

Participating Addendum Number PA4768
for
POLICE RADAR/LIDAR SPEED ENFORCEMENT & ACCIDENT SCENE RECONSTRUCTION
between
State of Utah
and
Kustom Signals, Inc.

This Participating Addendum is entered into by [Participating Entity] ("Participating Entity") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number 24823, executed by Contractor and the State of Washington ("Lead State") for Police Radar/Lidar Speed Enforcement & Accident Scene Reconstruction ("Master Agreement"):

Kustom Signals, Inc. ("Contractor")
10901 W 84th Terrace
Suite 100
Lenexa, KS 66214

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Jim Lindquist
sales@kustomsignals.com
800-458-7866 ext. 3023

Participating Entity's contact for this Participating Addendum is:

Kevin Lucus
Contract Analyst
klucus@utah.gov
801-957-7281

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below or 09/01/2024 whichever is later, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- III. PARTICIPATION AND USAGE.** This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.
- IV. GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.
- V. SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to Contractor and Participating Entity and Purchasing Entities.
- a. Products.** All products available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities. Group A2 – Speed Enforcement, Group B2 – Speed Advisory Systems
 - b. Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities. Group A2 – Speed Enforcement, Group B2 – Speed Advisory Systems
 - c. Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that

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Police Radar/Lidar Speed Enforcement & Accident Reconstruction**

Between State of Utah and
Kustom Signals, Inc.

the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum. Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto.

d. Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum. The terms of this Participating Addendum, including those modifying or adding to the terms of the Master Agreement, apply only to the Parties and shall have no effect on Contractor's participating addenda with other participating entities or Contractor's Master Agreement with the Lead State.

VI. ORDERS. Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.

VII. PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE. One half of one percent (0.5%) and will apply per section 55 of Attachment A.

VIII. FEDERAL FUNDING REQUIREMENTS. Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.

IX. ATTACHMENTS. This Participating Addendum includes the following attachments:

- a. Attachment A: State of Utah NASPO PA Truncated IT Terms and Conditions
- b. Attachment B: Master Agreement

X. NOTICE. Any notice required herein shall be sent to the following:

For Contractor:

Jim Lindquist
sales@kustomsignals.com
800-458-7866 Ext. 3023

For Participating Entity:

Kevin Lucas
Contract Analyst
klucas@utah.gov
801-957-7281

XI. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT. Upon execution, Contractor shall promptly email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. The Parties acknowledge and agree that the Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

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Police Radar/Lidar Speed Enforcement & Accident Reconstruction**

Between State of Utah and
Kustom Signals, Inc.

CONTRACTOR:



Signature

Chris Abel

Printed Name

President

Title

01/08/2025

Date

PARTICIPATING ENTITY:

DocuSigned by:



C38BE9DAC528424...

Signature

windy Aphayrath

Printed Name

Chief Procurement Officer

Title

1/14/2025

Date

ATTACHMENT A: STATE OF UTAH NASPO PA TRUNCATED IT TERMS AND CONDITIONS STATE OF UTAH COOPERATIVE IT CONTRACT

This is a State Cooperative Contract for information technology products and services. DTS policies referenced by number in this Attachment are only applicable to the Executive Branch and are available at <https://dts.utah.gov/policies>. All other policies and codes of conduct are available upon request.

1. DEFINITIONS:

- a. "Access to Secure State Facilities, Data, or Technology" means Contractor will (a) enter upon secure premises controlled, held, leased, or occupied by State of Utah or Eligible User; (b) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by State of Utah or Eligible User; or (c) have access to or receive any State Data or Confidential Information.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors, or agents of Contractor who need Access to Secure State Facilities, Data, or Technology to enable the Contractor to perform its responsibilities under this Contract.
- c. "Background IP" means intellectual property (IP) owned or controlled prior to the effective date of this Contract or that IP developed or acquired from activities independent of the services performed under this Contract, including but not limited to (a) methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services, and (b) processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of Eligible User.
- d. "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference.
- e. "Contract Period" means the term of this Contract, as set forth in the Contract Signature Page(s).
- f. "Contract Signature Page(s)" means the cover page that the Division and Contractor sign.
- g. "Contractor" means the individual or entity identified on the Contract Signature Page(s). "Contractor" includes Contractor's agents, officers, employees, partners, contractors, and Subcontractors at any level.
- h. "Custom Deliverables" means the product that Contractor is required to design, develop, or customize and deliver to the Eligible User as specifically described under this Contract or an associated statement of work for which all interest and title shall be transferred to and owned by the Eligible User. This includes every invention, design, development, customization, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registrable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor pursuant to this Contract.
- i. "Data Breach" means the unauthorized access or acquisition of State Data that compromises the security, confidentiality, or integrity of State Data.
- j. "Division" means the State of Utah Division of Purchasing.
- k. "DTS" means the Utah Department of Technology Services.
- l. "Eligible User(s)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts.
- m. "Federal Criminal Background Check" means a fingerprint-based, nationwide background check conducted and processed by the FBI.
- n. "Federal Data" means all information that originated with a federal entity, including tax information.
- o. "Good" means any deliverable not classified as a Custom Deliverable or Service.
- p. "Intellectual Property Rights" means all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and other protection afforded by law to inventions, models, designs, technical information, and applications.
- q. "Non-Public Data" means records or data that are not subject to distribution to the public. Access is restricted because it includes information that is protected by state or federal law. Non-Public Data includes, but is not limited to, a person's name; government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; or Protected Health Information.
- r. "Procurement Item" means a Good, a supply, Services, Custom Deliverable, construction, or technology that Contractor is required to deliver to the State of Utah under this Contract, including software and Software as a Service.
- s. "Protected Health Information" (PHI) is as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and its implementing regulations.
- t. "Response" means the Contractor's bid, proposals, quote, or any other document used by the Contractor to respond to the State Entity's Solicitation.
- u. "Security Incident" means the attempted unauthorized access to State Data that may result in the use, disclosure, or theft of State Data.

- v. "Services" means the furnishing of labor, time, or effort by Contractor, and may include installation, configuration, implementation, technical support, warranty maintenance, and other support services.
- w. "Solicitation" means an invitation for bids, request for proposals, notice of sole source procurement, request for statement of qualifications, request for information, or any document used to obtain bids, proposals, pricing, qualifications, or information for the purpose of entering into this Contract.
- x. "Single Sign On" means the authentication and authorization system operated by the State of Utah for accessing resources operated either by the State or a third party on behalf of the State.
- y. "X [Software, Platform, Infrastructure, Network, etc.] as a Service (SaaS)" means an application running on a Contractor's or State's cloud infrastructure which is accessible from various client devices through a client interface (e.g. a Web browser, Web-based email, a program interface etc.) For clarity, the State does not manage or control the underlying cloud infrastructure including network, servers, operating systems, storage, or even individual application capabilities, with the possible exception of limited user-specific application configuration settings.
- z. "State Data" means Data that is created, controlled, maintained, owned, or in any way originating from or on behalf of the State of Utah, including confidential information, Non-Public Data, and all data that is the output of computer processing or other electronic manipulation of any data created, controlled, maintained, or in any way originating from the State of Utah, regardless of where such data or output is stored or maintained.. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities and instrumentalities, boards, commissions, elected or appointed officers, employees, agents, authorized volunteers, and where applicable, Eligible Users.
- aa. "Subcontractors" includes contractors, manufacturers, distributors, suppliers, or consultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, including a person or entity that is, or will be, providing goods or performing services pursuant to this Contract.

