

STATE OF VERMONT PARTICIPATING ADDENDUM # 47394
FOR NASPO VALUEPOINT PURCHASING PROGRAM: Public Safety Communications Products, Services and
Solutions

Led by the State of Washington

NASPO Master Agreement # 00318

Contractor: Freedom Communication Technologies Inc

Contractor's NASPO ValuePoint Webpage: <https://www.naspovaluepoint.org/portfolio/public-safety-communications-products-services-and-solutions/freedom-communication-technologies/>

1. ***Parties.*** This Participating Addendum (“Agreement”) is a contract between the State of Vermont, through its Department of Buildings and General Services, Office of Purchasing & Contracting (hereinafter “State” or “Vermont”), and the Contractor identified above. It is the Contractor’s responsibility to contact the Vermont Department of Taxes to determine if, by law, the Contractor is required to have a Vermont Department of Taxes Business Account Number.
2. ***Subject Matter.*** This Agreement authorizes Purchasing Entities (defined below in section four) to purchase from Contractor certain products and services offered by Contractor under the NASPO Master Agreement identified above (“Master Agreement”) at or below the rates established under the Master Agreement for such products and services. The terms of the Master Agreement are hereby incorporated by reference as if fully set forth herein. Contractor’s awarded categories are:
 - a. **SUB-CATEGORY 8.1 TESTING: MULTIFUNCTION RADIO TEST SET**
3. ***Definitions.*** Capitalized terms used, but not defined herein, have the meanings ascribed to such terms in the Master Agreement.
4. ***Entities Authorized to Use This Agreement.*** This Agreement may be used by (a) all departments, offices, institutions, and other agencies of the State of Vermont and counties (each a “State Purchaser”) according to the process for ordering and other restrictions applicable to State Purchasers set forth herein; and (b) political subdivisions of the State of Vermont (including, but not limited to, cities, towns, and school districts) and any institution of higher education chartered in Vermont and accredited or holding a certificate of approval from the State Board of Education as authorized under 29 V.S.A. § 902 (each an “Additional Purchaser”). Each State Purchaser and Additional Purchaser is referred to herein as a “Purchasing Entity” or collectively as “Purchasing Entities”. Issues concerning a Purchasing Entity’s eligibility for participation under this Agreement are solely within the authority of the State of Vermont Chief Procurement Officer. The State of Vermont and its officers and employees shall have no responsibility or liability for Additional Purchasers. Each Additional Purchaser is to make its own determination whether this Participating Addendum and the Master Agreement are consistent with its procurement policies and regulations.
5. ***Contract Term.*** This Agreement shall be effective on February 23, 2024 and end upon expiration of the Master Agreement, unless terminated earlier in accordance with the terms of this Agreement or the Master Agreement. An amendment to the term of this Agreement shall not be necessary in the event of the renewal or extension of the Master Agreement.

6. ***Restricted/Disallowed Products and Services.*** All products and services listed in the Master Agreement may be purchased under this Agreement, subject to the restrictions set forth in the Master Agreement, except as set forth directly below in this section.
- a. Cybersecurity Standard Update 2023-01. Contractor confirms that all products and services provided to or for the use of a State Purchaser under this Agreement shall be in compliance with State of Vermont Cybersecurity Standard Update 2023-01, which prohibits the use of certain branded products in State information systems or any vendor system that is supporting State information systems, and is available on-line at: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>
 - b. Configuration Dollar Limits. No configuration dollar limits apply to orders placed under this Agreement.
 - c. Services. Services are allowed under this Agreement. Orders that include services shall use and follow the SOW Services Order Form attached to this Agreement for reference.
7. ***No Lease Agreements with State Purchasers.*** Contractor is prohibited from leasing to State Purchasers under this Agreement. Any breach of this prohibition shall be grounds for termination of this Agreement by the State and the immediate cancellation of any applicable purchases. Additional Purchasers are not subject to this prohibition and may negotiate lease agreements directly with Contractor if and to the extent leasing is contemplated under the terms of the Master Agreement.
8. ***Requirements for Ordering.***
- a. Orders must be placed pursuant to this Agreement prior to the termination of this Agreement.
 - i. Notwithstanding the expiration, cancellation or termination of this Agreement, Contractor agrees to perform in accordance with the terms of any orders then outstanding at the time of such expiration or termination. Contractor shall not honor any orders placed after the expiration, cancellation, or termination of this Agreement, or otherwise inconsistent with its terms.
 - ii. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Agreement may not be placed after the expiration or termination of this Cooperative Purchasing Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.
 - iii. Any language in the Master Agreement setting a time limit on delivery dates or performance periods for valid orders placed under this Agreement shall not apply. Vermont Purchasing Entities shall follow their customary procurement rules and policies when considering the duration of orders placed under this Agreement.
 - b. All orders placed under this Participating Addendum must be in writing and shall, at a minimum, specify the following:

- i. The product(s) being delivered and the place and time of delivery;
 - ii. The service(s) required and the place and time period for performance;
 - iii. The Purchasing Entity's billing address;
 - iv. The name and contact information for the Purchasing Entity's primary contact;
 - v. The price per unit, rates, or other pricing elements consistent with this Agreement;
 - vi. A maximum amount payable by the Purchasing Entity under the order;
 - vii. A unique identifier for the order; and
 - viii. The State of Vermont Participating Addendum Number.
- c. As applicable, orders shall include specifically negotiated statement of work or service level agreement terms as necessary for the product and/or service to meet the Purchasing Entity's requirements.
 - d. Orders may include additional terms as necessary to comply with local, state or federal laws or regulations applicable to the Purchasing Entity.
- 9. *Requirements for Ordering Applicable to State Purchasers Only.*** The following requirements apply as between Contractor and State Purchasers only and are not applicable to Additional Purchasers. An Additional Purchaser may adopt procedures for purchasing under this Agreement as necessary to comply with its procurement policies and regulations.
- a. Contract Backed Purchase Order (PO). For orders by State Purchasers that do not include services, the Ordering Document will be a Contract backed Purchase Order (PO) that draws against the Contract.
 - b. Services. For orders that include services Contractor shall use the State of Vermont SOW Services Order Form attached to the Agreement with State Purchasers.

10. *Payment Provisions and Invoicing.*

- a. Payment obligations shall be solely between the Purchasing Entity and the Contractor.
- b. Purchasing Entities may solicit the Contractor or, as applicable, its Fulfillment Partner/Authorized Reseller for deeper discounts than the minimum contract pricing as set forth in the Price Schedule (e.g., additional volume pricing, incremental discounts, firm fixed pricing or other incentives).
- c. If applicable, all equipment pricing is to include F.O.B. delivery to the ordering facility. No request for extra delivery cost will be honored.
- d. Retainage may be specified in an order in an amount mutually agreeable to the parties.
- e. Overdue or other charges or penalty for late payment are not authorized and shall not apply to Purchasing Entities.
- f. Payment terms are Net 30 days from the date the State receives an error-free invoice with all necessary and complete supporting documentation. Invoices shall itemize all work

performed during the invoice period, including, as applicable, the dates of service, rates of pay, hours of work performed, and any other information and/or documentation appropriate and sufficient to substantiate the amount invoiced for payment. As applicable, a copy of the notice(s) of acceptance shall accompany invoices submitted for payment.

- g. Invoices shall be sent to the address identified on the Purchasing Entity's order and shall specify:
 - i. The address to which payments will be sent;
 - ii. The State of Vermont Contract Number for this Agreement, as indicated atop this Agreement; and
 - iii. The order number or other unique identifier for the order against which the invoice is being submitted.
- h. Reimbursement of expenses is not authorized. Contractor rates set forth in an order shall be inclusive of any and all Contractor fees and expenses.
- i. Unopened Products can be returned with no restocking fee up to 30 days from the date of receipt.
- j. The State Purchasing Card may be used by State Purchasers for the payment of invoices. Use of the Purchasing Card requires all required documentation applicable to the purchase. The Purchasing Card is a payment mechanism, not a procurement approach and, therefore, does not relieve State Purchasers from adhering to all procurement laws, regulations, policies, procedures, and best practices.

11. *Fulfillment Partners/Authorized Resellers.*

- a. Contractor shall be responsible for successful performance and compliance with all requirements in accordance with the terms and conditions of this Agreement. Contractor acknowledges that each and all of the promises it makes as "Contractor" in this Agreement and the Master Agreement apply to all Products and Services provided hereunder, regardless of who is providing or licensing the Product or performing the work.

12. *Reporting.* Contractor shall submit quarterly reports electronically detailing the purchasing of all items by all Purchasing Entities under this Agreement. If the format for reporting is not otherwise set forth under the Master Agreement, Contractor's reporting shall detail the minimum requirements for orders as set out in section 8.b, above. Contractor's reporting shall state "no activity" for any month in which there is no activity during a quarterly reporting period.

- a. The reports shall be an excel spreadsheet transmitted electronically to SOV.ThePathForward@vermont.gov.
- b. Reports are due for each quarter as follows:

Reporting Period	Report Due
January 1 to March 31	April 30

April 1 to June 30	July 31
July 1 to September 30	October 31
October 1 to December 31	January 31

- c. Failure to meet these reporting requirements may result in suspension or termination of this Participating Addendum.
13. **Prior Approvals.** This Agreement shall not be binding until it has been approved by the State in accordance with current State law, bulletins, and interpretations.
14. **Amendment.** No changes, modifications, or amendments in the terms and conditions of this Agreement shall be effective unless reduced to writing, numbered, and signed by the duly authorized representatives of the State and Contractor.
15. **Termination.** This Agreement may be terminated by the State at any time upon 30 days prior written notice to the Contractor.
16. **Primary Contacts.** The Parties will keep and maintain current at all times a primary point of contact for this Agreement, which are presently as follows:

a. **For the Contractor:**

Name: Ed Mick
 Phone: 903/985-8238
 Email: ed.mick@astronics.com

b. **For the State:**

Name: State of Vermont, Roland Ortiz
 Address: 133 State Street, Montpelier, VT 05633-8000
 Phone: 802/371-8987
 Email: roland.ortiz@vermont.gov

17. **No effect of Click-Through or Other Additional Terms and Conditions.** Where a Purchasing Entity is required to click-through or otherwise accept or made subject to any electronic terms and conditions to use or access any Product or Service purchased hereunder, such terms and conditions are not binding and shall have no force or effect as to the Product or Service, this Agreement, or the applicable order for the Product or Service. Further, any terms and conditions of a Party's invoice, acknowledgment, confirmation, or similar documents, shall not apply to any order under this Agreement, or to this Agreement, and any such terms and conditions on any such document are objected to without need of further notice or objection.

18. ***Attachments; Order of Precedence.*** The following documents are made part of this Agreement and any ambiguity or conflict among them shall be resolved by giving priority to the documents in the order in which they are listed below.

- a. “Attachment C: Standard State Provisions for Contracts and Grants” (revision version dated December 7, 2023) is hereby incorporated by reference as if fully set forth herein and shall apply to this Agreement and shall apply to each order placed under this Agreement as if fully set forth in the order. A copy of this document is available online at: <https://bgs.vermont.gov/purchasing-contracting/forms> .
- b. “Attachment D: Information Technology System Implementation Terms and Conditions” is attached to this Agreement and incorporated herein and shall apply to each order placed under this Agreement as though fully set forth in the order.
- c. If specified in an order made by a State Purchaser under this Agreement, the terms and conditions of the State of Vermont Business Associate Agreement, revised May 2019 shall be incorporated by reference and apply to the order as if specifically set forth in the order. A copy of this document is available online at: <https://bgs.vermont.gov/purchasing-contracting/forms>.
- d. If specified in an order made by a State Purchaser under this Agreement, the “STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Non-Construction) (Revision date: July 19, 2023)” shall be incorporated by reference and apply to the order as if fully set forth in the order. A copy of this document is available online at: <https://bgs.vermont.gov/purchasing-contracting/forms>.
- e. The Master Agreement, together with its exhibits, is hereby incorporated by reference as if fully set forth herein and shall apply to this Agreement and shall apply to each order placed under this Agreement as though fully set forth in the order.
- f. The State of Vermont SOW Services Order Form is attached to this Agreement for use by State Purchasers when placing orders that include services.

