

MASTER AGREEMENT

This Master Agreement ("Master Agreement") is between City of Fairfax and _____, whose primary business address is _____ ("Contractor"). City of Fairfax and Contractor may each be referred to as a "Party" and collectively as "Parties."

BACKGROUND

- A. City of Fairfax seeks to establish a cooperative contracting relationship with Contractor to provide goods and services to non-profit, private, and public purchasing entities.
- B. This Master Agreement sets forth the terms and conditions under which Contractor will supply such goods and services to these entities through the Procurement Professionals Alliance ("PPA")/RFxPremier ("RFxP") program.

The Parties agree as follows:

I. Term of Agreement

- 1.1 **Effective Date.** This Master Agreement is effective upon the date of last signature.
- 1.2 **End Date.** This Master Agreement will continue for a period of 4 years, unless otherwise terminated by either Party in writing.
- 1.3 **Termination.** Either Party may terminate this Master Agreement upon breach by the other party, subject to thirty (30) days' written notice and opportunity to cure.

II. Order of Precedence

- 2.1 **Order.** Any order placed under this Master Agreement will consist of the following documents:
 - 2.1.1 A Participating Entity's Participating Addendum ("PA") (if applicable);
 - 2.1.2 A Purchase Order/Order or Scope of Work/Specifications issued against the Master Agreement;
 - 2.1.3 RFxPremier Master Agreement, including all attachments thereto;
 - 2.1.4 The Solicitation; and
 - 2.1.5 Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead Entity.
- 2.2 **Conflict.** These documents will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead Entity and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

III. Cooperative Purchasing Mechanism

- 3.1 **Marketing and Administration.** Lead Entity shall administer this Master Agreement as a convenient and cost-effective contracting vehicle for use by states, territories, counties, cities, and other political subdivisions, higher

education, K-12, healthcare, tribal, and nonprofit organizations (“Eligible Entities”).

- 3.2 **Annual Contract Performance Review.** Contractor shall participate in an annual contract performance review with Lead Entity and PPA/RFP.
- 3.3 **Logo Use.** The PPA/RFP logos may not be used by Contractor in sales and marketing until a separate logo use agreement is executed with PPA/RFP.
- 3.4 **No Representations.** The Contractor shall not make any representations concerning Lead Entity, PPA/RFP or any nonprofit, private, or public entities purchasing under this Master Agreement (“Buyers”) as to the quality or effectiveness of the goods or services provided herein, without prior written consent.

IV. Purchasing and Contract Administration

- 4.1 **Goods and Services.** Contractor will provide the goods and services to Eligible Entities as set forth in Attachment 02 – Scope of Work, as attached and incorporated herein.
- 4.2 **Pricing.** The prices contained in Attachment 02 – Scope of Work represent the not-to-exceed price Offered by Contractor. All prices and rates must be guaranteed for the initial term of the Master Agreement.
- 4.3 **Shipping.** All deliveries will be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor.
 - 4.3.1 Notwithstanding the above, responsibility and liability for loss or damage will remain the Contractor’s until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor’s warranty obligations.
- 4.4 **Purchase Orders.** Contractor shall require all Buyers to include the following language in each purchase order: “Buyer shall hold Procurement Professionals Alliance harmless and, to the extent permitted by law, shall indemnify Procurement Professionals Alliance and RFPremier from all third-party claims or causes of action, arising from goods and services acquired under this Purchase Order.”
- 4.5 **Administrative Fee.** Contractor shall pay PPA a fee for management and marketing of the Master Agreement (“Administrative Fee”) equal to one percent (1% or 0.01) of each sale of products or services under this Master Agreement no later than sixty (60) days following the end of each calendar quarter. The Administrative Fee applies to the cost of the goods and services, less any charges for taxes or shipping. The PPA/RFP Administrative Fee is not negotiable and must be included in the overall cost provided to the Buyer and not shown as a separate line item.
- 4.6 **Sales Data Reporting.** Contractor shall report to PPA/RFP all sales made under this Master Agreement which Contractor has invoiced and received payment for, including orders for personal use, if applicable (“Sales Data”).
 - 4.6.1 **Summary Sales.** Contractor shall provide a summary of the Sales Data (“Summary Sales Data”) using a reporting tool or template provided by PPA/RFP. Contractor shall provide PPA/RFP with Summary Sales

Data each calendar year quarter, no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.