2. ESSENTIAL PROVISIONS:

- a. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed solely by the laws of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Exclusive venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
- b. **LAWS:** Contractor and all Goods and Services delivered under this Contract will comply with all applicable federal and state of Utah laws, including applicable licensure and certification requirements.
- c. **SOVEREIGN IMMUNITY:** The Division and the State of Utah do not waive any protection, right, defense or immunity under the Governmental Immunity Act of Utah, Utah Code §§ 63G-7-101 to 904, as amended, the Eleventh Amendment to the Constitution of the United States, or otherwise, from any claim or from the jurisdiction of any court. If a claim must be brought in a federal forum, then the party bringing the claim shall file it and seek to adjudicate it exclusively within the United States District Court for the District of Utah. This paragraph applies only to a claim brought against DTS or the State of Utah to the extent Congress has abrogated the State of Utah's sovereign immunity. Furthermore, this paragraph is not consent by DTS or the State of Utah to be sued in federal court.
- d. **PUBLIC INFORMATION:** This Contract and any purchase orders, invoices, pricing lists, and the Response are public records available for disclosure in accordance with the State of Utah's Government Records Access and Management Act (GRAMA, Utah Code 63G-2-101 et seq.), except to the extent classified as protected in accordance with UCA 63G-2-309. GRAMA takes precedence over any statements of confidentiality or similar notations. Neither the Division, the Eligible User nor the State of Utah will inform Contractor of any request for a copy of this Contract, including any purchase orders, invoices, pricing lists, or the Response.
- e. **CREDITING THE DIVISION IN PUBLICITY:** Any publicity given to this Contract shall identify the Division as the managing agency and shall not be released without prior written approval from the Division.
- f. **SALES TAX EXEMPTION:** Goods, Custom Deliverables, and Services purchased by some Eligible Users are being paid from that Eligible User's funds and used in the exercise of that Eligible User's essential functions as a State of Utah governmental entity. Any such Eligible Users will provide Contractor with a copy of its sales tax exemption number upon request.
- g. **SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
- h. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract, is within the scope/purpose of the Solicitation, and is attached and made part of this Contract. Automatic renewals are prohibited and are deemed void even if listed elsewhere in this Contract.
- i. **DEBARMENT:** Defer to NASPO MA Terms and Conditions but for the following: If the Contractor cannot certify the statement contained in the NASPO MA Terms and Conditions, attach a written explanation for review by the Lead State.
- j. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** This Contract may be terminated in whole or in part at the sole discretion of the Division or Eligible User upon thirty days written notice, if the Division or Eligible User determines that (a) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (b) that a change in available funds affects the Division or Eligible User's ability to pay under this Contract. A change of available funds includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or an order of the President, the Governor, or Executive Director.
- k. The Division or Eligible User, as applicable, will reimburse Contractor for the Goods or Services properly ordered and delivered until the effective date of said notice. The Division and Eligible User are not liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of the notice.

- I. **ENTIRE AGREEMENT:** This Contract is the entire agreement between the parties, and supersedes any prior and contemporaneous agreements and understandings between the parties, whether oral or written.
- m. **WAIVER:** Defer to NASPO MA Terms and Conditions.
- n. **CHANGES IN SCOPE:** Any changes in the scope of work to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of work.
- o. **TRAVEL COSTS:** Unless otherwise agreed to in the contract, all travel costs associated with the delivery of Services will be paid in accordance with the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the Contractor for correction.
3. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by an Eligible User to Contractor. These records shall be retained by Contractor for at least six (6) years after final payment (per Utah Administrative Code R33-12-605 and Utah Code 78B-2-309), or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor shall allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
4. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 - a. Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
 - b. Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) Contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
 - c. Contractor's failure to comply with this section will be considered a material breach of this Contract.
 - d. Contractor shall protect, indemnify, and hold harmless the Division, the Eligible Users, and the State of Utah, and anyone that the State of Utah may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
5. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless written disclosure has been made to the Division.
6. **INDEPENDENT CONTRACTOR:** Defer to NASPO MA Terms and Conditions.
7. **CRIMINAL BACKGROUND SCREENING:** Depending on the Eligible User's policy, each employee of Contractor and Subcontractor may be required to successfully complete a Federal Criminal Background Check, prior to being granted Access to Secure State Facilities, State Data, or Technology. Contractor or the applicable employee shall provide Eligible Users with sufficient personal information (at Contractor's expense) so that a Federal Criminal Background Check may be completed by the Eligible User, at Eligible User's expense. The Eligible User will provide Contractor with forms which must be filled out by Contractor and returned to the Eligible User. Each employee of Contractor or a Subcontractor who will have Access to Secure State Facilities, State Data, or Technology must be fingerprinted by the Eligible User or local law enforcement a minimum of one week prior to needing access. At the time of fingerprinting, said employee shall disclose all felony or misdemeanor convictions. Eligible Users may conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided and use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) at least every two years. Eligible Users may revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor and the employee or subcontractor shall immediately notify Eligible Users if an arrest or conviction for a felony or misdemeanor of any person that has Access to Secure State Facilities, State Data or Technology occurs during the Contract Period. Eligible Users will determine in its discretion if such person's Access to Secure State Facilities, State Data, or Technology shall remain in effect. Felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred. (DTS Policy 2000-0014 Background Investigations)
8. **DRUG-FREE WORKPLACE:** Contractor shall abide by the Eligible User's drug-free workplace policies while on the Eligible User's or the State of Utah's premises.
9. **CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor shall follow and enforce the agency applicable code of conduct. Contractor will ensure that each employee receives a copy of the policies and applicable codes of conduct. (DTS Policy 2000-0001 Code of Conduct, DTS Policy 1000-0003 Acceptable Use of Information Technology Resources)
10. **INDEMNITY AND LIABILITY**
 - a. **Indemnity Clause:** Defer to NASPO MA Terms and Conditions.
 - b. **Governmental Immunity Act:** In accordance with the Constitution of the State of Utah and the Governmental Immunity Act of

Utah ("the Act", Utah Code §§63G-7-101 to 904, as amended), the Division and the State of Utah have no liability for the operations, acts, or omissions of the Contractor or any third party. Any indemnity obligations of the Division, Eligible Users, or the State of Utah are subject to the Constitution of the State of Utah and the Act and limited to claims that arise from and to the extent caused by the negligent acts or omissions of the Division or the Eligible Users in the performance of the Division's or the Eligible User's obligations under this Contract.

- c. **Intellectual Property Indemnification:** Contractor warrants and represents it has full ownership and clear title free of all liens and encumbrances to any Good delivered under this contract. Contractor also warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by the Eligible Users in unaltered form, will not infringe any copyrights, patents, trade secrets, or other proprietary rights.

Contractor will release, indemnify, and hold the Division, the Eligible Users, and the State of Utah harmless from liability or damages of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in Contractor's performance of this Contract. Additionally, if such a claim or liability is based upon an allegation that a Good, Custom Deliverable, or Service furnished by Contractor infringes on any right protected by any patent, copyright, trademark, trade secret, and/or proprietary right, Contractor shall indemnify and hold harmless the Division, the Eligible Users, and the State of Utah for any judgments, settlements, costs, and reasonable attorneys' fees resulting from such a claim or liability. Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto; however, the Eligible Users shall have the right, at its option, to participate in the defense of any such action at its own expense without relieving Contractor of any obligation hereunder. If there are any limitations of liability in this Contract, such limitations will not apply to this section.

11. **HARDWARE WARRANTY: THE STATE OF UTAH DOES NOT ACCEPT ANY PROCUREMENT ITEM "AS-IS".** Defer to NASPO MA Warranty Terms and Conditions.
12. **SOFTWARE WARRANTY: THE STATE OF UTAH DOES NOT ACCEPT ANY PROCUREMENT ITEM "AS-IS".** CONTRACTOR WARRANTS FOR A PERIOD OF **NINETY DAYS** FROM THE DATE OF ACCEPTANCE THAT THE SOFTWARE PORTIONS OF THE GOODS AND CUSTOM DELIVERABLES THAT CONTRACTOR DIRECTLY OR INDIRECTLY PROVIDES WILL: (A) PERFORM IN ACCORDANCE WITH THE SPECIFIC CLAIMS PROVIDED IN THE RESPONSE; (B) BE SUITABLE FOR THE ORDINARY PURPOSES FOR WHICH SUCH GOODS AND CUSTOM DELIVERABLES ARE USED; (C) BE SUITABLE FOR ANY SPECIAL PURPOSES THAT THE ELIGIBLE USER HAS RELIED ON CONTRACTOR'S SKILL OR JUDGMENT TO CONSIDER WHEN IT ADVISED THE STATE ABOUT THE GOODS OR CUSTOM DELIVERABLES; (D) HAVE BEEN PROPERLY DESIGNED AND MANUFACTURED; AND (E) BE FREE OF SIGNIFICANT DEFECTS. CONTRACTOR SHALL PROVIDE THE ELIGIBLE USER WITH BUG FIXES, INCLUDING INFORMING THE ELIGIBLE USERS OF ANY KNOWN SOFTWARE BUGS OR SOFTWARE DEFECTS THAT MAY AFFECT THE STATE'S USE OF THE SOFTWARE.
13. **WARRANTY REMEDIES:** Defer to Breach of Warranty NASPO MA Terms and Conditions.
14. **UPDATES AND UPGRADES:** Contractor grants to the Eligible User a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the Contract Period. Upgrades and updates are subject to the terms of this Contract. The Eligible User reserves the right to accept updates and upgrades at its discretion and to determine if such updates comply with the requirements in the Contract scope of work. Contractor shall keep any applicable hardware, software, middleware, and application plugins up to date and in a state of good repair. All patches, critical vulnerabilities, and/or hardware issues must be addressed based on response times by criticality as laid out in the SOW. If the State hosts the solution, then Contractor may request such maintenance from the DTS hosting team.
15. **BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With the Eligible User's prior written authorization, Contractor may perform remote diagnostics to work on reported problems. If the Eligible User declines remote diagnostics, Contractor and the Eligible User may agree to on-site technical support, subject to the terms of the Contract.
16. **TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is required by the Contract, Contractor will use commercially reasonable efforts to respond to the Eligible User in a reasonable time, and in all events, in accordance with the specific timeframes detailed in the Contract, when the Eligible User makes technical support or maintenance requests.
17. **PHYSICAL DELIVERY:** Defer to NASPO MA Terms and Conditions but for the following: All deliveries under this Contract will be F.O.B. Destination Freight Prepaid and Allowed, unless specifically negotiated otherwise and explicitly written in this contract, with all transportation and handling charges paid for by Contractor.
18. **ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good or Custom Deliverable to the Eligible User or provide any Good and Custom Deliverable for download from the Internet, if pre-approved in writing by the Eligible User. Contractor shall ensure the confidentiality of electronic deliveries in transit. Contractor warrants that all electronic deliveries will be free of known malware, bugs, Trojan horses, etc.
19. **ACCEPTANCE PERIOD:** A Good, Custom Deliverable, or Service furnished under this Contract shall function in accordance with the specifications identified in this Contract and Solicitation. If the Goods and Custom Deliverables delivered do not conform to the specifications identified in this Contract and Solicitation ("Defects"), the Eligible User shall within thirty (30) calendar days of the delivery date ("Acceptance Period") notify Contractor in writing of the Defects. Upon receiving notice, Contractor shall use reasonable efforts to correct the Defects within fourteen (14) calendar days ("Cure Period"). The Eligible User's acceptance of a Good, Custom Deliverable, or Services occurs at the end of the Acceptance Period or Cure Period, whichever is later.