STATE OF VERMONT PARTICIPATING ADDENDUM # 47394

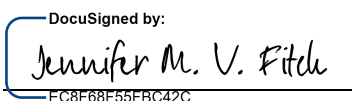
Contractor: Freedom Communication Technologies Inc

By signing below Contractor agrees to offer the products and services on the Master Agreement at prices equal to or lower than the prices listed on the Master Agreement.

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS CONTRACT

By the State of Vermont:

Date: 4/17/2024

Signature:  EC8F68F55FBC42C...

Name: Jennifer M.V. Fitch

Title: Commissioner - Buildings and
General Services

By Freedom Communication Technologies Inc:

Date: April 12, 2024

Signature: Ed Mick

Name: Ed Mick

Title: Senior Director, LMR Markets

ATTACHMENT D
INFORMATION TECHNOLOGY PROFESSIONAL SERVICES
TERMS AND CONDITIONS (rev. 01/12/2024)

1. OWNERSHIP AND LICENSE IN DELIVERABLES

1.1 Contractor Intellectual Property. Contractor shall retain all right, title and interest in and to any work, ideas, inventions, discoveries, tools, methodology, computer programs, processes and improvements and any other intellectual property, tangible or intangible, that has been created by Contractor prior to entering into this Contract (“Contractor Intellectual Property”). Should the State require a license for the use of Contractor Intellectual Property in connection with the development or use of the items that Contractor is required to deliver to the State under this Contract, including Work Product (“Deliverables”), the Contractor shall grant the State a royalty-free license for such development and use. For the avoidance of doubt, Work Product shall not be deemed to include Contractor Intellectual Property, provided the State shall be granted an irrevocable, perpetual, non-exclusive royalty-free license to use any such Contractor Intellectual Property that is incorporated into Work Product.

1.2 State Intellectual Property. The State shall retain all right, title and interest in and to (i) all content and all property, data and information furnished by or on behalf of the State or any agency, commission or board thereof, and to all information that is created under this Contract, including, but not limited to, all data that is generated under this Contract as a result of the use by Contractor, the State or any third party of any technology systems or knowledge bases that are developed for the State and used by Contractor hereunder, and all other rights, tangible or intangible; and (ii) all State trademarks, trade names, logos and other State identifiers, Internet uniform resource locators, State user name or names, Internet addresses and e-mail addresses obtained or developed pursuant to this Contract (collectively, “State Intellectual Property”).

Contractor may not use State Intellectual Property for any purpose other than as specified in this Contract. Upon expiration or termination of this Contract, Contractor shall return or destroy all State Intellectual Property and all copies thereof, and Contractor shall have no further right or license to such State Intellectual Property.

Contractor acquires no rights or licenses, including, without limitation, intellectual property rights or licenses, to use State Intellectual Property for its own purposes. In no event shall the Contractor claim any security interest in State Intellectual Property.

1.3 Work Product. All Work Product shall belong exclusively to the State, with the State having the sole and exclusive right to apply for, obtain, register, hold and renew, in its own name and/or for its own benefit, all patents and copyrights, and all applications and registrations, renewals and continuations thereof and/or any and all other appropriate protection. To the extent

exclusive title and/or complete and exclusive ownership rights in and to any Work Product may not originally vest in the State by operation of law or otherwise as contemplated hereunder, Contractor shall immediately upon request, unconditionally and irrevocably assign, transfer and convey to the State all right, title and interest therein.

“Work Product” means any tangible or intangible ideas, inventions, improvements, modifications, discoveries, development, customization, configuration, methodologies or processes, designs, models, drawings, photographs, reports, formulas, algorithms, patterns, devices, compilations, databases, computer programs, work of authorship, specifications, operating instructions, procedures manuals or other documentation, technique, know-how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection), that is specifically made, conceived, discovered or reduced to practice by Contractor, either solely or jointly with others, pursuant to this Contract. Work Product does not include Contractor Intellectual Property or third party intellectual property.

To the extent delivered under this Contract, upon full payment to Contractor in accordance with Attachment B, and subject to the terms and conditions contained herein, Contractor hereby (i) assigns to State all rights in and to all Deliverables, except to the extent they include any Contractor Intellectual Property; and (ii) grants to State a perpetual, non-exclusive, irrevocable, royalty-free license to use for State’s internal business purposes, any Contractor Intellectual Property included in the Deliverables in connection with its use of the Deliverables and, subject to the State’s obligations with respect to Confidential Information, authorize others to do the same on the State’s behalf. Except for the foregoing license grant, Contractor or its licensors retain all rights in and to all Contractor Intellectual Property.

The Contractor shall not sell or copyright a Deliverable without explicit permission from the State.

If the Contractor is operating a system or application on behalf of the State of Vermont, then the Contractor shall not make information entered into the system or application available for uses by any other party than the State of Vermont, without prior authorization by the State. Nothing herein shall entitle the State to pre-existing Contractor Intellectual Property or Contractor Intellectual Property developed outside of this Contract with no assistance from State.

2. CONFIDENTIALITY AND NON-DISCLOSURE; SECURITY BREACH REPORTING

2.1 For purposes of this Contract, confidential information will not include information or material which (a) enters the public domain (other than as a result of a breach of this Contract); (b) was in the receiving party’s possession prior to its receipt from the disclosing party; (c) is independently developed by the receiving party without the use of confidential information; (d) is obtained by the receiving party from a third party under no obligation of confidentiality to the disclosing party; or (e) is not exempt from disclosure under applicable State law.

2.2 Confidentiality of Contractor Information. The Contractor acknowledges and agrees that this Contract and any and all Contractor information obtained by the State in connection

with the performance of this Contract are subject to the State of Vermont Access to Public Records Act, 1 V.S.A. § 315 et seq. The State will not disclose information for which a reasonable claim of exemption can be made pursuant to 1 V.S.A. § 317(c), including, but not limited to, trade secrets, proprietary information or financial information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to the Contractor, and which gives the Contractor an opportunity to obtain business advantage over competitors who do not know it or use it.

The State shall immediately notify Contractor of any request made under the Access to Public Records Act, or any request or demand by any court, governmental agency or other person asserting a demand or request for Contractor information. Contractor may, in its discretion, seek an appropriate protective order, or otherwise defend any right it may have to maintain the confidentiality of such information under applicable State law within three business days of the State's receipt of any such request. Contractor agrees that it will not make any claim against the State if the State makes available to the public any information in accordance with the Access to Public Records Act or in response to a binding order from a court or governmental body or agency compelling its production. Contractor shall indemnify the State for any costs or expenses incurred by the State, including, but not limited to, attorneys' fees awarded in accordance with 1 V.S.A. § 320, in connection with any action brought in connection with Contractor's attempts to prevent or unreasonably delay public disclosure of Contractor's information if a final decision of a court of competent jurisdiction determines that the State improperly withheld such information and that the improper withholding was based on Contractor's attempts to prevent public disclosure of Contractor's information.

The State agrees that (a) it will use the Contractor information only as may be necessary in the course of performing duties, receiving services or exercising rights under this Contract; (b) it will provide at a minimum the same care to avoid disclosure or unauthorized use of Contractor information as it provides to protect its own similar confidential and proprietary information; (c) except as required by the Access to Records Act, it will not disclose such information orally or in writing to any third party unless that third party is subject to a written confidentiality agreement that contains restrictions and safeguards at least as restrictive as those contained in this Contract; (d) it will take all reasonable precautions to protect the Contractor's information; and (e) it will not otherwise appropriate such information to its own use or to the use of any other person or entity.

Contractor may affix an appropriate legend to Contractor information that is provided under this Contract to reflect the Contractor's determination that any such information is a trade secret, proprietary information or financial information at time of delivery or disclosure.

3. SECURITY OF STATE INFORMATION.

3.1 Security Standards. To the extent Contractor has access to, processes, handles, collects, transmits, stores or otherwise deals with State Data, the Contractor represents and

warrants that it has implemented and it shall maintain during the term of this Contract the highest industry standard administrative, technical, and physical safeguards and controls consistent with NIST *Special Publication 800-53* (version 4 or higher) and *Federal Information Processing Standards Publication 200* and designed to (i) ensure the security and confidentiality of State Data; (ii) protect against any anticipated security threats or hazards to the security or integrity of the State Data; and (iii) protect against unauthorized access to or use of State Data. Such measures shall include at a minimum: (1) access controls on information systems, including controls to authenticate and permit access to State Data only to authorized individuals and controls to prevent the Contractor employees from providing State Data to unauthorized individuals who may seek to obtain this information (whether through fraudulent means or otherwise); (2) industry-standard firewall protection; (3) encryption of electronic State Data while in transit from the Contractor networks to external networks; (4) measures to store in a secure fashion all State Data which shall include multiple levels of authentication; (5) dual control procedures, segregation of duties, and pre-employment criminal background checks for employees with responsibilities for or access to State Data; (6) measures to ensure that the State Data shall not be altered or corrupted without the prior written consent of the State; (7) measures to protect against destruction, loss or damage of State Data due to potential environmental hazards, such as fire and water damage; (8) staff training to implement the information security measures; and (9) monitoring of the security of any portions of the Contractor systems that are used in the provision of the services against intrusion on a twenty-four (24) hour a day basis.

3.2 Security Breach Notice and Reporting. The Contractor shall have policies and procedures in place for the effective management of Security Breaches, as defined below, which shall be made available to the State upon request.

In addition to the requirements set forth in any applicable Business Associate Agreement as may be attached to this Contract, in the event of any actual security breach or reasonable belief of an actual security breach the Contractor either suffers or learns of that either compromises or could compromise State Data (a “Security Breach”), the Contractor shall notify the State within 24 hours of its discovery. Contractor shall immediately determine the nature and extent of the Security Breach, contain the incident by stopping the unauthorized practice, recover records, shut down the system that was breached, revoke access and/or correct weaknesses in physical security. Contractor shall report to the State: (i) the nature of the Security Breach; (ii) the State Data used or disclosed; (iii) who made the unauthorized use or received the unauthorized disclosure; (iv) what the Contractor has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure; and (v) what corrective action the Contractor has taken or shall take to prevent future similar unauthorized use or disclosure. The Contractor shall provide such other information, including a written report, as reasonably requested by the State. Contractor shall analyze and document the incident and provide all notices required by applicable law.

In accordance with Section 9 V.S.A. §2435(b)(3), the Contractor shall notify the Office of the Attorney General, or, if applicable, Vermont Department of Financial Regulation (“DFR”), within fourteen (14) business days of the Contractor’s discovery of the Security Breach. The notice shall provide a preliminary description of the breach. The foregoing notice requirement shall be included in the subcontracts of any of Contractor’s subcontractors, affiliates or agents which may be “data collectors” hereunder.

The Contractor agrees to fully cooperate with the State and assume responsibility at its own expense for the following, to be determined in the sole discretion of the State: (i) notice to affected consumers if the State determines it to be appropriate under the circumstances of any particular Security Breach, in a form recommended by the AGO; and (ii) investigation and remediation associated with a Security Breach, including but not limited to, outside investigation, forensics, counsel, crisis management and credit monitoring, in the sole determination of the State.