- 4.6.2 **Detailed Sales.** Within thirty (30) days following the end of each calendar year quarter, Contractor shall provide PPA/RFP with detailed sales Data, including but not limited to customer name and address and line-item ordering detail ("Detailed Sales Data"). PPA/RFP will work collaboratively with Contractor to determine the appropriate data and means of reporting.

V. Pricing, Payment & Leasing

- 5.1 **Pricing.** The prices contained in this Master Agreement or offered under this Master Agreement represent the not-to-exceed price to any Buyer.
 - 5.1.1 All prices and rates must be guaranteed for the initial term of the Master Agreement.
 - 5.1.2 Following the initial term of the Master Agreement, any request for a price or rate adjustment must be for an equal guarantee period and must be made at least 60 days prior to the effective date.
 - 5.1.3 Requests for a price or rate adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement will not be effective unless approved in writing by the Lead Entity.
 - 5.1.4 No retroactive adjustments to prices or rates will be allowed.
- 5.2 **Payment.** Unless otherwise agreed upon in a Participating Addendum or Order, Payment after Acceptance will be made within thirty (30) days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum or Order, or otherwise prescribed by applicable law. Payments will be remitted in the manner specified in the Participating Addendum or Order. Payments may be made via a purchasing card with no additional charge.
- 5.3 **Leasing or Alternative Financing Methods.** The procurement and other applicable laws of some Buyers 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 or Order, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Buyer.

VI. Inspection and Acceptance

- 6.1 **Laws and Regulations.** All Products must comply with applicable federal, state, and local laws and regulations.
- 6.2 **Applicability.** Unless otherwise stated in the Master Agreement, Participating Addendum, or ordering document, this Section applies and does not limit rights under applicable commercial codes.
- 6.3 **Inspection.** Products are subject to inspection before Acceptance at reasonable times and places. The Buyer and authorized agents may access the Contractor's facilities as needed to monitor performance and compliance.

- 6.3.1 Products failing to meet specifications may be rejected. Acceptance does not waive rights for material or latent defects later discovered. Acceptance may be revoked in accordance with commercial code provisions. Contractor is responsible for costs related to rejected or revoked goods.
- 6.4 **Failure to Conform.** If services fail to meet contract requirements, Buyer may require re-performance at no cost. If not correctable, Buyer may require corrective action and a price reduction to reflect diminished value.
- 6.5 **Acceptance Testing.** Buyer may conduct Acceptance Testing in accordance with industry standards.
 - 6.5.1 The testing period is 30 calendar days from delivery or installation and Contractor's notice of readiness.
 - 6.5.2 If the Product does not meet required performance, Buyer may extend testing on a day-to-day basis.
 - 6.5.3 If rejected, Contractor has 15 calendar days to cure. If still nonconforming, Buyer may (a) terminate the Order, (b) demand a replacement at no cost, or (c) extend the cure period by agreement.
 - 6.5.4 Contractor is responsible for return shipping and related costs.
 - 6.5.5 No Product is deemed Accepted or payable until it meets all performance standards.

VII. Product Title

- 7.1 **Conveyance of Title.** Upon Acceptance by the Buyer, Contractor shall convey to Buyer title to the Product free and clear of all liens, encumbrances, or other security interests.

VIII. Indemnification

- 8.1 **General Indemnification.** The Contractor shall defend, indemnify and hold harmless Lead Entity, PPA, and RFxP along with their officers and employees, from and against any 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 the sale or use of any product or service sold under this Master Agreement.