If after the Cure Period, a Good, Custom Deliverable, or Service still has Defects, then the Eligible User may, at its option: (a) declare Contractor to be in breach and terminate this Contract; (b) demand replacement conforming Goods, Custom Deliverables, or Services from Contractor at no additional cost to the Eligible User; or (c) continue the Cure Period for an additional time period agreed upon by the Eligible User and Contractor in writing. Contractor shall pay all costs related to the preparation and shipping of the replacement

products. No products shall be deemed accepted and no invoices shall be paid until acceptance. The warranty period will begin upon the end of the Acceptance Period.

20. SECURE PROTECTION AND HANDLING OF STATE DATA: If Contractor is given access to State Data, the protection of State Data shall be an integral part of the business activities of Contractor, and Contractor shall ensure that there is no inappropriate or unauthorized use of State Data. Contractor shall safeguard the confidentiality, integrity, and availability of the State Data and comply with the conditions outlined below. The Eligible User reserves the right to verify Contractor's adherence to the following conditions to ensure they are met:

- a. **Network Security:** Contractor shall maintain network security that, at a minimum, includes: network firewall provisioning, intrusion detection, and regular third-party penetration testing. Contractor shall maintain network security and ensure that Contractor network security policies conform to one of the following:
 - 1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy*;
 - 2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or
 - 3) Any generally recognized comparable standard that Contractor then applies to its own network and pre-approved by the Eligible User in writing.
- b. **State Data Security:** Contractor shall protect and maintain the security of State Data with protection that is at least as good as or better than that maintained by the State of Utah which will be provided by an Eligible User upon Contractor's request (*DTS Policy 5000-0002*). These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification). Data access must incorporate the principles of test privilege and be physically and technologically controlled. The Eligible User reserves the right to determine if Contractor's level of protection meets the Eligible User's security requirements.
- c. **State Data Transmission:** Contractor shall ensure all transmission or exchange of system application data with the Eligible User and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).
- d. **State Data Storage:** All State Data will be stored and maintained in data centers in the United States. No State Data will be processed on or transferred to any portable or laptop computing device or portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process.
- e. **Access:** Contractor shall permit its employees and Subcontractors to remotely access non-State Data only as required to provide technical support.
- f. **State Data Encryption:** Contractor shall store all data provided to Contractor, including State, as well as any backups made of that data, in encrypted form using no less than 128 bit key and include all data as part of a designated backup and recovery process.
- g. **Authentication:** Any portable or laptop computer that has access to the Eligible User's or State of Utah networks, or stores any Eligible User data shall be equipped with strong and secure password protection. All systems that require authentication must use the Single Sign On solution operated by the State of Utah. This may be accomplished through federation using standard authentication protocols or direct integration into the vendor supplied application. If the Goods or Services, or both, are to be accessed or used by both Internal (state employees, contractors, etc.) and External (public, etc.) users, then the Goods and Services must be able to be integrated with multiple identity providers at the same time.
- h. **Confidential Information Certification:** Contractor shall sign a Confidential Information Certification form prior to being given access to confidential computerized records.
- i. **State Data Re-Use:** All data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. No State Data of any kind may be transmitted, exchanged, or provided to other contractors or third parties except on a case-by-case basis as specifically agreed to in writing by the Eligible User.
- j. **State Data Destruction:** No sooner than 60 days but no later than 90 days following the expiration or termination of this Contract, and only after ensuring compliance with Section 32 (Ownership, Protection, and Return of Documents and Data) of this Attachment A, Contractor shall erase, destroy, and render unreadable all State Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the Eligible User, whichever shall come first, unless the Eligible User provides Contractor with a written directive. The Eligible User's written directive may require that certain data be preserved in accordance with applicable law.
- k. **Services Shall Be Performed Within the United States:** ALL OF THE SERVICES RELATED TO STATE DATA SHALL BE PERFORMED WITHIN THE BORDERS AND JURISDICTION OF THE UNITED STATES.
- l. **User Support:** Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.
- m. **Federal Data Protection:** Contractor shall store all Federal Data in a manner that, at all times, is physically and electronically secure from access by unauthorized persons. Contractor shall employ both physical and technological barriers to prevent unauthorized retrieval of Federal Data via computer, remote terminal, or other means. Federal Data must be subject to separation-of-duties protocols and provided only to those with a need to know.

1) Contractor shall store each query for Federal Data in Contractor's system (including read-only and system access events that do not result in a change to data or a new transaction) as a separate record, not overlaid by subsequent records. All viewing of Federal Data must be recorded by a fully-automated audit trail system, which can be via an online query,

automated report, batch processing, or any other logical means. Access to the audit file must be restricted to authorized users with a need to know and be maintained for a minimum of three years or the amount of time required by a federal agency, whichever is greater.

2) Contractor shall delete, purge, destroy, or return to the State of Utah all Federal Data upon termination of the Contract with no output retained by Contractor. If immediate purging is not possible, Contractor shall certify that any Federal Data in physical or electronic storage will remain safeguarded to prevent unauthorized disclosure. Contractor agrees to abide by all relevant federal laws, restrictions on access, use, disclosure, and security requirements in the State's data exchange agreement with the social security administration, including receipt of security awareness training by Contractor's employees who have access to Federal Data through this Contract. Contractor shall permit the State to conduct, at least once every three years and upon prior notice, a review to verify that the Contract is in compliance with the State's agreement with the social security administration.

3) Federal Data may be used only for the purpose of carrying out the provisions of the Contract. Federal Data must be treated as confidential and may not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract.

4) All computer systems receiving, processing, storing, or transmitting Federal Data must meet the requirements set forth by the applicable federal agency.

21. SECURITY INCIDENT OR DATA BREACH NOTIFICATION: Contractor shall immediately inform the Eligible User of any Security Incident or Data Breach. It is within the Eligible User's discretion to determine whether any attempted unauthorized access is a Security Incident or a Data Breach.

a. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the Eligible User should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.

b. **Security Incident Reporting Requirements:** Contractor shall promptly report a Security Incident to the Eligible User.

c. **Breach Reporting Requirements:** As required by Utah Code 13-44-202 or any other law, Contractor shall immediately notify the Eligible User of a Data Breach that affects the security of State Data.

22. DATA BREACH. In the event of a data breach, liability for notification, remedial costs, and damages are the responsibility of the Party whose environment was breached.

23. DATA BREACH RESPONSIBILITIES: Contractor shall comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification (*DTS Policy 5000-0002 Enterprise Information Security Policy*). In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the Eligible User by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; and (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the Eligible User. Contractor is responsible for all notification and remedial costs and damages.