The Contractor agrees to comply with all applicable laws, as such laws may be amended from time to time (including, but not limited to, Chapter 62 of Title 9 of the Vermont Statutes and all applicable State and federal laws, rules or regulations) that require notification in the event of unauthorized release of personally-identifiable information or other event requiring notification.

In addition to any other indemnification obligations in this Contract, the Contractor shall fully indemnify and save harmless the State from any costs, loss or damage to the State resulting from a Security Breach or the unauthorized disclosure of State Data by the Contractor, its officers, agents, employees, and subcontractors.

4. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

4.1 General Representations and Warranties. The Contractor represents, warrants and covenants that:

- (i) The Contractor has all requisite power and authority to execute, deliver and perform its obligations under this Contract and the execution, delivery and performance of this Contract by the Contractor has been duly authorized by the Contractor.
- (ii) There is no pending litigation, arbitrated matter or other dispute to which the Contractor is a party which, if decided unfavorably to the Contractor, would reasonably be expected to have a material adverse effect on the Contractor's ability to fulfill its obligations under this Contract.
- (iii) The Contractor will comply with all laws applicable to its performance of the services and otherwise to the Contractor in connection with its obligations under this Contract.
- (iv) The Contractor (a) owns, or has the right to use under valid and enforceable agreements, all intellectual property rights reasonably necessary for and related to delivery of the services and provision of the services as set forth in this Contract; (b) shall be responsible for and have full authority to license all proprietary and/or third party software modules, including algorithms and protocols, that Contractor incorporates into its product; and (c) none of the services or other materials or technology provided by the Contractor to the State will infringe upon or misappropriate the intellectual property rights of any third party.

- (v) The Contractor has adequate resources to fulfill its obligations under this Contract.
- (vi) Neither Contractor nor Contractor's subcontractors has past state or federal violations, convictions or suspensions relating to miscoding of employees in NCCI job codes for purposes of differentiating between independent contractors and employees.

4.2 Contractor's Performance Warranties. Contractor represents and warrants to the State that:

- (i) Each and all of the services shall be performed in a timely, diligent, professional and skillful manner, in accordance with the highest professional or technical standards applicable to such services, by qualified persons with the technical skills, training and experience to perform such services in the planned environment.
- (ii) Any time software is delivered to the State, whether delivered via electronic media or the internet, no portion of such software or the media upon which it is stored or delivered will have any type of software routine or other element which is designed to facilitate unauthorized access to or intrusion upon; or unrequested disabling or erasure of; or unauthorized interference with the operation of any hardware, software, data or peripheral equipment of or utilized by the State. Without limiting the generality of the foregoing, if the State believes that harmful code may be present in any software delivered hereunder, Contractor will, upon State's request, provide a new or clean install of the software. Notwithstanding the foregoing, Contractor assumes no responsibility for the State's negligence or failure to protect data from viruses, or any unintended modification, destruction or disclosure.
- (iii) To the extent Contractor resells commercial hardware or software it purchased from a third party, Contractor will, to the extent it is legally able to do so, pass through any such third party warranties to the State and will reasonably cooperate in enforcing them. Such warranty pass-through will not relieve the Contractor from Contractor's warranty obligations set forth herein.

5. REMEDIES FOR DEFAULT. In the event either party is in default under this Contract, the non-defaulting party may, at its option, pursue any or all of the remedies available to it under this Contract, including termination for cause, and at law or in equity.

6. TERMINATION

6.1. Contractor shall reasonably cooperate with other parties in connection with all services to be delivered under this Contract, including without limitation any successor provider to whom

State Data, State Intellectual Property or other State information and materials are to be transferred in connection with termination. Contractor shall assist the State in exporting and extracting any and all State data, in a format usable without the use of the Services and as agreed to by State, at no additional cost. Any transition services requested by State involving additional knowledge transfer and support may be subject to a contract amendment for a fixed fee or at rates to be mutually agreed upon by the parties.

If the State determines in its sole discretion that a documented transition plan is necessary, then no later than sixty (60) days prior to termination, Contractor and the State shall mutually prepare a Transition Plan identifying transition services to be provided.

6.2. Return of Property. Upon termination of this Contract for any reason whatsoever, Contractor shall immediately deliver to State all State Intellectual Property and State Data (including without limitation any Deliverables for which State has made payment in whole or in part), that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such State property is expressed or embodied at that time.

7. DESTRUCTION OF STATE DATA. At any time during the term of this Contract within thirty days of (i) the State's written request or (ii) termination or expiration of this Contract for any reason, Contractor shall securely dispose of all copies, whether in written, electronic or other form or media, of State Data according to National Institute of Standards and Technology (NIST) approved methods, and certify in writing to the State that such State Data has been disposed of securely. Further, upon the relocation of State Data, Contractor shall securely dispose of such copies from the former data location according to National Institute of Standards and Technology (NIST) approved methods and certify in writing to the State that such State Data has been disposed of securely. Contractor shall comply with all reasonable directions provided by the State with respect to the disposal of State Data.

8. SOV Cybersecurity Standard Update 2023-01: Contractor confirms that all products and services provided to or for the use of the State under this Agreement shall be in compliance with *State of Vermont Cybersecurity Standard 2023-01*, which prohibits the use of certain branded products in State information systems or any vendor system that is supporting State information systems, and is available on-line at:

<https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

State of Vermont Ordering Document for Services

Authorizing Agreement: State of Vermont Participating Addendum # [REDACTED] for NASPO
VALUEPOINT PURCHASING PROGRAM: Public Safety Communication Products, Services
and Solutions

Contractor: Type text here

State Purchasing Entity: Insert Requesting Agency or Business Unit

Purchasing Entity's address for invoicing: [REDACTED]

Order No. insert number here and in header on second page (This assigned Order # must be included
on all correspondence, delivery documents and invoices.)

- 1. Scope:** This Order is a contract between the Contractor identified above (hereinafter the "Contractor") and the State of Vermont, through its State Purchasing Entity identified above (hereinafter the "State"). Contractor hereby agrees to provide the services specified herein subject to and in accordance with the terms and conditions of the above-captioned Authorizing Agreement, inclusive of its attachments and/or exhibits and respective amendments (hereinafter the "Authorizing Agreement"). THE AUTHORIZING AGREEMENT IS HEREBY INCORPORATED BY REFERENCE AND SHALL APPLY TO THIS ORDER AS IF SPECIFICALLY APPENDED HERETO. THE TERMS OF THE AUTHORIZING AGREEMENT SHALL GOVERN AND PREVAIL IN THE EVENT OF ANY CONFLICT OR AMBIGUITY BETWEEN THE TERMS OF THIS ORDER AND THE TERMS OF THE AUTHORIZING AGREEMENT. FURTHER, AND WITHOUT LIMITING THE GENERALITY OF THE FOREGOING SENTENCE, NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY, CONTRACTOR ACKNOWLEDGES AND AGREES THAT PURCHASING ENTITIES DO NOT INTEND TO BE BOUND, AND WILL NOT BE BOUND, BY ANY TERMS APPLICABLE TO THIS ORDER TO THE EXTENT SUCH TERMS: (A) REQUIRE INDEMNIFICATION BY THE PURCHASING ENTITY OF THE CONTRACTOR OR A THIRD PARTY; (B) WAIVE THE PURCHASING ENTITY'S RIGHT TO A JURY TRIAL; (C) ESTABLISH JURISDICTION IN ANY VENUE OTHER THAN THE SUPERIOR COURT OF THE STATE OF VERMONT, CIVIL DIVISION, WASHINGTON UNIT; (D) DESIGNATE A GOVERNING LAW OTHER THAN THE LAWS OF THE STATE OF VERMONT; (E) CONSTITUTE AN IMPLIED OR DEEMED WAIVER OF THE IMMUNITIES, DEFENSES, RIGHTS OR ACTIONS ARISING OUT OF PURCHASING ENTITY'S SOVEREIGN STATUS OR UNDER THE ELEVENTH AMENDMENT TO THE UNITED STATES CONSTITUTION; (F) ESTABLISH NEW OR DIFFERENT PAYMENT OBLIGATIONS OF THE PURCHASING ENTITY THAN ARE ESTABLISHED BY THE AUTHORIZING

AGREEMENT; (G) REDUCE OR DIMINISH THE OBLIGATIONS REGARDING THE SECURITY, CONFIDENTIALITY, AND INTEGRITY OF THE PURCHASING ENTITY'S DATA AS ARE ESTABLISHED UNDER THE AGREEMENT; (H) ESTABLISH RIGHTS IN THE USE OF OR ACCESS TO PURCHASING ENTITY'S DATA FOR ANY REASON OTHER THAN PERFORMANCE OF THE PRODUCT OR SERVICE; (I) ESTABLISH RIGHTS OF OWNERSHIP IN THE PURCHASING ENTITY'S DATA; OR (J) LIMIT THE TIME WITHIN WHICH AN ACTION MAY BE BROUGHT.

2. **Data Categorization and Applicable Standards:** Contractor is required at all times to comply with all applicable federal and state laws and regulations pertaining to information security and privacy. For purposes of this Order the parties have conferred and determined that the Contractor will hold, store, or process, or will have access to, the types of data indicated in the **Exhibit VT-Data Types** attached to this Order. Contractor confirms that the services provided under this Order can and will meet in all respects the corresponding standards, policies and laws as indicated in the **Exhibit VT-Data Types** attached to this Order.
3. **Term:** The term of this Order shall begin on [REDACTED] and end on [REDACTED] (the "Initial Term"). **INSERT RENEWAL OPTION(S) AS REQUIRED. NOTE: orders may only be executed during the term of the Authorizing Agreement (before expiration/termination) and may not have a delivery date or performance period continuing more than 120 days beyond the expiration date of the Authorizing Agreement**
4. **Payment and Invoicing:** The maximum amount payable under this Order shall not exceed [REDACTED]. This maximum amount is not a guaranteed amount. Contractor will be paid for products or services actually delivered or performed, as specified in the attached **Statement of Work**, up to the maximum amount payable. Payment obligations of the State hereunder shall not exceed the maximum allowable rates or other cost structures established by the Authorizing Agreement. Payments of invoices shall be made in accordance with the payment provisions in the Authorizing Agreement as further supplemented herein.
 - a. Contractor shall submit invoices to the State Purchasing Entity's address identified above.
 - b. Invoices shall include the Order # and Authorizing Agreement # appearing atop the first page of this document.
5. **Services:** The Contractor shall provide the services as described in the **Statement of Work** attached to this Order in full satisfaction of the specific requirements of the Authorizing Agreement and this Order.
6. **Integrated Agreement; Amendment:** This Order contains the final and complete agreement of the parties. The parties do not intend to be bound by any additional terms not included, or expressly incorporated by reference, in this Order. The terms of this Ordering Document shall

govern and prevail over any conflict or ambiguity with the terms of the attached **Statement of Work**. Electronic “click-through” terms, terms and conditions of a Party’s invoice, acknowledgment, confirmation, or similar document, shall not apply, and any such terms and conditions on any such document are objected to without need of further notice or objection. This Order may not be amended except in a writing that is numbered and signed by the duly-authorized representatives of the State and the Contractor.

