of at least 98%. The fill rate will be calculated by each Facility, by dividing the number of line items delivered on time by the number of line items ordered for delivery during the month and multiplying the result by 1000 to arrive at the percent (%) fill rate. Approved and accepted substitutions shipped and delivered on first fill will not count against fill rate. Supplier's failure to maintain a Fill Rate of 98% may result in further review.

4.6 Invoice Accuracy

The Supplier should strive to achieve invoice accuracy of 100% as measured by SKUs ordered.

4.7 Non-Delivery

After notification of impending short or out-of-stock items, Purchasing Entity may cancel balance of incomplete deliveries without penalty. Purchasing Entity may purchase shorted items that cannot be supplied by the Supplier by date required to the next awarded contractor, if this solicitation results in a multi-award situation.

4.8 Overall Customer Satisfaction

Supplier should develop a plan to conduct a quarterly survey of end-users to determine the level of customer service satisfaction experienced by Purchasing Entity, and should conduct such a survey upon request from the Lead State. Both the raw and analyzed survey results should be measured on the survey: Responsiveness, Communication, Courtesy, Competence, Effectiveness, and Overall Satisfaction.

4.9 Payment Options

Purchasing Entity will pay the Supplier by check, electronic fund transfer, or with State(s) P-card.

4.10 Freight Policy

All shipments should be F.O.B. Destination to the specified location, with inside delivery. Supplier is responsible for filing and expediting all freight claims with the carrier. The Supplier will pay title and risk of loss or damage charges.

4.11 Return of Product

Any materials delivered in poor condition, or in excess of the amount authorized by purchase order may, at the discretion of the Purchasing Entity, be returned by the Supplier at the Supplier's expense within 5 days. Credit for returned goods shall be made immediately once the Supplier receives the returned goods. If any product is returned to a Supplier for failure of performance, the Supplier will, at the State's discretion, refund all amounts paid to the Supplier for such product or replace the product, and the following shall apply:

4.11.1 Within five (5) days of written notification by the Purchasing Entity, the Supplier will make arrangements for the return of the product.

4.11.2 The Supplier shall bear all shipping and insurance costs.

4.11.3 Supplier shall be liable for damages to the product, unless caused by fault or negligence of the Purchasing Entity that occur during the return process.

4.12 Returns Due to User Error

Supplier shall provide for return of unopened items ordered in error for up to 30 calendar days from delivery. For all returns of unopened items or returns due to user error, returns should be provided free-of-charge as long as they occur at a regularly-scheduled delivery time. Otherwise, Purchasing Entity may be responsible for all costs associated with the preparation of the product for shipping, and all shipping costs to the Supplier's nearest service location for such returns; no additional charges are allowed, including restocking fees.

Supplier shall issue a credit to Purchasing Entity's account as soon as items have been received by the Supplier.

4.13 Price Verification

The Supplier should be able to provide manufacturer price lists and its own price lists at the State's request in order for the State to verify pricing. The Supplier should have its own Auditing system to verify that correct pricing is being offered to the State. In addition, the State reserves the right to audit Supplier records in order to identify discrepancies. If Discrepancies are found, at a minimum, the Supplier will refund the State the difference and may be subject to other legal remedies.

4.14. Rebates

Offerors should offer all rebates and special offers (including commercial and consumer offers) made available by the manufacturer, in addition to contracted pricing.

4.15 Receiving Procedures and Order Inspection

Purchasing Entity shall inspect and verify deliveries, upon receipt of order. Products shall be matched against the packing slip and other specifications. Any cases damaged during loading, or delivery will be rejected. Supplier shall replace with like or acceptable product at no charge within two business days of notice.

4.16 Disaster Recovery

The State(s) expects the Supplier to have robust disaster recovery capabilities and procedures, to continue service in all aspects of its operations. Supplier shall provide a copy of such a plan in the response.

4.17 Catalogs

Supplier shall have web based catalog(s) and may deliver hard copies, CD-ROM, or electronic media copies of the most current catalog to each Purchasing Entity upon request. Supplier should provide Lead State with electronic copy of its most recent catalog within five (5) business days of publication.

4.18. Supplier Outsourcing

All suppliers outsourcing of products which are not currently listed in the suppliers catalog or on-line ordering system must be direct line extension products. A product which has a similar items is an established and awarded product category, and supplier has a publically recognized business partnership with the brand/or manufacturer.

OKLAHOMA NASPO VALUEPOINT MASTER AGREEMENT

EXHIBIT C - PRICING

1. All prices offered shall be guaranteed for the initial first year of the Master Agreement. Any request for price adjustment following the initial first year of the Master Agreement is detailed in section 8 and 21 of the NASPO ValuePoint Master Agreement Terms and Conditions.
2. All discount rates shall be guaranteed for the length of the Master Agreement term. Additional discounts may be increased but not decreased.
3. Offeror shall provide detailed costs for all costs associated with the responsibilities of managing this contract;
4. Pursuant to 68 O.S. 1404, 68 O.S. 1352, and 68 O.S. 1356, Purchasing entities under the contract that are Oklahoma state agencies are exempt from the assessment of state sales, use, and excise taxes. Further, such purchasing entities and purchasing entities that are political subdivisions of the state of Oklahoma are exempt from Federal Excise taxes pursuant to Title 26 of the United States Code. Purchasing Entities will provide Contractor with a tax exemption certificate upon request. Any taxes of any nature whatsoever payable by the Contractor shall not be reimbursed by the participating entity or the Purchasing entity.
5. The Supplier should be able to provide manufacturer price lists and its own price lists at the States request in order for the state to verify pricing. The State reserves the right to audit Supplier records in order to identify discrepancies. If discrepancies are found, at a minimum, the Supplier will refund the State the difference and may be subject to other legal remedies.
6. The price to the Customer under the Contract shall include and Contractor shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be Free on Board Purchasing Entity's Destination. No additional fees shall be charged to the Purchasing Entity for standard shipping and handling. If the Purchasing Entity requests expedited or special delivery, Purchasing Entity may be responsible for any charges for expedited or special deliver.