24. STATE INFORMATION TECHNOLOGY POLICIES: If Contractor is providing an Executive Branch Agency of the State of Utah with Goods or Custom Deliverables, Contractor shall comply with policies and procedures that meet or exceed those DTS follows for internally developed goods and deliverables to minimize security risk, ensure applicable Utah and Federal laws are followed, address issues with accessibility and mobile device access, and prevent outages and data breaches within the State of Utah's environment. Contractor shall comply with the following DTS Policies:

a. **DTS Policy 4000-0001, Enterprise Application and Database Deployment Policy:** A Contractor developing software for the State to develop and establish proper controls that will ensure a clear separation of duties between developing and deploying applications and databases to minimize security risk; to meet due diligence requirements pursuant to applicable Utah and federal regulations; to enforce contractual obligations; and to protect the State's electronic information and information technology assets.

b. **DTS policy 4000-0002, Enterprise Password Standards Policy:** A Contractor developing software for the State must ensure it complies with the password requirements of the Enterprise Password Standards Policy.

c. **DTS Policy 4000-0003, Software Development Life Cycle Policy:** A Contractor developing software for the State shall work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance.

d. **DTS Policy 4000-0004, Change Management Policy:** Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify DTS's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. Any outages or Data Breaches which are a result of Contractor's failure to comply with DTS instructions and policies will result in Contractor's liability for all damages resulting from or associated with the outage or Data Breach.

25. CONFIDENTIALITY: This section does not apply to records where disclosure is regulated under Federal or State laws.

GRAMA applies only to records, therefore if information (other than Non-Public Data, Public Health Information, or State Data) is disclosed orally by either party which either party wishes to remain confidential, then each party shall adhere to the following:

Each party will: (a) limit disclosure of any such information to Authorized Persons who have a need to know such information in connection with the current or contemplated business relationship between the parties to which this Contract relates, and only for

that purpose; (b) advise its Authorized Persons of the proprietary nature of the information and of the obligations set forth in this Contract and require such Authorized Persons to keep the information confidential; (c) shall keep all information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any such information received by it to any third parties, except as otherwise agreed to in writing by the disclosing party. Each party will notify the other of any misuse or misappropriation of such information that comes to said party's attention.

This duty of confidentiality shall be ongoing and survive the Contract Period.

26. Reserved

27. OWNERSHIP IN INTELLECTUAL PROPERTY: The Parties recognize that each has no right, title, or interest, proprietary or otherwise, in or to the name, logo, or intellectual property owned or licensed by the other. The Parties shall not, without the prior written consent of the other or as authorized in this Contract, use the name, logo, or intellectual property owned or licensed by the other.

28. OWNERSHIP IN CUSTOM DELIVERABLES: Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Custom Deliverable. Contractor conveys the ownership in Custom Deliverables as defined in this Attachment A to the Eligible User. All intellectual property rights, title and interest in the Custom Deliverables shall transfer to the Eligible User, subject to the following:

- a. Contractor has received payment for the Custom Deliverables,
- b. Each party will retain all rights to Background IP, even if embedded in the Custom Deliverables.
- c. Custom Deliverables, excluding Contractor's Background IP may not be marketed or distributed without written approval by the Eligible User.

Contractor shall grant to the Eligible User a perpetual, irrevocable, royalty-free license to use Contractor's Background IP as defined above, solely for the Eligible User to use the Custom Deliverables.

29. LICENSE FOR GOODS: For the Goods delivered that include Contractor's scripts and code and are not considered Custom Deliverables, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and, without the right to sublicense, for the Eligible User's internal business operation under this Contract

30. OWNERSHIP, PROTECTION, AND USE OF RECORDS: The Eligible User shall own exclusive title to all information and data gathered, reports developed, and conclusions reached by the Eligible User in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached by the Eligible User in performance of this Contract without the express written consent of the Eligible User. This includes information in anonymized or aggregated formats.

31. OWNERSHIP, PROTECTION, AND USE OF DATA: The Eligible User shall own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by Contractor under this Contract. Contractor, and any Subcontractors under its control, expressly agrees not to use Non-Public Data without prior written permission from the Eligible User.

32. OWNERSHIP, PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, UTAH, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES: In the event that the Eligible User provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor shall hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Contract. The improper use or disclosure by any party of protected internal federal or state business processes, policies, procedures, or practices is prohibited. Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by Contractor or its Subcontractors, except for the performance of this Contract, unless prior written consent has been obtained in advance from the Eligible User.

33. OWNERSHIP, PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION: All documents and data pertaining to work required by this Contract will be the property of the Eligible User, and must be delivered to the Eligible User upon its request at any time during the Contract Period, as well as within thirty (30) working days after termination or expiration of this Contract, and without restriction or limitation to their future use. Any State Data returned under this section must either be in the format as originally provided, in a format that is readily usable by the Eligible User, or formatted in a way that it can be used. The Contractor shall pay the costs for returning documents and data to the Eligible User except as specified in this Contract.

34. ORDERING AND INVOICING: All orders will be shipped promptly in accordance with the delivery schedule. Contractor will promptly submit invoices (within 30 days after shipment or delivery of goods or services, with the exclusion of end of fiscal year invoicing for Executive Branch Agencies) to the appropriate Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by the Eligible User shall not exceed prices listed in this Contract. The Eligible User shall adjust or return any invoice reflecting incorrect pricing. For Executive Branch Agencies, Contractor must send all invoices no later than July 10, or the last working day prior, to the State for all work completed or items received during the State's fiscal year of July 1-June 30.

35. PAYMENT AND NOTICE:

- a. Payments will be made within thirty (30) days from the date a correct invoice is received. For Executive Branch Agencies, a correct invoice will contain the contract and purchase order numbers as indicated in Section 33. After sixty (60) days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to the interest rate paid by the IRS on refund claims, plus two percent, computed in accordance with Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended.

- b. The contract costs may be changed only by written amendment. All payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Eligible User's purchasing card (major credit card). Eligible Users will not pay electronic payment fees of any kind.
- c. Any written protest of the final contract payment must be filed with the Eligible User within ten (10) working days of receipt of final payment. If no protest is received, the Eligible User, the Division, and the State of Utah are released from all claims and all liability to Contractor for fees and costs pursuant to this Contract.
- d. Overpayment: If during or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Eligible User to Contractor, then Contractor shall, upon written request, immediately refund to the Eligible User any such overpayments.

36. CONTRACTOR'S INSURANCE RESPONSIBILITY: The Contractor shall maintain the following insurance coverage:

- a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
- b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
- c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
- d. If the Procurement Item is Software as a Service, Cyber Security Coverage from an insurance company that meet or exceeds industry standards. The insurance policy must cover data breach and privacy/cyber liability including technology errors and omissions and professional liability. The limits may not be less than \$5,000,000.00 aggregate.
- e. Other insurance policies specified in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence. Failure to provide proof of insurance as required will be deemed a material breach of this Contract.

Contractor's failure to maintain this insurance requirement for the Contract Period will be grounds for immediate termination.

37. ADDITIONAL INSURANCE REQUIREMENTS:

- a. Professional liability insurance in the amount as described in the Solicitation for this Contract, if applicable.
- b. Any other insurance policies described or referenced in the Solicitation for this Contract.
- c. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, Utah, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.
- d. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Contractor must provide proof of the above listed policies within thirty (30) days of being awarded this Contract.

38. ASSIGNMENT/SUBCONTRACT: Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Division.

39. TERMINATION: Defer to NASPO MA Terms and Conditions but for the following: If the Contractor cannot certify the statement contained in the NASPO MA Terms and Conditions, attach a written explanation for review by the Lead State.

40. TERMINATION UPON DEFAULT: In the event this Contract is terminated for default by Contractor, the Division may procure Goods, Custom Deliverables, or Services similar to those terminated, and Contractor shall be liable to the Division for any and all cover costs and damages.

41. SUSPENSION OF WORK: The Division may suspend Contractor's responsibilities under this Contract without terminating this Contract by issuing a written notice. Contractor's responsibilities may then be reinstated upon written notice from the Division.

42. DEFAULT AND REMEDIES: Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract for nonperformance of contractual requirements or a material breach of any term or condition of this Contract. The Division will issue a written notice of default and may provide a fourteen (14) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the Division may exercise any remedy provided by law; terminate this Contract and any related contracts or portions thereof; (c) impose liquidated damages, if liquidated damages are listed in the contract; (d) suspend or debar Contractor from receiving future solicitations; or (e) demand a full refund of the Goods, Custom Deliverables, or Services furnished by Contractor that are defective or Services that were inadequately performed.

43. FORCE MAJEURE: Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God, or war which is beyond that party's reasonable control. The Division may immediately terminate this Contract after determining such delay will reasonably prevent successful performance of this Contract.