7. **Termination:** The State reserves the right to terminate or suspend this Order for convenience upon written notice at least fifteen (15) days in advance and, in the event of termination under this provision, the State will pay for all completed and accepted deliverables up until the date of termination.
8. **Vermont Business Associate Agreement:** The terms and conditions of the State of Vermont Business Associate Agreement, as posted the Office of Purchasing & Contracting’s website at <https://bgs.vermont.gov/purchasing-contracting/forms>, is hereby incorporated by reference and shall apply to this Order. **INCLUDE THIS CLAUSE ONLY AS APPLICABLE; DELETE OTHERWISE**
9. **Vermont Federal Terms Supplement (Non-Construction):** The “STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Non-Construction) STATE OF VERMONT- FEDERAL TERMS SUPPLEMENT (Non-Construction) (Revision date: July 19, 2023)” as attached to the Authorizing Agreement, or otherwise as posted online at <https://bgs.vermont.gov/purchasing-contracting/forms>, is hereby incorporated by reference and shall apply to the order. **INCLUDE THIS CLAUSE ONLY AS APPLICABLE; DELETE OTHERWISE**

Taxes Due to the State. Contractor certifies under the pains and penalties of perjury that, as of the date this agreement is signed, the Contractor is in good standing with respect to, or in full compliance with a plan to pay, any and all taxes due the State of Vermont.

Certification Regarding Suspension or Debarment. Contractor certifies under the pains and penalties of perjury that, as of the date this agreement is signed, neither Contractor nor Contractor’s principals (officers, directors, owners, or partners) are presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in federal programs, or programs supported in whole or in part by federal funds. Contractor further certifies under pains and penalties of perjury that, as of the date this agreement is signed, Contractor is not presently debarred, suspended, nor named on the State’s debarment list at: <http://www.bgs.vermont.gov/purchasing-contracting/debarment>.

SOV Cybersecurity Standard Update 2023-01. Contractor certifies that the products and services provided to or for the use of the State under this agreement comply with *State of Vermont Cybersecurity Standard 23-01*, which Contractor acknowledges has been provided to it, and is available on-line at: <https://digitalservices.vermont.gov/cybersecurity/cybersecurity-standards-and-directives>

REQUIRED PRIOR APPROVALS

In accordance with current State law, bulletins, and interpretations, this Order shall not be binding unless and until all requisite approvals have been obtained.

Contractor: Freedom Communication Technologies Inc

- a. **This Order must be approved by the Vermont Chief Information Officer/Secretary of the Agency of Digital Services prior to execution if the services will involve the electronic processing, storing, or transmission of Confidential Information.**
- b. **This Order, if valued at \$25,000 or more per year, must be certified by the Vermont Office of the Attorney General in accordance with 3 V.S.A. § 342 prior to execution.**
- c. **This Order, if valued at \$2,000,000 or greater, must be approved by the Secretary of Administration prior to execution.**

WE THE UNDERSIGNED PARTIES AGREE TO BE BOUND BY THIS AGREEMENT.

<Insert Contractor Name here>

Signature

Date

STATE OF VERMONT, <Insert Requesting Agency or business unit>

Signature

Date

Exhibit VT-Data Types

INSERT DOC VENDOR SIGNED/SUBMITTED WITH Statement of Work.

Statement of Work

1. PROJECT BACKGROUND AND OVERVIEW

[Provide background and high-level overview of project.]

2. DEFINITIONS

Specific terms used in this SOW shall have the following meanings. All other terms used in this SOW shall have the meaning ascribed to them in the other documents that constitute the Agreement.

“Deliverable” means any work product that Contractor delivers for the purposes of fulfilling its obligations under this SOW.

“Task” means a material activity engaged in by Contractor for the purpose of fulfilling its obligations under this SOW.

“Task Order” means an amendment to this SOW that specifies Tasks or Deliverables to be completed by Contractor within a specified time period.

3. TIME AND MATERIALS SERVICES

This Section describes the general Tasks and Deliverables to be completed by the Contractor on a time and material basis. A Task or Deliverable will be considered “complete” when all the acceptance criteria set forth in this SOW have been met. All written Deliverables shall be delivered in a format specified by the State.

TABLE 1: T&M TASKS AND DELIVERABLES

Task/Deliverable Name	Metrics of Acceptance	Estimated Completion Date

For the Time and Materials Services, Contractor shall complete the work described in Table 1 or in the relevant Task Order, and as scheduled through [weekly] planning meetings. Contractor will submit [weekly] reports to the State’s Project Manager detailing the hours worked by each Named Resource. The weekly reporting must show actual resource hours worked against assigned Tasks and/or Deliverables and a description of completed Tasks or progress toward completion. Contractor will also report [weekly] to the State’s Project Manager its expected work effort the forthcoming week(s), showing each Named Resource’s expected level of effort. Prior review and authorization of each report by the State’s Project Manager is required to authorize any work by the Named Resource.

Contractor shall submit invoices to the state not more frequently than [monthly] for the actual hours worked per week of the Named Resource identified in Table 3 or in the relevant Task Order. Each invoice must include resource names, dates of service, and the hours worked and approved for each date of service. The State will review and approve these invoices based on satisfactory work performance by each Named Resource, satisfactory completion of Tasks listed in Table 1 or in the relevant Task Order, and fulfillment of Metrics of Acceptance in this Agreement. Approved invoices will be payable by the State in accordance with the Authorizing Agreement and applicable payment terms in the Order Document to which this SOW is attached.

The State shall withhold **10%** from each payment as retainage. Upon completion of all work described in Table 1 in accordance with the prescribed project timeline, and to the satisfaction of the State, Contractor may submit a single invoice for the amount of retainage withheld.

4. FIXED PRICE TASKS AND DELIVERABLES

This Section describes the Tasks to be completed by the Contractor, the Deliverables to be provided by the Contractor, and timeline for delivery. A Task or Deliverable will be considered “complete” when all the acceptance criteria set forth in this SOW have been met. All written Deliverables shall be delivered in a format specified by the State.

TABLE 2: FIXED PRICE TASKS AND DELIVERABLES

Number	Name	Description and Metrics of Acceptance (Refer to Attachments if needed)	Due Date	Amount Due	Retainage
TOTAL					

For the Fixed Price Tasks and Deliverables of this Agreement, Contractor shall perform Tasks and deliver Deliverables in conformance with the Description and Metrics of Acceptance on or before the Due Dates set forth in Table 2. A Deliverable or Task will be considered “completed” when the State has accepted the Deliverable or Task in accordance with the Metrics of Acceptance in Table 2. Contractor shall issue invoices to for the Deliverables or Tasks that are completed, less any retainage amounts specified (each, a “Valid Invoice”). Invoices shall be payable in accordance with the Authorizing Agreement and applicable payment terms in the Order Document to which this SOW is attached.

The State shall withhold **10%** from each payment as retainage. Upon completion of all work described in Table 2 in accordance with the prescribed project timeline, and to the satisfaction of the State, Contractor may submit a single invoice for the amount of retainage withheld.

5. KEY CONTRACTOR PERSONNEL

5.1 Contractor Project Manager

Contractor will designate an individual to serve as the “Contractor Project Manager” who will: (i) be a senior employee within Contractor’s organization, with the information, authority and resources available to properly discharge the responsibilities required hereunder; (ii) serve as primary point of contact and the single-point of accountability and responsibility for all Contract-related questions and issues and the provision of Services by Contractor; (iii) have day-to-day responsibility for, and authority to manage, State customer satisfaction; (iv) devote full time and dedicated efforts to managing and coordinating the Services; and (v) be located at State Facilities or such other appropriate location as Contractor and the State may mutually agree.

5.2 Contractor Personnel

Contractor shall assign each of the following Names Resources and/or Roles to this SOW in accordance with Table 3. If a change to the assigned personnel is necessary, the Contractor PM

Contractor: Freedom Communication Technologies Inc

will provide a written change request at least two weeks prior to the change to the State. The State may reject or accept such change. The State may terminate use of any Named Resource by providing five (5) days written notice to the Contractor PM. If termination is for cause, or for a violation of a term of this Agreement, the State may terminate use of the Named Resource effective immediately by providing written notice to the Contractor PM. Contractor shall use reasonable efforts to promptly and expeditiously replace Named Resources and within fifteen (15) business days of receipt of the written notice unless otherwise mutually agreed. The State's right to request replacement of Contractor personnel hereunder relates solely to the removal of individuals from work on this Contract with the State and does not create an employment relationship. Nothing in this Contract authorizes the State to direct the Contractor's termination of the employment of any individual.

Contractor shall take full responsibility for project management and shall obtain State's written pre-approval for the use of any subcontractor(s). Contractor shall ensure any subcontractor(s) providing work under this SOW comply with all terms of the Agreement and Contractor shall be responsible for the performance, acts, and omissions, of each such subcontractor.

TABLE 3: TIME AND MATERIALS RATES

Named Resource	Role	Hourly Rate	Estimated Number of Hours	Estimated Cost
TOTAL ESTIMATED COST				
TOTAL NOT TO EXCEED AMOUNT				

Hourly Rates listed above may not exceed the rates or pricing structure established in the Authorizing Agreement.

6. ACCEPTANCE OR REJECTION PROCESS

Time and Materials

The Contractor PM will submit each weekly report to the State. The State will review each weekly report and approve these reports based on satisfactory work performance by each Named Resource, satisfactory completion of Tasks listed in Table 1 or in the relevant Task Order, and fulfillment of Metrics of Acceptance in this Agreement.

Within **five (5)** business days of each weekly report, the State will notify the Contractor, in writing, of acceptance or rejection. A rejection will include a written description of any relevant defects or issues. If the State does not respond with acceptance or rejection within **five (5)** business days of receipt, the Contractor shall provide a reminder notice to the State. Upon receipt of rejection, Contractor will act diligently to correct the specified defects or issues.

Fixed Price

The Contractor PM will submit each Deliverable to the State on or before the Due Date specified in Table 2. The State will review each Deliverable and determine whether it has met in all material respects the criteria established in this Agreement.

Contractor: Freedom Communication Technologies Inc

Within ten (10) business days of receipt of each Deliverable, the State will notify the Contractor PM, in writing, of acceptance or rejection. A rejection will include a written description of the defects of the Deliverable. If the State does not respond with acceptance or rejection within ten (10) business days of receipt, the Contractor PM shall provide a reminder notice to the State. Upon receipt of rejection of a Deliverable, Contractor will act diligently to correct the specified defects and deliver an updated version of the Deliverable to the State. Acceptance or rejection of the updated version of the Deliverable will be subject to the process described in this paragraph.

Following any acceptance of a Deliverable which requires additional work to be entirely compliant with the pertinent specifications, and until the next delivery, Contractor will use reasonable efforts to provide a prompt correction or workaround.

7. ADDITIONAL REQUIREMENTS

[Include any additional privacy / security requirements based on data being accessed or used by Contractor. Include additional technical specifications, support terms, etc. Refer to attached documents if needed.]

EXAMPLE: Any personnel providing services under this SOW who will have access to [AGENCY]'s premises and/or systems will be subject to [AGENCY]'s background screening requirements prior to commencement of such services.]

8. TOTAL COSTS

The total amounts payable to Contractor by State are as follows:

For Time and Materials Work: Not to exceed XXXXX USD

For Fixed Price Deliverables and TASKS: XXXX USD



COOPERATIVE PURCHASING MASTER AGREEMENT

No. 00318

PUBLIC SAFETY COMMUNICATIONS PRODUCTS, SERVICES AND SOLUTIONS

For Use by Eligible Purchasing Entities

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

FREEDOM COMMUNICATION TECHNOLOGIES, INC.

Dated January 1, 2022

COOPERATIVE PURCHASING MASTER AGREEMENT

No. 00318

PUBLIC SAFETY COMMUNICATIONS PRODUCTS, SERVICES AND SOLUTIONS

FOR

SUB-CATEGORY 8.1 TESTING: MULTIFUNCTION TEST SET

This Cooperative Purchasing Master Agreement (“Cooperative Purchasing Master Agreement”) is made and entered into by and between Enterprise Services acting by and through the State of Washington (“Enterprise Services”) and Freedom Communication Technologies, Inc. a Delaware corporation (“Contractor”) and is dated and effective as of January 1, 2022.