I. Insurance

- 8.2 **Term.** Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. A Buyer may negotiate alternative Insurance requirements in their Order.
- 8.3 **Class.** Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Buyer'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 Buyer's option, result in termination of its Order.
- 8.4 **Coverage.** Coverage must be written on an occurrence basis. The minimum acceptable limits will be as indicated below:
 - 8.4.1 Contractor shall maintain Commercial General Liability insurance covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a

- limit of not less than \$1 million per occurrence and \$2 million general aggregate;
- 8.4.2 Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.
- 8.5 **Notice of Cancellation.** Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Buyer 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.
- 8.6 **Notice of Endorsement.** Prior to commencement of performance, Contractor shall provide to the Lead Entity a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead Entity that (1) provides that written notice of cancellation will be delivered in accordance with the policy provisions, and (2) provides that the Contractor's liability insurance policy will be primary, with any liability insurance of any Buyer as secondary and noncontributory.
- 8.7 **Participating Entities.** Contractor shall provide to Buyers the same insurance obligations and documentation as those specified in this Section IX, except the endorsement is provided to the applicable Buyer.
- 8.8 **Furnishing of Certificates.** Contractor shall furnish to the Lead Entity copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance will be furnished within thirty (30) days after any renewal date to the applicable Buyer. Failure to provide evidence of coverage may, at the sole option of the Lead Entity, or any Buyer, result in this Master Agreement's termination or the termination of any Order.
- 8.9 **Disclaimer.** Insurance coverage and limits will not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

IX. General Provisions

- 9.1 **Confidentiality.** Parties may have access to information that is confidential, proprietary, or trade secret, including information provided by the other Party, as well as by Buyers, which may also include information on individuals ("Confidential Information"). Parties acknowledge that any unauthorized disclosure or use of the Confidential Information may cause irreparable harm and loss to the disclosing party or other individuals. Therefore, Parties shall (a) use Confidential Information for the sole purpose of performing under this Agreement, (b) limit dissemination of Confidential Information to only those employees and representatives who have a need to know the Confidential Information, and (c) not disclose the Confidential Information to any other person or entity without the approval of disclosing Party or Buyer, if applicable.
- 9.2 **Records Administration and Audit.** Contractor shall maintain detailed records related to performance, payments, and fees under this Master Agreement and any Buyer orders. Contractor shall provide access to the Lead Entity, any Buyer, the federal government (including grant awarding agencies and the U.S. Comptroller General), and other authorized government agents to audit, inspect, copy, or examine records directly related to this Agreement or any order. This audit right will remain in effect for six (6) years after termination of the Agreement

or final payment, whichever is later, or longer if required by applicable state law, to ensure contract compliance and performance evaluation.

- 9.3 **Amendments.** This Agreement may only be amended or modified in writing upon agreement by both Parties.
- 9.4 **Assignment.** Neither Party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party.
- 9.5 **Notice.** All notices concerning enforcement, modification, amendment, interpretation, or dispute resolution of this Agreement must be in writing and be delivered to the other Party's signatory to this Agreement.
- 9.6 **Dispute Resolution.** In the event of a dispute concerning this Agreement, Parties shall attempt to resolve the dispute in good faith through non-binding meditation prior to any formal legal action.
- 9.7 **Severability.** If any provision of this Agreement is deemed to be invalid or unenforceable, the remainder of this Agreement will not be affected and will be enforced to the greatest extent permitted by law.
- 9.8 **Waiver.** The waiver of either Party of a breach, default, delay, or omission of any of the provisions of this Agreement by the other Party shall not be construed as a waiver of any subsequent breach of the same or other provisions.
- 9.9 **Governing Law, Jurisdiction, and Venue.** Any claim or cause of action must be brought in a court of competent jurisdiction within the Commonwealth of Virginia, City of Fairfax, and will be subject to Virginia law, without regard to its choice of law provisions.
- 9.10 **Survivability.** Sections 4.5, 4.6, 5.1, 8.1, 10.1, 10.2, 10.4, 10.5, 10.6, 10.7, and 10.9 will survive expiration or termination of this Agreement.

The Parties accept the terms of this Agreement as of the dates set forth below.

For City of Fairfax:

Name

Title

Signature: _____ Date: _____

For Contractor:

Name

Title

Signature: _____ Date: _____