44. CONFLICT OF TERMS: Contractor terms and conditions must be attached to this Contract. No other terms and conditions will apply to this Contract, including terms listed or referenced on a Contractor's website, quotation/sales order, purchase orders, or invoice. In

the event of any conflict in the contract terms and conditions, the order of precedence is: (a) This Attachment A; (b) the Division's Contract Signature Page(s); (c) State of Utah's Additional Terms and Conditions, if any; and (d) Contractor Terms and Conditions, if any. Attachment A will be given precedence over any provisions including, limitation of liability, indemnification, standard of care, insurance, or warranty, and will not be nullified by or exception created by more specific terms elsewhere in this Contract.

45. SURVIVORSHIP: The contractual provisions that will remain in effect after expiration or termination of this Contract are: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of State Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records, including Residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, Utah, or Local Government Internal Business Processes, including residuals of such confidential business processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration, completion, or termination of this contract.

46. RELEVANT STATE AND FEDERAL LAWS

- a. **Conflict of Interest with State Employees:** Contractor shall comply and cooperate in good faith with all conflict of interest and ethic laws, including Section 63G-6a-2404, Utah Procurement Code, as amended.
- b. **Procurement Ethics:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6a-2304.5, Utah Procurement Code, as amended).
- c. **Contact Information:** Per Utah Code §§63G-6a-110 and 35A-2-203, the State shall make Contractor's contact information available to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may post information regarding Contractor's job vacancies on its website.
- d. **Employment Practices:** Contractor shall abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the work place. Contractor shall abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.
- e. **Compliance with Accessibility Standards:** Contractor shall comply with the Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractor shall comply with Utah Administrative Code R895-14-3(3), which states that contractors developing new websites or applications for State agencies are required to meet accessibility guidelines subject to rule R895 and correct any items that do not meet these guidelines at no cost to the agency. Contractor shall comply with Utah Administrative Code R895-14-4(2), which states that contractors proposing IT products and services shall provide Voluntary Product Accessibility Template® (VPAT™) documents.

47. RIGHT TO MONITOR PERFORMANCE AND AUDIT

- a. **Audit:** Contractor shall, upon written notification permit the Division, or a third party designated by the Division, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated scopes of work; and applicable laws, regulations, and industry standards. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel; physical premises; records; technical and physical infrastructures; and any other person, place, or object which may assist the Division or its designee in completing such assessment. Upon request, Contractor shall provide the results of any audit performed by or on behalf of Contractor that would assist the Division or its designee in confirming Contractor's compliance with this Contract; associated scopes of work; and applicable laws, regulations, and industry standards.
 - b. **Monitor Performance:** The Division and Eligible Users reserve the right to monitor Contractor's performance, perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. This includes Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
- 48. TIME IS OF THE ESSENCE:** The Services shall be completed and Goods and Custom Deliverables delivered by any applicable deadline stated in this Contract. Time is of the essence.
- 49. STANDARD OF CARE:** For Services of Contractor which require licenses and certifications, such Services shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.
- 50. LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
- 51. ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions and prices of this Contract.
- 52. INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each

Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.

53. QUANTITY ESTIMATES: The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.

54. ORDERING: Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.

55. REPORTS AND FEES:

a. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a check, EFT or online payment through the Division's Automated Vendor Usage Management System. Checks will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, Attn: Cooperative Contracts, PO Box 141061, Salt Lake City, UT 84114-1061. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.

b. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the dollar volume of purchases by each Eligible User. The quarterly report will be provided in secure electronic format through the Division's Automated Vendor Usage Management System found at: <https://statecontracts.utah.gov/Vendor>.

c. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

d. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.

56. Timely Reports and Fees: If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

57. ANTI-BOYCOTT ACTIONS: In accordance with Utah Code 63G-27 et seq., Contractor certifies that it is not currently engaged in any "economic boycott" nor a "boycott of the State of Israel" as those terms are defined in Section 102. Contractor further certifies that it has read and understands 63G-27 et. seq., that it will not engage in any such boycott action during the term of this Contract, and that if it does, it shall promptly notify the State in writing.

58. END USER AGREEMENTS: If Eligible Users are required by Contractor to sign an End User Agreement before participating in this Contract, then a copy of the End User Agreement must be attached to this Contract as an attachment. An End User Agreement must reference this Contract, and may not be amended or changed unless approved in writing by the Division. Eligible Users will not be responsible or obligated for any early termination fees if the End User Agreement terminates as a result of completion or termination of this Contract.

59. COMPLIANCE WITH NIST 800.53 If Contractor is developing software for the State or providing Goods or Custom Deliverables or performing Services which have the potential to cause any form of outage or to modify any State of Utah infrastructure, Contractor shall comply with current standards set forth and maintained by the National Institute of Standards and Technology, NIST 800-53 or ISO 27001 and/or FedRamp for cloud solutions, as applicable.

59. USE OF AI OR STATE SUB DOMAIN: Contractor must inform the Eligible Users of any generative Artificial Intelligence ("AI") in the Goods or Services being contracted for prior to providing those Goods or Services to the State. Additionally, Utilization of generative AI in the creation of Goods and Services impacting the State's Intellectual Property Rights shall include annotations sufficient to comply with DTS POLICY 4000-0008 Enterprise Generative AI Policy. Contractor is prohibited from using Eligible Users materials or data in generative AI queries without prior written permission from the Eligible User, as well as from building or training proprietary generative AI programs. Contractor attests that its AI models use only properly licensed material. Should Contract be found in violation of this requirement, Contractor shall fully indemnify and defend Eligible Users from all claims related thereto. Furthermore, should Contractor learn that Eligible Users materials or Data has been used in generative AI queries without permission from the Eligible User, Contractor shall immediately notify the Eligible Users of the use and cover the full expense of any remediation.

b. Contractor shall support usage of a utah.gov subdomain according to R895-4 for Goods and Services that will be made available to non-state users.

60. PUBLICITY and WEBSITE BRANDING: Contractor shall submit to the Division for written approval all advertising and publicity matters relating to this Contract. Contractor shall only use the approved executive branch agency, and/or State of Utah logo on websites produced under terms of this Contract. It is within the Division's sole discretion whether to provide approval, which approval must be in writing.

61. DEVELOPMENT, TEST, AND PRODUCTION ENVIRONMENTS: If Goods or Services under this Contract are Contractor-hosted, the Contractor shall include three environments throughout the term of the Contract: a development, test, and production environment. Regular refreshes to the database or application or both will be requested. To perform an application refresh, all developers involved in the project, whether from the Contractor or the State, will need to approve in writing the

refresh request to prevent any code from being deleted without a prior backup. The cost to configure and maintain these environments is included in the Contract price and will not be charged beyond the amount noted on the Contract Cover Page.

- a. If a development or test region is promoted to production, that region must have all of the required security and privacy controls and audit requirements prior to promotion.
- b. If the application cannot perform a production refresh after the application is live, then a secondary environment for testing must be created by Contractor.
- c. If the Contractor receives written approval by the State of Utah, not to provide the three separate environments required by the first paragraph of this section 61, then Contractor shall configure the production environment with dummy or test accounts that have the ability to go through the full application process without causing or creating data or cost discrepancies. Additionally, a device or mechanism, such as a feature flag/banner announcement to call out new features to the user, or canary releases to allow for gradual release to smaller sets of users, must be included. Logging must be enabled in order to identify and diagnose issues and to fulfill audit and regulatory requirements, including security frameworks such as NIST and OWASP. A/B testing, automated testing, and incremental rollouts must also be considered and clarified in lettered additions to this Section 16 (e.g. "d," "e," etc.). A way of communicating upcoming changes via notification, alerts, emails, and updates must be available. Contractor shall make clearly defined fallback strategies and rollback plans available prior to any code promotion.

(Revision Date: 10/1/2024)



Washington State
DEPARTMENT OF
ENTERPRISE SERVICES



COOPERATIVE PURCHASING AGREEMENT

No. 24823

**POLICE RADAR LIDAR SPEED ENFORCEMENT
&
ACCIDENT SCENE RECONSTRUCTION**

For Use by Eligible Purchasing Entities

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES**

and

Kustom Signals, Inc.

September 1, 2024

COOPERATIVE PURCHASING AGREEMENT

No. 24823

POLICE RADAR/LIDAR SPEED ENFORCEMENT & ACCIDENT SCENE RECONSTRUCTION

FOR

CONTRACT CATEGORY ONE, Group A2 – Speed Enforcement & Group B2 – Speed Advisory Systems

This Cooperative Purchasing Agreement (“Cooperative Purchasing Agreement”) is made and entered into by and between Enterprise Services acting by and through the State of Washington (“Enterprise Services”) and Kustom Signals, Inc., a Kansas Corporation, (“Contractor”) and is dated and effective as of September 1, 2024.