RECITALS

- A. Pursuant to Legislative authorization, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish Cooperative Purchasing Master Agreements for goods and services to support Washington state agencies. See RCW 39.26.050(1). The Washington State Legislature has authorized Enterprise Services to make these Cooperative Purchasing Master Agreements available, pursuant to agreement in which Enterprise Services ensures full cost recovery, to other local or federal government agency or entity, public benefit nonprofit organizations, or any tribes located in the State of Washington. See RCW 39.26.050(1) & (2).
- B. The Washington State Legislature also has authorized Enterprise Services to participate in, sponsor, conduct, or administer certain cooperative purchasing agreements for the procurement of goods or services. See RCW 39.26.060(1). One of the approaches that Enterprise Services utilizes to participate in cooperative purchasing agreements with other states is NASPO ValuePoint.
- C. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO). The NASPO ValuePoint purchasing cooperative program is led by state procurement officers from member states. NASPO ValuePoint does not award contracts; rather, it assists states, for an administrative fee, in their collaboration pertaining to solicitations and the resulting master agreements.
- D. Pursuant to the NASPO ValuePoint cooperative purchasing model, a state serves as the ‘lead state’ to conduct a competitive procurement in compliance with that state’s procurement laws and award a cooperative purchasing master agreement with a contractor for the specified goods or services. States (including the District of Columbia and the organized territories of the United States), including the lead state, then may participate in that cooperative purchasing master agreement by executing a Participating Addendum. Until a Participating Addendum is executed by the applicable state (a ‘participating entity’), no agency or other eligible organization (a ‘purchasing entity’) may purchase pursuant to the cooperative purchasing master agreement. Under Washington law, at the time of solicitation, states may provide supplemental substantive terms and conditions to inform the competitive procurement. In addition, pursuant to their Participating Addendum, states may require certain administrative terms and conditions

(e.g., a vendor management fee for sales within the state, state registration and reporting). Contractor, however, has no obligation to condition execution of a Participating Addendum on substantive terms and conditions that were not competitively procured.

- E. Enterprise Services, as part of a cooperative purchasing competitive governmental procurement, with administrative support from NASPO ValuePoint, issued Competitive Solicitation No. 00318 dated November 16, 2020 regarding Public Safety Communications Products, Services and Solutions (“Public Safety Radio”). Sixteen (16) states indicated an intent to utilize the resulting Cooperative Purchasing Master Agreement.
- F. Enterprise Services and a stakeholder team consisting of representatives from Washington, California, Alaska, Oregon, Montana, Tennessee, Colorado and Nevada evaluated all responsive bids to the Competitive Solicitation and identified Contractor as an Apparent Successful Bidder for the Category identified above.
- G. Enterprise Services determined that entering into this Cooperative Purchasing Master Agreement will meet the cooperative purchasing needs and be in the best interest of the State of Washington.
- H. The purpose of this Cooperative Purchasing Master Agreement is to enable Participating or Purchasing Entities to purchase Public Safety Radio products and services, in the awarded Category as set forth herein.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the parties hereto hereby agree as follows:

1. **TERM.** The term of this Master Agreement begins January 1, 2022 and ends on December 31, 2026; provided, however that, the contract term shall be extended for twenty-four (24) months if, in Enterprise Services’ sole, reasonable judgement, which shall occur no later than June 30, 2025, Contractor meets the following performance metrics:
 - Reports: Contractor provides timely and accurate reports as detailed in this Master Agreement and Participating Addendums; and
 - Administrative Fee Payments: Contractor provides timely and accurate Administrative Fee payments as detailed in this Master Agreement and Participating Addendums.

Notwithstanding any provision to the contrary, to effectuate a smooth transition for Participating States and Purchasing Entities for Public Safety Communications Products, Services and Solutions to begin on January 1, 2022, Contractor shall provide implementation and transition support to Participating States who wish to utilize the Master Agreement, beginning upon the date such Participating State and Contractor executes a Participating Addendum. For the avoidance of doubt, no orders for products or services shall be made under this Agreement prior to January 1, 2022.

2. **PARTICIPANTS AND SCOPE.** This Cooperative Purchasing Master Agreement may be utilized under the following conditions:

- 2.1. PARTICIPATING ENTITIES. Contractor may not sell Public Safety Radio products and services under this Cooperative Purchasing Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The terms and conditions set forth in the Cooperative Purchasing Master Agreement are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented, or amended by a Participating Addendum; *Provided*, however, that no Participating Addendum shall operate to alter or modify any substantive terms of this Cooperative Purchasing Master Agreement which were solicited and procured pursuant to a competitive procurement. By way of illustration and not limitation, Participating Entities may include unique administrative, delivery, and invoicing requirements, as well as entity-specific confidentiality requirements and similar entity-specific administrative requirements in purchase Orders utilizing this Cooperative Purchasing Master Agreement.
- 2.2. PURCHASING ENTITIES. Purchasing Entity means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order or other commitment document against the Cooperative Purchasing Master Agreement and becomes financially committed to the purchase.
- 2.3. PARTICIPATING ADDENDUM. Obligations under this Cooperative Purchasing Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive or other process to determine which Cooperative Purchasing Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum as instructed by the Lead State to support documentation of participation and posting in appropriate databases.
- 2.4. PURCHASING ENTITY RIGHTS. Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Cooperative Purchasing Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Cooperative Purchasing Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Cooperative Purchasing Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. Contractor will apply the charges and invoice each Participating Entity individually.
- 2.5. PARTICIPATING ADDENDUM APPROVAL. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

3. SCOPE – INCLUDED GOODS/SERVICES AND PRICE.

- 3.1. CONTRACT SCOPE. Pursuant to this Cooperative Purchasing Master Agreement, Contractor is authorized to sell only those Public Safety Radio Products and Services in the category above posted on the NASPO ValuePoint website. Contractor shall not represent to any Participating or Purchasing Entity under this Cooperative Purchasing Master Agreement that Contractor has contractual authority to sell any Public Safety Radio Products beyond those approved and posted on the NASPO ValuePoint website.
- 3.2. MINIMUM WARRANTY FOR INCLUDED GOODS/SERVICES. Notwithstanding any provision to the contrary, Contractor agrees to and is providing a minimum warranty of no less than one (1) year for any goods/services included in this Cooperative Purchasing Master Agreement. Such minimum warranty begins when the goods/services are delivered to Purchasing Entity or as agreed by Purchasing Entity in its ordering documentation. Such minimum warranty includes all firmware and software updates within warranty period. Parts and related software will be free from defects in material and workmanship for one (1) year. If a product fails because of a defect in workmanship or materials within one (1) year from the date of acceptance by Purchasing Entity, manufacture shall repair or replace the product or part with a new product or part without charge to Purchasing Entity.
- 3.3. ADDITIONAL WARRANTY OPTIONS – See Freedom Communication Technologies Products/Services Pricing Document on the NASPO ValuePoint website for descriptions and pricing for all available warranty options.
- 3.4. AVAILABLE SERVICES – See Freedom Communication Technologies Products/Services Pricing Document on the NASPO ValuePoint website for descriptions and pricing for all available services.
- 3.5. ABILITY TO MODIFY SCOPE OF COOPERATIVE PURCHASING MASTER AGREEMENT. Subject to mutual agreement between the parties, Enterprise Services, acting as the lead state, reserves the right to modify the Public Safety Radio Products included in this Cooperative Purchasing Master Agreement; *Provided*, however, that any such modification shall be effective only upon thirty (30) days advance written notice; and *Provided further*, that any such modification must be within the scope of this competitively procured Cooperative Purchasing Master Agreement. In no event shall such modification, if authorized by Enterprise Services, limit the requirement for cooperative purchasing agreements to be subject to competitive procurement.
- 3.6. PRODUCT UPDATES. Upon approval, Contractor may update their products/pricelist on a semi-annual basis. Contractor must submit to the Lead Contract Administrator a revised product/pricelist highlighting changes and include an effective date of the change. At no time during the contract term shall products be deleted from the products/pricelist. Discontinued products/services must be struck-through and highlighted for ease of review process. Product/pricelist updates must be submitted for review and approval to the Lead Contract Administrator thirty (30) days prior to the effective date of the change. All products/pricelist will be posted on the NASPO ValuePoint website.

Product updates for January 1st through June 30th must be submitted to Lead State Contract Administrator by June 1st to be eligible for product updates effective July 1st. Product updates for July 1st through December 31st must be submitted to the Lead State Contract Administrator by December 1st to be eligible for product updates effective January 1st. Additional product

updates may be considered for approval with proper 30 day notice at the discretion of the Lead State.

Semi-Annual	Submitted By	Effective Date
January 1-June 30	June 1 st	July 1 st
July 1-December 31	December 1 st	January 1 st

- 3.7. **ECONOMIC ADJUSTMENTS.** All pricing must be guaranteed for the first year of the Cooperative Purchasing Master Agreement. Following the guarantee period, any request for price increases must be for an equal guarantee period (1 year), and must be submitted to the Lead State at least thirty (30) calendar days prior to the effective date. The Lead State will review a documented request for an MSRP price list increase only after the Price Guarantee Period.

Requests for price increases must include sufficient documentation supporting the request and demonstrating the reasonableness of the adjustment when comparing the current price list to the proposed price list. Documentation may include: the manufacturer's national price increase announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, index data and other information to support and justify the increase. The price increase must not produce a higher profit margin than the original contract, and must be accompanied by sufficient documentation and nationwide notice of price adjustment to the published manufacturer's price list. No retroactive price increases will be allowed.

Price Reductions. In the event of a price decrease in any category of product at any time during the contract in an OEM's published manufacturer's price list, including renewal options, the Lead State shall be notified immediately. All published manufacturer's price list price reductions shall be effective upon the notification provided to the Lead State.

Enterprise Services reserves the right to request clarification and justification for requested Economic Adjustments.

Economic Price Adjustment requests for January 1st through June 30th must be submitted to Lead State Contract Administrator by June 1st to be eligible for product updates effective July 1st. Product updates for July 1st through December 31st must be submitted to the Lead State Contract Administrator by December 1st to be eligible for product updates effective January 1st.

Semi-Annual	Submitted By	Effective Date
January 1-June 30	June 1 st	July 1 st
July 1-December 31	December 1 st	January 1 st

- 3.8. **PRICE CEILING.** Although Contractor may offer lower prices, including volume discounts, to Purchasing Entity, during the term of this Cooperative Purchasing Master Agreement, Contractor guarantees to provide the Goods/Services at no greater than the prices set forth approved and posted on the NASPO ValuePoint website.