RECITALS

- A. **CONTRACTS FOR GOODS AND/OR SERVICES.** Pursuant to Legislative authorization, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish contracts 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 contracts available, pursuant to agreement in which Enterprise Services ensures full cost recovery, to other local or federal government agency or entity, certain public benefit nonprofit organizations, or any tribes located in the State of Washington. See RCW 39.26.050(1) & (2).
- B. **COOPERATIVE PURCHASING.** The Washington State Legislature also has authorized Enterprise Services, on behalf of the State of Washington, to participate in, sponsor, conduct, or administer certain cooperative purchasing agreements. See RCW 39.26.060(1). Such cooperative purchasing agreements are designed to function as cost-effective and efficient enterprise procurement solutions for Washington state agencies and other specified eligible purchasers, authorized by Enterprise Services, to procure goods and/or services from awarded contractors pursuant to a competitive solicitation process. See RCW 39.26.060(2).
- C. **COOPERATIVE PURCHASING – ENTERPRISE SERVICES’ ROLE.** In regard to cooperative purchasing, Enterprise Services’ role and responsibility differs depending on whether Enterprise Services, on behalf of the State of Washington, is exercising its authority to participate in an established cooperative purchasing agreement (e.g., join an existing cooperative purchasing agreement and specify the scope of such joinder and eligible purchasers) or is exercising its authority to collaborate, for example, with one or more other states to develop, solicit, and award a cooperative purchasing agreement. See RCW 39.26.060(1).
- D. **COOPERATIVE PURCHASING – ENTERPRISE SERVICES’ MULTI-STATE PROCUREMENT COLLABORATION THROUGH NASPO VALUEPOINT.** One of the approaches that Enterprise Services utilizes to collaborate with other states to develop, solicit, and award a cooperative purchasing agreement, is NASPO ValuePoint. NASPO Cooperative Organization LLC, doing business as NASPO ValuePoint, is a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO). The NASPO ValuePoint cooperative program is led by state procurement officers from member states. NASPO ValuePoint does not solicit, evaluate, or award cooperative purchasing agreements; rather, NASPO ValuePoint assists

states, for an administrative fee, in their multi-state procurement collaboration to design and implement competitively solicited and awarded cooperative purchasing agreements.

- E. **COOPERATIVE PURCHASING – NASPO VALUEPOINT COOPERATIVE MODEL.** Pursuant to the NASPO ValuePoint cooperative model, a designated state serves as the ‘lead state’ to conduct a competitive procurement in compliance with the lead state’s procurement laws and award a cooperative purchasing agreement with a contractor for the specified goods and/or services. States (including the District of Columbia and the organized territories of the United States), including the lead state, then may participate in the awarded cooperative purchasing agreement(s) by executing a participating addendum with the awarded contractor. Until a participating addendum is executed by the applicable state (a ‘participating entity’), no agency or other eligible organization (a ‘purchasing entity’) may purchase any goods and/or services pursuant to the cooperative purchasing agreement. Under Washington law, at the time of the competitive solicitation, states may provide supplemental terms and conditions to inform such state’s use of the resulting cooperative purchasing agreement. 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). Awarded contractors, however, have no obligation to condition execution of a participating addendum on substantive terms and conditions that were not competitively procured.
- F. **COMPETITIVE SOLICITATION FOR COOPERATIVE PURCHASING AGREEMENT(S).** Enterprise Services, with administrative support from NASPO ValuePoint, issued Competitive Solicitation No. 24823 dated January 22, 2024, to solicit bids, by Contract Category and Group, for specified *Goods and/or Services* collectively referred to as Police Radar/Lidar Speed Enforcement & Accident Scene Reconstruction or Police Radar/Lidar. Pursuant to the Competitive Solicitation, bidders were able to bid for some or all of the specified Contract Categories and Groups that comprised the solicited *Goods and/or Services*. Nineteen (19) states indicated an intent to utilize the resulting cooperative purchasing agreement.
- G. **AWARDED CONTRACTOR FOR COOPERATIVE PURCHASING AGREEMENT.** Enterprise Services and a multi-state stakeholder team consisting of representatives from Washington, California, Nevada, Oklahoma, and South Carolina, evaluated all responsive bids to the Competitive Solicitation and identified *Contractor* as an apparent successful bidder for the specified Contract Category(ies) and Group(s) identified above.
- H. **COOPERATIVE PURCHASING AGREEMENT.** The purpose of this *Cooperative Purchasing Agreement* is to establish commercially reasonable contractual terms and conditions for authorized *Purchasing Entities* to purchase specified *Goods and/or Services* from *Contractor*, as set forth herein.

A G R E E M E N T

NOW THEREFORE, in consideration of the mutual promises, covenants, and conditions set forth herein, the *Parties* agree as follows:

1. DEFINITIONS.

- 1.1. **COMPETITIVE SOLICITATION.** Competitive Solicitation No. 24823, issued by Enterprise Services, pursuant to Washington’s Procurement Code for Goods/Services

(RCW 39.26) to conduct a competitive procurement process for *Cooperative Purchasing Agreement(s)* for *Goods and/or Services*.

- 1.2. *CONTRACTOR*. The entity identified above who, pursuant to a competitive solicitation process conducted by the *Lead State*, was awarded a *Cooperative Purchasing Agreement* and, as such, is authorized to enter into a *Participating Addendum* with any *Participating Entity* to enable such *Participating Entity* to authorize *Purchasing Entities* to purchase *Goods and/or Services* from this *Cooperative Purchasing Agreement*, as specified by the applicable *Participating Entity* in the *Participating Addendum*.
- 1.3. *COOPERATIVE PURCHASING AGREEMENT(S)*. This *Cooperative Purchasing Agreement* that was competitively solicited and awarded by the *Lead State* to *Contractor* and which, pursuant to a *Participating Addendum* between *Contractor* and *Participating Entity*, may be utilized by those *Purchasing Entities* specified by the applicable *Participating Entity* to purchase specified *Goods and/or Services*.
- 1.4. *ENTERPRISE SERVICES*. The Washington State Department of Enterprise Services, a Washington state governmental agency.
- 1.5. *GOODS AND/OR SERVICES*. The goods and/or services included within the scope of this *Cooperative Purchasing Agreement* and set forth in attached ***Exhibit B – Included Goods and/or Services & Pricing***.
- 1.6. *LEAD STATE*. The State of Washington acting by and through *Enterprise Services*.
- 1.7. *NASPO VALUEPOINT*. NASPO ValuePoint is a division of the National Association of State Procurement Officials (“NASPO”), a 501(c)(3) corporation. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Cooperative Purchasing Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports, as well as other contract administration functions as assigned by the Lead State.
- 1.8. *PARTICIPATING ADDENDUM*. A bilateral agreement executed by a Contractor and a Participating Entity incorporating this Cooperative Purchasing Agreement and any additional Participating Entity-specific language or other requirements (e.g., ordering procedures specific to the Participating Entity, entity-specific terms and conditions, etc.).
- 1.9. *PARTICIPATING ENTITY(IES)*. A state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.
- 1.10. *PARTIES*. *Contractor* and the State of Washington acting by and through *Enterprise Services*.
- 1.11. *PURCHASE ORDER(S)*. Any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products. .

- 1.12. *PURCHASING ENTITY(IES)*. A state (as well as the District of Columbia and US territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Cooperative Purchasing Agreement and becomes financially committed to the purchase.
- 1.13. *WEBS*. The Washington Electronic Business Solutions system administered by *Enterprise Services*. See RCW 39.26.150.

2. **TERM.** The term of this *Cooperative Purchasing Agreement* is up to sixty (60) months. Initially, the term of this *Cooperative Purchasing Agreement* is thirty-six (36) months, commencing September 1, 2024 and ending August 31, 2027; *Provided*, however that, if *Contractor* is not in default and if, by May 1, 2027, in *Enterprise Services'* reasonable judgment, *Contractor* satisfactorily has met the performance-based metrics for extension, *Enterprise Services* shall extend the term of this *Cooperative Purchasing Agreement*, by written amendment, for up to twenty-four (24) additional months. Such term extension, if any, shall be on the same terms and conditions as set forth in this *Cooperative Purchasing Agreement*. To earn the performance-based term extension, *Contractor* must achieve the following performance-based metrics:

PERFORMANCE METRIC	PERFORMANCE REQUIREMENT FOR TERM EXTENSION
Insurance Endorsements:	<i>Contractor</i> timely provides at the designated address, without exception, annual insurance endorsements for the insurance coverages required by this <i>Cooperative Purchasing Agreement</i> . See Exhibit A – Insurance Requirements at § 15.
Administrative Fee Payments:	<i>Contractor</i> provides timely and accurate Administrative Fee payments as detailed in this <i>Cooperative Purchasing Agreement</i> and <i>Participating Addendums</i> . See § 12.
Reports:	<i>Contractor</i> provides timely and accurate reports as detailed in this <i>Cooperative Purchasing Agreement</i> and <i>Participating Addendums</i> . See § 12, 13.3, 14, and 16.

3. **PARTICIPANTS AND SCOPE OF PARTICIPATION.** This *Cooperative Purchasing Agreement* may be utilized pursuant to the following conditions:

- 3.1. **PARTICIPATING ENTITIES.** *Contractor* may not sell *Goods and/or Services* to a *Purchasing Entity* pursuant to this *Cooperative Purchasing Agreement* until the applicable *Participating Entity* for such *Purchasing Entity* has executed a *Participating Addendum* acceptable to *Participating Entity* and *Contractor* that authorizes purchases of such *Goods and/or Services* by *Purchasing Entity*. The terms and conditions set forth in this *Cooperative Purchasing Agreement* are applicable to any *Purchase Order* by any *Purchasing Entity*, except to the extent altered, modified, supplemented, or amended by a *Participating Addendum*; *Provided*, however, that no *Participating Addendum* shall be construed to diminish, modify, or otherwise derogate any provisions in this *Cooperative Purchasing Agreement* between the Lead State and *Contractor*, which terms and conditions were publicly solicited and procured pursuant to an open, transparent, fair, and competitive procurement process. By way of illustration and not limitation, *Participating Entities* may include in their applicable *Participating Addendum* unique administrative, delivery, and invoicing *Participating Entity* requirements, as well as *Participating Entity*-specific confidentiality requirements and similar *Participating Entity*-

specific administrative requirements in *Purchase Orders* utilizing this *Cooperative Purchasing Agreement*.

- 3.2. PARTICIPATING ADDENDUM. Obligations under this *Cooperative Purchasing 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 Agreements* to participate in through execution of a *Participating Addendum*. *Participating Entities* 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.
- 3.3. ENTITY RIGHTS. Except to the extent modified by a *Participating Addendum* in accordance with this *Cooperative Purchasing Agreement*, each *Participating Entity* (and their authorized *Purchasing Entities*) shall follow the terms and conditions of this *Cooperative Purchasing Agreement* and applicable *Participating Addendum* and shall have the same rights and responsibilities for their purchases as the *Lead State* has in this *Cooperative Purchasing Agreement*. Each *Purchasing Entity* shall be responsible for its own charges, fees, and liabilities. *Contractor* shall apply the charges and invoice to each *Purchasing Entity* individually.
- 3.4. PARTICIPATING ADDENDUM APPROVAL. Entities who are not states may, under some circumstances, sign their own *Participating Addendum* as a *Participating Entity*, subject to participation approval by the Chief Procurement Official of the state where such entity is located; Provided, however, that such entities shall, at a minimum, confirm in writing to the applicable Chief Procurement Official of the state where such entity is located that such entity has procurement authority to execute a *Participating Addendum*. Such entities shall coordinate participation requests through NASPO ValuePoint.

4. SCOPE OF COOPERATIVE PURCHASING AGREEMENT – INCLUDED GOODS AND/OR SERVICES & PRICE.

- 4.1. SCOPE. Pursuant to this *Cooperative Purchasing Agreement*, *Contractor* is authorized to sell only those *Goods and/or Services* in the Contract Category(ies) and group(s) stated above and specified in ***Exhibit B – Included Goods and/or Services and Pricing***. *Contractor* shall not represent to any *Participating Entity* or *Purchasing Entity* under this *Cooperative Purchasing Agreement* that *Contractor* has contractual authority to sell any goods and/or services beyond those *Goods and/or Services* in the Contract Category(ies) and group(s) stated above and specified in ***Exhibit B – Included Goods and/or Services and Pricing*** and posted on the NASPO ValuePoint website.
 - (a) *Goods*. For purposes of this *Cooperative Purchasing Agreement*, “Goods” means all equipment, materials, supplies, ancillary parts, accessories, components and other items purchased by *Purchasing Entity* pursuant to this *Cooperative Purchasing Agreement* and specified in ***Exhibit B – Included Goods and/or Services and Pricing*** and as identified in the *Purchase Order*.
 - (b) *Services*. For purposes of this *Cooperative Purchasing Agreement*, “Services” means all services of any nature ordered by *Purchasing Entity* pursuant to this *Cooperative Purchasing Agreement* and specified in

Exhibit B – Included Goods and/or Services and Pricing and as identified in the *Purchase Order*.

- (c) *Specifications*. Where applicable, specifications for *Goods and/or Services* are detailed in this *Cooperative Purchasing Agreement* and the *Purchase Order*. Unless otherwise specified in the *Purchase Order*, all *Goods and/or Services* provided shall be new and unused of the latest model or design.

4.2. ABILITY TO MODIFY SCOPE OF COOPERATIVE PURCHASING AGREEMENT. Subject to mutual agreement of the *Parties*, *Enterprise Services*, acting as the *Lead State*, reserves the right to modify the *Goods and/or Services* included in this *Cooperative Purchasing 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 the *Competitive Solicitation* for this competitively procured *Cooperative Purchasing Agreement*.

4.3. GOODS AND/OR SERVICES – PRODUCT UPDATES. Upon approval by *Enterprise Services*, *Contractor* may update, on a semi-annual basis a set forth below, their products included as *Goods and/or Services* specified in ***Exhibit B – Included Goods and/or Services and Pricing***. *Contractor* timely must submit to the *Enterprise Services’ Contract Administrator* a proposed updated product list using Excel with each tab containing products per category/group separately as described below:

- All discontinued products must be struck through and highlighted;
- All product additions must include the MSRP, percentage discount, and contract price;
- All product changes must include an effective date of the change;
- A separate tab labeled “changes” may be created to show all changes;
- At no time during the term of the *Cooperative Purchasing Agreement* shall products be deleted from the products list;
- Product updates must be submitted for review and approval to the *Enterprise Services’ Contract Administrator* thirty (30) days prior to the effective date of the change;
- All products shall be posted on the NASPO ValuePoint website for the entire term of the *Cooperative Purchasing Agreement*; and
- Product updates must be submitted, as described above, according to the Products and Pricing Update Schedule table below:

PRODUCTS AND PRICING UPDATE SCHEDULE		
SEMI-ANNUAL	SUBMITTED BY	EFFECTIVE DATE
January 1 – June 30	June 1	July 1
July 1 – December 31	December 1	January 1

4.4. PRICING CHANGES. All goods, services and related software are based on a percentage off Manufacturer Suggested Retail Price (MSRP). MSRP may be adjusted semi-annually, *Provided further*, that percentage discount remains the same for the entire contract term. The first

MSRP adjustment must be received by April 1, 2025, for an effective date of July 1, 2025, and semi-annually thereafter according to the Product/Pricing Update Schedule table above. Enterprise Services will review for accuracy to ensure the percentage discount remains unchanged prior to posting to the NASPO ValuePoint website.

- 4.5. PRICE CEILING. Although *Contractor* may offer lower prices, including volume discounts, to *Purchasing Entities*, during the term of this *Cooperative Purchasing Agreement*, *Contractor* guarantees to provide the *Goods and/or Services* at no greater than the prices set forth in ***Exhibit B – Included Goods and/or Services and Pricing*** (subject to adjustment as set forth above).
- 4.6. COOPERATIVE PURCHASING AGREEMENT INFORMATION. *Enterprise Services* shall maintain and provide to *Purchasing Entities* information regarding this *Cooperative Purchasing Agreement*, including scope, pricing, and lowest responsive, responsible bidder designation. In addition, *Enterprise Services* identifies awarded contractors who qualify as Washington Small Businesses, Certified Veteran-Owned Businesses, or that, pursuant to the *Cooperative Purchasing Agreement* provide *Goods and/or Services* that meet specified state procurement priorities as set forth in the Competitive Solicitation.

5. CONTRACTOR REPRESENTATIONS AND WARRANTIES. *Contractor* makes each of the following representations and warranties as of the effective date of this *Cooperative Purchasing Agreement* and at the time any *Purchase Order* is placed pursuant to this *Cooperative Purchasing Agreement*. If, at the time of any such *Purchase Order*, *Contractor* cannot make such representations and warranties, *Contractor* shall not process any *Purchase Orders* and shall, within three (3) business days notify *Enterprise Services*, in writing, of such breach.