- 3.9. COOPERATIVE PURCHASING MASTER AGREEMENT INFORMATION. Enterprise Services shall maintain and provide information regarding this Cooperative Purchasing Master Agreement, including scope and pricing, to eligible Purchasing Entity.
- 3.10. CONTRACTOR RESPONSIBILITIES. Contractor shall be responsible for successful performance of the Cooperative Purchasing Master Agreement and also for the successful performance of any and all of their partners. Contractor is to be the sole point of contact as applicable by Cooperative Purchasing Master Agreement with regard to contractual matters, payment of any and all charges resulting from the purchase of the products and maintenance of the product for the term of the Cooperative Purchasing Master Agreement unless otherwise specified by a Participating State in a Participating Addendum and/or the Cooperative Purchasing Master Agreement. Contractor must be able to receive, process, and invoice orders unless the Participating State has agreed to assign these functions to a partner. Contractor will be responsible for compliance with requirements under the Cooperative Purchasing Master Agreement, even if requirements are delegated to partners. Contractor and partners must not in any way represent themselves in the name of the Lead State, NASPO ValuePoint or Participating States.
4. CONTRACTOR REPRESENTATIONS AND WARRANTIES. Contractor makes each of the following representations and warranties as of the effective date of this Cooperative Purchasing Master Agreement and at the time any order is placed pursuant to this Cooperative Purchasing 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.
- 4.1. QUALIFIED TO DO BUSINESS. Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington, that it is registered with the Washington State Department of Revenue and the Washington Secretary of State, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington. Contractor further represents and warrants that, within fifteen (15) days of executing any Participating Addendum and prior to making any sales pursuant to such Participating Addendum, Contractor shall be in good standing and qualified to do business in such state and that Contractor properly shall have registered to do business in such state, shall possess and shall keep current all required licenses and/or approvals, and that it shall be current, in full compliance, and have paid all applicable taxes owed to such state.
- 4.2. SUSPENSION & DEBARMENT. Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.
- 4.3. QUALITY OF GOODS OR SERVICES. Contractor represents and warrants that any goods and/or services sold pursuant to this Cooperative Purchasing Master Agreement shall be merchantable, available for purchase, and shall conform to this Cooperative Purchasing Master Agreement and Purchasing Entity's Purchase Order, shall be fit and safe for the intended purposes, shall be free from defects in materials and workmanship, and shall be produced and delivered in full compliance with applicable law. Contractor further represents and warrants it has clear title to the goods and that the same shall be delivered and the services provided free of liens and encumbrances and that the same do not infringe any third

party patent. Upon breach of warranty, Contractor will repair or replace (at no charge to Purchasing Entity) any goods and/or services whose nonconformance is discovered and made known to the Contractor. If, in Purchasing Entity's judgment, repair or replacement is inadequate, or fails of its essential purpose, 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.

- 4.4. **PAY EQUALITY.** Contractor represents and warrants that, among its workers, 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 Cooperative Purchasing Master Agreement and any Purchasing Entity hereunder similarly may suspend or terminate its use of the Cooperative Purchasing Master Agreement and/or any agreement entered into pursuant to this Cooperative Purchasing Master Agreement.
- 4.5. **EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS.** Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, 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 Cooperative Purchasing Master Agreement, 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.
- 4.6. **PROCUREMENT ETHICS & PROHIBITION ON GIFTS.** Contractor represents and warrants that it complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Purchasing Entity's employees.
- 4.7. **WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS).** Contractor represents and warrants that it is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of its information therein is current and accurate and that throughout the term of this Cooperative Purchasing Master Agreement, Contractor shall maintain an accurate profile in WEBS.
- 4.8. **STATEWIDE PAYEE DESK.** Contractor represents and warrants that it is registered with the Washington Statewide Payee Desk, which registration is a condition to payment.

- 4.9. COOPERATIVE PURCHASING MASTER AGREEMENT PROMOTION; ADVERTISING AND ENDORSEMENT. Contractor represents and warrants that it shall use commercially reasonable efforts both to promote and market the use of this Cooperative Purchasing Master Agreement with eligible Purchasing Entity and to ensure that those entities that utilize this Cooperative Purchasing Master Agreement are eligible Purchasing Entity. Contractor understands and acknowledges that neither Enterprise Services nor Purchasing Entity are endorsing Contractor's goods and/or services or suggesting that such goods and/or services are the best or only solution to their needs. Accordingly, Contractor represents and warrants that it shall make no reference to Enterprise Services, any Purchasing Entity, or the State of Washington in any promotional material without the prior written consent of Enterprise Services.
- 4.10. COOPERATIVE PURCHASING MASTER AGREEMENT TRANSITION. Contractor represents and warrants that, in the event this Cooperative Purchasing Master Agreement or a similar contract, is transitioned to another contractor (e.g., Cooperative Purchasing Master Agreement expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.
- 4.11. SUB-CONTRACTORS, AUTHORIZED RESELLERS/DEALERS. MANUFACTURER'S REPRESENTATIVE (PARTNERS). If utilizing partners, Contractor is responsible for such partners providing products and services, as well as warranty and maintenance services for any product or solution such partners provide pursuant to this Cooperative Purchasing Master Agreement. Pursuant to their applicable Participating Addendum, each Participating Entity may allow or disallow Contractor to utilize Partners. Only partners approved by the Participating Entity may be utilized. The Participating Entity will define the process to add and remove partners in their Participating Addendum.

5. USING THE COOPERATIVE PURCHASING MASTER AGREEMENT – PURCHASES.

- 5.1. ORDERING REQUIREMENTS. Eligible Purchasing Entity shall order goods and/or services from this Cooperative Purchasing Master Agreement, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchasing Entity but, at a minimum, including the use of a purchase order. When practicable, Contractor and Purchasing Entity also shall use telephone orders, email orders, web-based orders, and similar procurement methods (collectively "Purchasing Entity Order"). All order documents must reference the Cooperative Purchasing Master Agreement number. The terms of this Cooperative Purchasing Master Agreement shall apply to any Purchase Order and, in the event of any conflict, the terms of this Cooperative Purchasing Master Agreement shall prevail. Notwithstanding any provision to the contrary, in no event shall any 'click-agreement,' software or web-based application terms and conditions, or other agreement modify the terms and conditions of this Cooperative Purchasing Master Agreement.

(a) All order documents must, at a minimum, reference

- The Cooperative Purchasing Master Agreement number;
- The place and requested time of delivery;
- A billing address;
- The name, phone number, and address of the Participating Entity representative;

- (b) All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Participating Entity's purchasing office, or to such other individual identified in writing in the Order.
- (c) Orders must be placed pursuant to this Cooperative Purchasing Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days thereafter.
- (d) Notwithstanding the expiration, cancellation or termination of this Cooperative Purchasing Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation, or termination of this Cooperative Purchasing 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 Cooperative Purchasing Master Agreement may not be placed after the expiration or termination of this Cooperative Purchasing Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

5.2. DELIVERY REQUIREMENTS. Contractor must ensure that delivery of goods and/or services will be made as required by this Cooperative Purchasing Master Agreement, the Purchase Order used by Purchasing Entity, or as otherwise mutually agreed in writing between the Purchasing Entity and Contractor. The following apply to all deliveries:

- (a) Contractor shall make all deliveries to the applicable delivery location specified in the Purchase Order. Such deliveries shall occur during Purchasing Entity's normal work hours and within the time period mutually agreed in writing between Purchasing Entity and Contractor at the time of order placement. Deliveries to be off-loaded at Purchasing Entity's receiving dock or designated job site by Contractor.
- (b) Contractor shall ship all goods purchased pursuant to this Master Agreement to Purchasing Entity's specified destination. Shipping charges must be mutually agreed to between Purchasing Entity and Contractor, and shall be added as a separate line item on the Contractor's invoice. Contractor shall bear all risk of loss, damage, or destruction of the goods ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchasing Entity's fault or negligence. Ownership transfers to the Purchasing Entity upon delivery.
- (c) All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.
- (d) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Cooperative Purchasing Master Agreement shall be identified by the Cooperative Purchasing Master Agreement number set forth on the cover of this

Cooperative Purchasing Master Agreement and the applicable Purchase Order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.

- (e) Purchasing Entities may return unopened or unused (non-specialty or customized) Public Safety Radio products within ten (10) business days of receipt for full credit, minus any freight or restocking fee. In such event, Contractor is responsible for shipping costs pertaining to any defective Public Safety Radio Products that are returned.

- 5.3. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. Goods and/or services purchased under this Cooperative Purchasing Master Agreement are subject to Purchasing Entity's reasonable inspection, testing, and approval at Purchasing Entity's destination. Such inspection and approval shall be determined within thirty (30) days of delivery. Purchasing Entity reserves the right to reject and refuse acceptance of goods and/or services that are not in accordance with this Cooperative Purchasing Master Agreement and Purchasing Entity's Purchase Order. If there are any apparent defects in the goods and/or services at the time of delivery, Purchasing Entity will notify Contractor within five (5) business days. At Purchasing Entity's option, and without limiting any other rights, Purchasing Entity may require Contractor to, consistent with the warranty terms, repair or replace, at Contractor's expense, any or all of the damaged goods and/or services or, at Purchasing Entity's option, Purchasing Entity may note any damage to the goods and/or services on the receiving report, decline acceptance, and deduct the cost of rejected goods and/or services from final payment. Payment for any goods under such Purchase Order shall not be deemed acceptance of the goods.

- (a) 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 Cooperative Purchasing Master Agreement. Products that do not meet specifications may be rejected as mutually agreed between Purchasing Entity and Contractor. Failure to reject upon receipt, however, does not relieve Contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when the Public Safety Radio Products are put to use. Acceptance of such Public Safety Radio Products may be revoked in accordance with the provisions of the applicable commercial code, and Contractor shall be liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of any Public Safety Radio Products rejected and returned, or for which Acceptance is revoked.
- (b) If any Public Safety Radio Products do not conform to the specifications, the Purchasing Entity may require the Contractor to repair or replace the Public Safety Radio Product in conformity with the specifications.

- 5.4. ON SITE REQUIREMENTS. While on Purchasing Entity's premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchasing Entity's physical, fire, access, safety, and other security requirements.
- 5.5. INSTALLATION. Installation shall be performed by Contractor or Sub-Contractor, in a professional manner in accordance with industry standard best practices. The premises shall be left in a neat, clean, and undamaged condition. Purchasing Entity reserves the right to

require Contractor or Sub-Contractor to repair any damage caused during installation or provide full compensation as determined by Purchasing Entity.

- 5.6. CONFIDENTIALITY; SAFEGUARDING OF INFORMATION. Contractor shall not use or disclose any information concerning Enterprise Services/the State of Washington or Purchasing Entity's information which may be classified as confidential, for any purpose not directly connected with the administration of this Cooperative Purchasing Master Agreement, except with prior written consent of Enterprise Services (or the applicable Purchasing Entity), or as may be required by law.
- 5.7. TREATMENT OF ASSETS. Title to all property furnished by any Participating State and/or Purchasing Entity shall remain with such Participating State and/or Purchasing Entity, as applicable. Any property of any Participating State and/or Purchasing Entity furnished to Contractor shall, unless otherwise provided herein or approved by such Participating State and/or Purchasing Entity, be used only for the performance of this Cooperative Purchasing Master Agreement. Contractor shall be responsible for damages as a result of any loss or damage to property of any Participating State and/or Purchasing Entity to the extent it results from the negligence of Contractor or to the extent it results from the failure on the part of Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances. If any such Participating State and/or Purchasing Entity property is lost, destroyed, or damaged, Contractor immediately shall notify such Participating State and/or Purchasing Entity and shall take all reasonable steps to protect the property from further damage. Contractor shall surrender to such Participating State and/or Purchasing Entity all property of such Participating State and/or Purchasing Entity prior to settlement upon completion, termination, or cancellation of this Cooperative Purchasing Master Agreement. Title to all property furnished by Contractor, the cost for which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the Purchasing Entity upon delivery of such property by Contractor to the Purchasing Entity. Title to other property, the cost of which is reimbursable to Contractor under this Contract, shall pass to and vest in the Purchasing Entity upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Purchasing Entity in whole or in part, whichever first occurs. All reference to Contractor under this clause shall also include Contractor's employees, agents or subcontractors. Title to software shall not pass to Purchasing Entity but shall be licensed. All reference to Contractor under this clause shall also include Contractor's employees, agents or subcontractors.
- 5.8. SOFTWARE LICENSE AGREEMENT. If the public safety communications equipment ordered and delivered under the term and conditions of this Cooperative Purchasing Master Agreement requires software or firmware to operate, Purchasing Entity and Contractor will mutually agree to Contractor's Software License Agreement that will apply to such transactions. Contractor's software license agreement shall not conflict with the terms and conditions of this Cooperative Purchasing Master Agreement or specific security requirements of Purchasing Entity.
- 5.9. SUBSCRIPTION SERVICES AGREEMENT. If the public safety communications equipment ordered and delivered under the term and conditions of this Contract requires subscription services to operate, Purchasing Entity and Contractor will mutually agree to Contractor's Software License Agreement that will apply to such transactions. Contractor's Subscription Services Agreement shall not conflict with the terms and conditions of this Master Agreement or the specific security requirements of Purchasing Entity.

6. INVOICING & PAYMENT.

6.1. **CONTRACTOR INVOICE.** Contractor shall submit to Purchasing Entity's designated invoicing contact properly itemized invoices. Such invoices shall itemize the following:

- Cooperative Purchasing Master Agreement No. 00318
- Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative)
- Contractor's Federal Tax Identification Number
- Date(s) of delivery
- Applicable goods/services
- Invoice amount; and
- Payment terms, including any available prompt payment discounts.

Contractor's invoices for payment shall reflect accurate Cooperative Purchasing Master Agreement prices, less discounts or lower negotiated costs. Invoices will not be processed for payment until receipt of a complete invoice as specified herein.

6.2. **PAYMENT.** Payment is the sole responsibility of, and will be made by, the Purchasing Entity. Payment is due within thirty (30) days of invoice. If Purchasing Entity fails to make timely payment(s), Contractor may invoice Purchasing Entity in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.

6.3. **OVERPAYMENTS.** Contractor promptly shall refund to Purchasing Entity the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) days of written notice to Contractor; *Provided*, however, that Purchasing Entity shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, Purchasing Entity may impose a one percent (1%) per month on the amount overdue thirty (30) days after notice to the Contractor.

6.4. **NO ADVANCE PAYMENT.** No advance payment shall be made for the products and services furnished by Contractor pursuant to this Cooperative Purchasing Master Agreement; *Provided*, however, that the parties agree that maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter.

6.5. **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, or payment processing.

6.6. **TAXES/FEES.** Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Cooperative Purchasing Master Agreement. Failure to do so shall constitute breach of this Cooperative Purchasing Master Agreement. Unless otherwise agreed, Purchasing Entity shall pay applicable sales tax imposed by the State of Washington on purchased goods and/or services. In regard to federal excise taxes, Contractor shall include federal excise taxes only if, after thirty (30) calendar days written notice to Purchasing Entity, Purchase has not provided Contractor with a valid exemption certificate from such federal excise taxes.

7. CONTRACT MANAGEMENT.

- 7.1. **CONTRACT ADMINISTRATION & NOTICES.** Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of this Cooperative Purchasing Master Agreement. Enterprise Services' contract administrator shall provide Cooperative Purchasing Master Agreement oversight. Contractor's contract administrator shall be Contractor's principal contact for business activities under this Cooperative Purchasing Master Agreement. The parties may change contractor administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services

Attn: Contract Administrator 00318
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Tel: (360) 407-2218
Email: DESContractsTeamCypress@des.wa.gov

Freedom Communication Technologies, Inc.

Attn: Ed Mick
2002 Synergy Blvd, Suite 200
Kilgore, TX 75662
Tel: (814) 883-0331
Email: ed.mick@astronics.com

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 7.2. **CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE.** Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Purchasing Entity issues pertaining to this Cooperative Purchasing Master Agreement.
- 7.3. **LEGAL NOTICES.** Any legal notices required or desired shall be in writing and delivered by U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

Enterprise Services

Attn: Legal Services Manager
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411
Email: greg.tolbert@des.wa.gov

Freedom Communication Technologies, Inc.

Attn: Melody Massey
2002 Synergy Blvd, Suite 200
Kilgore, TX 75662
Email: melody.massey@astronics.com

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

8. NASPO VALUEPOINT SUMMARY AND DETAILED USAGE REPORTS.

- 8.1. SUMMARY SALES DATA. Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under this Cooperative Purchasing 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).
- 8.2. DETAILED SALES DATA. Contractor also shall report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Participating Entity name; (4) Participating Entity bill-to and ship-to locations; (5) Participating Entity and Contractor Purchase Order identifier/number(s); (6) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (7) Purchase Order date; (8) Ship Date; and (9) line item description, including product number if used. Reports are due on a quarterly basis and must be received by the Enterprise Services and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to Enterprise Services and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by Enterprise Services and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Cooperative Purchasing Master Agreement.
- 8.3. NASPO VALUEPOINT EXECUTIVE SUMMARY. 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.
- 8.4. REPORT OWNERSHIP. Timely submission of these reports is a material requirement of the Cooperative Purchasing Master Agreement. Enterprise Services and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.
- 8.5. CONFIDENTIALITY OF DETAILED SALES DATA AND PARTICIPATING ADDENDA. Participating Addenda, as well as Orders or transaction data relating to Orders under this Cooperative Purchasing Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates, shall be Confidential Information. Contractor shall hold Confidential Information in confidence and shall not transfer or otherwise disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Cooperative Purchasing Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Cooperative Purchasing Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

9. NASPO VALUEPOINT COOPERATIVE PROGRAM MARKETING AND PERFORMANCE REVIEW

- 9.1. NASPO VALUEPOINT COOPERATIVE PROGRAM. 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 Cooperative Purchasing Master Agreement, including the competitive nature of NASPO ValuePoint procurements, the Cooperative Purchasing Master Agreement and Participating Addendum process, and the manner in which qualifying entities can participate in the Cooperative Purchasing Master Agreement.
- 9.2. LOGOS. NASPO VALUEPOINT logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- 9.3. ANNUAL SUPPLIER BUSINESS REVIEW. Contractor agrees to participate in an annual supplier performance review at a location (virtual or in-person) selected by Enterprise Services 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. The 2022 Annual Supplier Business Review requires in-person attendance. Any subsequent Annual Supplier Business Review meetings may be attended virtually or in-person.

10. ADMINISTRATIVE FEES.

- 10.1. CONTRACTOR shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint ADMINISTRATIVE Fee of one-quarter of one percent (0.25%) of the quarterly sales by participating state. The NASPO ValuePoint administrative fee is not negotiable. This fee may not be adjusted in any Participating Addendum. This fee is to be included as part of the pricing submitted with the bid.
- 10.2. Some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. 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 Cooperative Purchasing Master Agreement. The Contractor may adjust the Cooperative Purchasing 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 set forth above 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.

11. RECORDS RETENTION & AUDITS.

- 11.1. RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Cooperative Purchasing Master Agreement and orders placed by Purchasing Entity under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Cooperative Purchasing Master Agreement or final payment for any order placed by a Purchasing Entity against this Cooperative Purchasing Master Agreement, whichever is later; *Provided*, however, that if any

litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.

- 11.2. **AUDIT.** Upon reasonable advance written notice, Enterprise Services reserves the right to audit, or have a designated third party audit, applicable records associated with this Cooperative Purchasing Master Agreement to ensure that Contractor has properly invoiced Purchasing Entity and that Contractor has paid all applicable vendor management fees. Accordingly, Contractor shall permit Enterprise Services, any Purchasing Entity, 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 Cooperative Purchasing 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 six (6) years following expiration or termination of this Cooperative Purchasing Master Agreement or final payment for any order placed by a Purchasing Entity against this Cooperative Purchasing Master Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 11.3. **OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES.** Without limiting any other remedy available to any Purchasing Entity, Contractor shall reimburse Purchasing Entity for any overpayments inconsistent with the terms of this Cooperative Purchasing Master Agreement or orders, at a rate of 100% of such overpayments, found as a result of the examination of the Contractor's records.

12. INSURANCE.

- 12.1. **REQUIRED INSURANCE.** During the Term of this Cooperative Purchasing Master Agreement, Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit A – Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for goods/services and no additional payment shall be made.
- 12.2. **WORKERS COMPENSATION.** Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Enterprise Services may terminate this Cooperative Purchasing Master Agreement. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. In addition, Contractor waives its immunity under RCW Title 51 to the extent it is required to indemnify, defend, and hold harmless the State of Washington and its agencies, officials, agents, or employees.
- 12.3. **INSURANCE CERTIFICATE.** Prior to commencement of performance, Contractor shall provide to Enterprise Services a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to Enterprise Services that (1) names the State of Washington and Enterprise Services as additional insureds, (2) provides for written notice of cancellation delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations

are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

- 13. PUBLIC INFORMATION.** This Cooperative Purchasing Master Agreement, all related documents, and all records created as a result of the Cooperative Purchasing Master Agreement are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56. In addition, Participating Addendums and related records shall be subject to public disclosure as required by applicable law pertaining to such Purchasing Entity. Consistent with the Public Records Act, to the extent that any such Contractor document or record – in whole or in part – includes information exempted or protected from disclosure by the Public Records Act, Contractor may mark such document or record – the exempted or protected portions only – with the specific basis for protection under the Public Records Act. In the event that Enterprise Services receives a public records disclosure request that pertains to such properly marked documents or records, Enterprise Services shall notify Contractor of such disclosure request and of the date that the records will be released to the requester unless Contractor, at Contractor's sole expense, timely obtains a court order enjoining such disclosure. In the event Contractor fails to file a motion for a court order enjoining such disclosure, Enterprise Services shall release the requested documents on the date specified. Contractor's failure properly to identify exempted or protected information or timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are protected or exempt from disclosure.

14. DEFAULTS AND REMEDIES

- 14.1. SUSPENSION & TERMINATION FOR DEFAULT.** Enterprise Services may suspend Contractor's operations under this Cooperative Purchasing Master Agreement immediately by written cure notice of any default. Contractor may be required to submit a written cure plan within thirty (30) business days of Suspension notification. Suspension shall continue until the default is remedied to Enterprise Services' reasonable satisfaction; *Provided*, however, that, if after thirty (30) days from such a suspension notice, Contractor remains in default, Enterprise Services may terminate Contractor's right under this Cooperative Purchasing Master Agreement. All of Contractor's obligations to Enterprise Services and Purchasing Entity survive termination of Contractor's rights under this Cooperative Purchasing Master Agreement, until such obligations have been fulfilled.
- 14.2. DEFAULT.** Each of the following events shall constitute default of this Cooperative Purchasing Master Agreement by Contractor:
- (a) Contractor fails to perform or comply with any of the terms or conditions of this Cooperative Purchasing Master Agreement;
 - (b) Contractor breaches any representation or warranty provided herein; or
 - (c) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.
- 14.3. REMEDIES for DEFAULT.**
- (a) Enterprise Services' rights to suspend and terminate Contractor's rights under this Cooperative Purchasing Master Agreement are in addition to all other available remedies.
 - (b) In the event of termination for default, Enterprise Services may exercise any remedy provided by law including, without limitation, the right to procure for all Purchasing

Entity replacement goods and/or services. In such event, Contractor shall be liable to Enterprise Services for damages as authorized by law including, but not limited to, any price difference between the Cooperative Purchasing Master Agreement price and the replacement or cover price for identical equipment or services, as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement. Enterprise Services or Purchasing Entity will mitigate damages and provide Contractor with detailed invoices substantiating the charges.

- (c) 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 have all of the rights and remedies under this paragraph regarding its participation in the Cooperative Purchasing Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, either Party 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. Nothing in this Cooperative Purchasing Master Agreement shall be construed to limit the rights and remedies available to either Party under the applicable commercial code.

- 14.4. LIMITATION ON DAMAGES. Notwithstanding any provision to the contrary, the parties agree that in no event shall any party or Purchasing Entity be liable to the other for exemplary or punitive damages. Contractor's total liability shall not exceed \$1,000,000 per occurrence or \$4,000,000 aggregate; provided, however, that nothing contained in the Section shall in any way exclude or limit Contractor's liability for all damages arising out of negligence, personal injury or death.

ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT CONTRACTOR WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE, LOSS OF USE, LOSS TIME, DATA, GOODWILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY CONTRACTOR PURSUANT TO THIS AGREEMENT.

This limitation of liability provision survives the expiration or termination of this Cooperative Purchasing Master Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this Cooperative Purchasing Master Agreement may be brought later than the limitations period specified by statute

- 14.5. GOVERNMENTAL TERMINATION.

- (a) Termination for Withdrawal of Authority. Enterprise Services may suspend or terminate this Cooperative Purchasing Master Agreement if, during the term hereof, Enterprise Services' procurement authority is withdrawn, reduced, or limited such that Enterprise Services, in its judgment, would lack authority to enter into this Cooperative Purchasing Master Agreement; *Provided*, however, that such suspension or termination for withdrawal of authority shall only

be effective upon twenty (20) days prior written notice; and *Provided further*, that such suspension or termination for withdrawal of authority shall not relieve any Participating Entity or Purchasing Entity from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such suspension or termination for withdrawal of authority, neither Enterprise Services nor any Participating Entity or Purchasing Entity shall have any obligation or liability to Contractor. Contractor will be entitled to seek a change order to the extent Contractor provides documentary evidence that Contractor has incurred additional costs as a result of the suspension including costs to demobilize and remobilize the project.

- (b) Termination for Convenience. Enterprise Services, for convenience, may terminate this Cooperative Purchasing Master Agreement; *Provided*, however, that such termination for convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for convenience shall not relieve any Participating Entity or Purchasing Entity from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for convenience, neither Enterprise Services nor any Participating Entity or Purchasing Entity shall have any obligation or liability to Contractor.

15. CLAIMS.

- 15.1. ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents to the extent caused by its operations under this Cooperative Purchasing Master Agreement. Enterprise Services has made no representations regarding any factor affecting Contractor's risks. If responsibility can be substantiated as Contractor fault, Contractor shall pay for all damage to any Purchasing Entity's property resulting directly or indirectly from its acts or omissions under this Cooperative Purchasing Master Agreement, to the extent attributable to negligence by Contractor or its agents.
- 15.2. THIRD-PARTY CLAIMS; INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless Enterprise Services, any Purchasing Entity, and NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint) (NASPO) and their respective employees and agents from and against all claims, demands, judgments, assessments, damages, penalties, fines, costs, liabilities or losses including, without limitation, sums paid in settlement of claims, attorneys' fees, consultant fees, and expert fees (collectively "claims") arising from third party claims for any act or omission of Contractor or its successors, agents, and subcontractors under this Cooperative Purchasing Master Agreement, except to the extent such claims are caused by Enterprise Services, any Purchasing Entity, or NASPO's negligence. Contractor shall take all steps needed to keep Purchasing Entity's property free of liens arising from Contractor's activities, and promptly obtain or bond the release of any such liens that may be filed. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Cooperative Purchasing Master Agreement or in any other document executed in conjunction with this Cooperative Purchasing Master Agreement.

16. DISPUTE RESOLUTION. The parties shall cooperate to resolve any dispute pertaining to this Cooperative Purchasing Master Agreement efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

17. GENERAL PROVISIONS.

- 17.1. **TIME IS OF THE ESSENCE.** Time is of the essence for each and every provision of this Cooperative Purchasing Master Agreement.
- 17.2. **COMPLIANCE WITH LAW.** Contractor shall comply with all applicable law.
- 17.3. **INTEGRATED AGREEMENT.** This Cooperative Purchasing Master Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 17.4. **AMENDMENT OR MODIFICATION.** Except as set forth herein, this Cooperative Purchasing Master Agreement may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 17.5. **AUTHORITY.** Each party to this Cooperative Purchasing Master Agreement, 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 Cooperative Purchasing Master Agreement and that its execution, delivery, and performance of this Cooperative Purchasing Master Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 17.6. **NO AGENCY.** The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Cooperative Purchasing Master Agreement. Neither party is an agent of the other party nor authorized to obligate it.
- 17.7. **ASSIGNMENT.** Contractor may not assign its rights under this Cooperative Purchasing Master Agreement without Enterprise Services' prior written consent and Enterprise Services may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to Enterprise Services within thirty (30) days, Contractor may assign its rights under this Cooperative Purchasing Master Agreement in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Cooperative Purchasing Master Agreement notwithstanding any prior assignment of its rights.
- 17.8. **BINDING EFFECT; SUCCESSORS & ASSIGNS.** This Cooperative Purchasing Master Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

- 17.9. **ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS/SERVICES.** Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, 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 in connection with any goods and/or services provided in Washington for the purpose of carrying out the Contractor's obligations under this Cooperative Purchasing Master Agreement, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.
- 17.10. **FEDERAL FUNDS.** To the extent that any Purchasing Entity uses federal funds to purchase goods and/or services pursuant to this Cooperative Purchasing Master Agreement, such Purchasing Entity shall specify, with its order, any applicable requirement or certification that must be satisfied by Contractor at the time the order is placed or upon delivery.
- 17.11. **SEVERABILITY.** If any provision of this Cooperative Purchasing Master Agreement is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Cooperative Purchasing Master Agreement, and to this end the provisions of this Cooperative Purchasing Master Agreement are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Cooperative Purchasing Master Agreement.
- 17.12. **WAIVER.** Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Cooperative Purchasing Master Agreement, nor shall any purported oral modification or rescission of this Cooperative Purchasing Master Agreement by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.
- 17.13. **SURVIVAL.** All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Cooperative Purchasing Master Agreement shall survive and remain in effect following the expiration or termination of this Cooperative Purchasing Master Agreement, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 17.14. **GOVERNING LAW.** The validity, construction, performance, and enforcement of this Cooperative Purchasing Master Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules. The validity, construction, and effect of any Participating Addendum pertaining to the Cooperative Purchasing Master Agreement or Order placed pursuant to such Participating Addendum shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.
- 17.15. **JURISDICTION & VENUE.** In the event that any action is brought to enforce any provision of this Cooperative Purchasing Master Agreement, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington; *Provided*, however, that venue for any

claim, dispute, or action concerning any Order placed against the Cooperative Purchasing Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

- 17.16. **SOVEREIGN IMMUNITY.** In no event shall this Cooperative Purchasing 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.
- 17.17. **ATTORNEYS' FEES.** Should any legal action or proceeding be commenced by either party in order to enforce this Cooperative Purchasing Master Agreement or any provision hereof, or in connection with any alleged dispute, breach, default, or misrepresentation in connection with any provision herein contained, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including costs of pursuing or defending any legal action, including, without limitation, any appeal, discovery, or negotiation and preparation of settlement arrangements, in addition to such other relief as may be granted.
- 17.18. **FAIR CONSTRUCTION & INTERPRETATION.** The provisions of this Cooperative Purchasing Master Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Cooperative Purchasing Master Agreement. Each party hereto and its counsel has reviewed and revised this Cooperative Purchasing Master Agreement and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Cooperative Purchasing Master Agreement. Each term and provision of this Cooperative Purchasing Master Agreement to be performed by either party shall be construed to be both a covenant and a condition.
- 17.19. **FURTHER ASSURANCES.** In addition to the actions specifically mentioned in this Cooperative Purchasing Master Agreement, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Cooperative Purchasing Master Agreement including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Cooperative Purchasing Master Agreement.
- 17.20. **EXHIBITS.** All exhibits referred to herein are deemed to be incorporated in this Cooperative Purchasing Master Agreement in their entirety.
- 17.21. **CAPTIONS & HEADINGS.** The captions and headings in this Cooperative Purchasing Master Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Cooperative Purchasing Master Agreement nor the meaning of any provisions hereof.
- 17.22. **ELECTRONIC SIGNATURES.** An electronic signature of this Cooperative Purchasing Master Agreement or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Cooperative Purchasing Master Agreement or such other ancillary agreement for all purposes.

17.23. COUNTERPARTS. This Cooperative Purchasing Master Agreement may be executed in any number of 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 Cooperative Purchasing Master Agreement 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 Cooperative Purchasing Master Agreement.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

By: *Elena McGrew*
Elena McGrew

Its: Acting Statewide Enterprise Procurement
Manager

FREEDOM COMMUNICATION TECHNOLOGIES, INC.
A DELAWARE CORPORATION

By: *Ed Mick*
Ed Mick

Its: General Manager

INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the Term of this Cooperative Purchasing Master Agreement, Contractor shall possess and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
 - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability insurance (and, if necessary, commercial umbrella liability insurance) covering bodily injury, property damage, products/completed operations, personal injury, and advertising injury liability on an 'occurrence form' that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) under the most recent version of form CG 00 01 in the amount of not less than \$1,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.
 - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
 - c. **EMPLOYERS' LIABILITY (STOP GAP) INSURANCE.** Employers' liability insurance (and, if necessary, commercial umbrella liability insurance) with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.

The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** Commercial General Liability, Commercial Automobile Liability, and Pollution Liability Insurance shall include the State of Washington and all authorized Purchasing Entity (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Cooperative Purchasing Master Agreement, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Cooperative Purchasing Master Agreement, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall

furnish to Enterprise Services an updated or renewed certificate of insurance, satisfactory to Enterprise Services, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. **All policies and certificates of insurance shall include the Cooperative Purchasing Master Agreement number stated on the cover of this Cooperative Purchasing Master Agreement.** All certificates of Insurance and any related insurance documents shall be delivered to Enterprise Services by U.S. mail, postage prepaid, or sent via email, and shall be sent to the address or email address set forth below or to such other address or email address as Enterprise Services may specify in writing:

US Mail: Contracts & Procurement – Cooperative Purchasing Master Agreement Insurance Certificate
Cooperative Purchasing Master Agreement No. 00318 – Public Safety Communications Products, Services and Solutions
Attn: Team Cypress
Washington Dept. of Enterprise Services
PO Box 41411
Olympia, WA 98504-1411

Email: DESContractsTeamCypress@des.wa.gov

Note: For Email notice, the Email Subject line must state:
Cooperative Purchasing Master Agreement Insurance Certificate – Cooperative Purchasing Master Agreement No. 00318 – Public Safety Communications Products, Services and Solutions

5. **PRIMARY COVERAGE.** Contractor's insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchasing Entity. All insurance or self-insurance of the State of Washington and/or Purchasing Entity shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor's liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Purchasing Entity for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation without at least thirty (30) days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice shall include the Cooperative Purchasing Master Agreement number stated on the cover of this Cooperative Purchasing Master Agreement.

9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Cooperative Purchasing Master Agreement.

Contractor: Freedom Communication Technologies Inc

Within ten (10) business days of receipt of each Deliverable, the State will notify the Contractor PM, in writing, of acceptance or rejection. A rejection will include a written description of the defects of the Deliverable. If the State does not respond with acceptance or rejection within ten (10) business days of receipt, the Contractor PM shall provide a reminder notice to the State. Upon receipt of rejection of a Deliverable, Contractor will act diligently to correct the specified defects and deliver an updated version of the Deliverable to the State. Acceptance or rejection of the updated version of the Deliverable will be subject to the process described in this paragraph.

Following any acceptance of a Deliverable which requires additional work to be entirely compliant with the pertinent specifications, and until the next delivery, Contractor will use reasonable efforts to provide a prompt correction or workaround.

7. ADDITIONAL REQUIREMENTS

[Include any additional privacy / security requirements based on data being accessed or used by Contractor. Include additional technical specifications, support terms, etc. Refer to attached documents if needed.]

EXAMPLE: Any personnel providing services under this SOW who will have access to [AGENCY]'s premises and/or systems will be subject to [AGENCY]'s background screening requirements prior to commencement of such services.]

8. TOTAL COSTS

The total amounts payable to Contractor by State are as follows:

For Time and Materials Work: Not to exceed XXXXX USD

For Fixed Price Deliverables and TASKS: XXXX USD