- 5.1. QUALIFIED TO DO BUSINESS. *Contractor* represents and warrants that *Contractor* is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State. *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 (a) be in good standing; (b) qualified to do business in such state; and (c) properly shall have registered to do business in such state.
- 5.2. QUALIFIED TO DO BUSINESS. *Contractor* represents and warrants that *Contractor* is (a) in good standing; (b) qualified to do business in the State of Washington; and (c) registered with the Washington State Department of Revenue and the Washington Secretary of State. *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 (a) be in good standing; (b) qualified to do business in such state; and (c) properly shall have registered to do business in such state.
- 5.3. TAXES. *Contractor* represents and warrants that *Contractor* 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 current, in full compliance, and have paid all applicable taxes owed to such state.
- 5.4. LICENSES; CERTIFICATIONS; AUTHORIZATIONS; & APPROVALS. *Contractor* represents and warrants that *Contractor* possesses and shall keep current during the term of this *Cooperative Purchasing Agreement* all required licenses, certifications, permits, authorizations, and

- approvals necessary for *Contractor's* proper performance of this *Cooperative Purchasing Agreement*.
- 5.5. **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.
 - 5.6. **WAGE VIOLATIONS.** *Contractor* represents and warrants as previously certified in *Contractor's* Bidder's Certification, that during the term of this *Cooperative Purchasing Agreement* and the three (3) year period immediately preceding the award of this *Cooperative Purchasing Agreement*, *Contractor* has not been determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW 49.46, 49.48, or 49.52.
 - 5.7. **CIVIL RIGHTS.** *Contractor* represents and warrants that *Contractor* complies with all applicable requirements regarding civil rights. Such requirements prohibit discrimination against individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin.
 - 5.8. **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 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.
 - 5.9. **PUBLIC CONTRACTS AND PROCUREMENT FRAUD.** *Contractor* represents and warrants that, within the three (3) year period prior to this *Cooperative Purchasing Agreement*, neither *Contractor* nor its principals or affiliates: (a) have been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, local, or tribal) contract or purchase order under a public contract; (b) have been in violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; (c) have been indicted for or otherwise criminally or civilly charged by a government entity (federal, state, local, or tribal) with commission of any of the offense enumerated in subsection (b) of this provision; or (d) had one or more public contracts (federal, state, local, or tribal) terminated for cause or default.
 - 5.10. **PROCUREMENT ETHICS & PROHIBITION ON GIFTS.** *Contractor* represents and warrants that *Contractor* 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 Entities'* employees.
 - 5.11. **WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS).** *Contractor* represents and warrants that *Contractor* is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of *Contractor's* information therein is current and

accurate and that throughout the term of this *Cooperative Purchasing Agreement*, *Contractor* shall maintain an accurate profile in WEBS. Washington's Electronic Business Solution (WEBS).

- 5.12. COOPERATIVE PURCHASING 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 Agreement* with eligible *Purchasing Entities* and to ensure that those entities that utilize this *Cooperative Purchasing Agreement* are eligible *Purchasing Entities*. *Contractor* understands and acknowledges that neither *Enterprise Services* nor *Purchasing Entities* 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*.
- 5.13. CONTINGENT FEES. *Contractor* represents and warrants that no person or selling agent has been employed or retained to solicit or secure this *Cooperative Purchasing Agreement* upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established agents as defined in the Federal Acquisition Regulations.
- 5.14. FINANCIALLY SOLVENT. *Contractor* represents and warrants that *Contractor* has not commenced bankruptcy proceedings and that there are no judgment, liens, or encumbrances of any kind affecting title to any *Goods and/or Services* that are the subject of this *Cooperative Purchasing Agreement*.
- 5.15. OPERATIONAL CAPABILITY. *Contractor* represents and warrants, as previously certified in *Contractor's Bidder's Certification*, that *Contractor* has the operational and financial capability to perform this *Cooperative Purchasing Agreement*.
- 5.16. COOPERATIVE PURCHASING AGREEMENT TRANSITION. *Contractor* represents and warrants that, in the event this *Cooperative Purchasing Agreement* is transitioned to another contractor (e.g., *Cooperative Purchasing Agreement* expiration or termination), *Contractor* shall use commercially reasonable efforts to assist *Enterprise Services* and *Purchasing Entities* hereunder 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 and such *Purchasing Entities*; Provided, however, that, if costs are incurred, *Contractor* shall be compensated for such costs consistent with the terms and conditions pertaining to this *Cooperative Purchasing Agreement* for the sixty (60) day period immediately before such transition.

6. QUALITY; WARRANTY; REMEDIES.

- 6.1. GOODS WARRANTY. *Contractor* warrants that, as of the invoice date sent to the Purchasing Entity, for a period of twenty-four (24) months after invoice date of the Goods ("Goods Warranty Period"), the Goods: (a) are free from defects in design, material, and workmanship; (b) are fit and safe for the intended purposes and appropriate for the specified application(s) (if any); (c) are consistent with recognized industry quality standards; (d) comply with the requirements, specifications, drawings, standards, and descriptions included in this Contract; and (e) are produced and delivered in full compliance with applicable law ("Goods Warranty"). *Contractor* further warrants that it has good and marketable title to the Goods and shall keep *Purchasing Entity's* property free of liens. If

Purchasing Entity receives notice of a lien caused by *Contractor*, *Purchasing Entity* may withhold any payment otherwise due *Contractor* until *Contractor* submits proof, in a form satisfactory to *Purchasing Entity*, that all lienable claims have been fully paid or waived.

The following events are excluded by the warranty: (a) misuse, negligence, incorrect installation, maintenance, connection or operation of the product with equipment other than the original equipment authorized by *Contractor* or insufficient maintenance, (b) non-compliance with operating instructions, (c) unauthorized attempts by the *Purchasing Entity* or a third person to open, repair or alter the Goods, or other reasons beyond the framework of the intended use, or (d) accident, fire and/or other reasons for which *Contractor* is not responsible.

- 6.2. **GOODS REMEDY.** If Goods do not comply with the Goods Warranty or any defects develop during the Goods Warranty Period under normal use, at *Purchasing Entity's* election, *Contractor* promptly shall remedy the defect by replacing any defective Goods. *Contractor's* Goods Warranty support shall include, at *Contractor's* sole expense, all technical support, parts, materials and equipment, and labor, including freight and "in/out" costs required to address the defect. If, in *Purchasing Entity's*, replacement is inadequate, or fails of its essential purpose, *Contractor* shall 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.
- 6.3. **SERVICES WARRANTY.** *Contractor* warrants that: (a) Services shall be performed in a timely, efficient, and professional manner; (b) all *Contractor* personnel assigned to perform Services shall have the necessary skill and training; and (c) Services shall be performed in a manner consistent with the standard of care in the industry ("Services Warranty"). The Services Warranty shall survive for a period of twelve (12) months after the date when Services are completed ("Services Warranty Period").
- 6.4. **SERVICES REMEDY.** If Services do not comply with the Services Warranty or are in any manner found to be nonconforming during the Services Warranty Period, *Contractor* promptly shall remedy the non-conformance, or at *Purchasing Entity's* election, *Contractor* shall re-perform or correct the nonconforming Services at no additional cost to *Purchasing Entity* or refund the amounts paid for the Services.
- 6.5. **IT WARRANTY.** *Contractor* warrants at the time of delivery, that all hardware, software, and firmware associated with *Goods and/or Services* ("IT Goods" and "IT Services", respectively) shall not: (a) contain any viruses, malicious code, Trojan horse, worm, time bomb, self-help code, back door, or other software code or routine designed to: (i) damage, destroy, or alter any software or hardware; (ii) reveal, damage, destroy, or alter any data; (iii) disable any computer program automatically; or (iv) permit unauthorized access to any software or hardware; (b) contain any third party software (including software that may be considered free software or open source software) that (i) may require any software to be published, accessed, or otherwise made available without the consent of *Purchasing Entity*, or (ii) may require distribution, copying, or modification of any software free of charge; and (c) infringe on any patent, copyright, trademark, or other proprietary or intellectual property right of any third party or misappropriate any trade secret of any third party ("IT Warranty"). The IT Warranty shall expire twelve (12) months after the date IT Goods are delivered or IT Services are complete, as applicable.

- 6.6. IT REMEDY. If IT Goods or IT Services do not comply with the IT Warranty, or if any defect or non-conformance develops during the IT Warranty Period, *Contractor*, at *Purchasing Entity's* election, promptly shall: (a) remedy the defect by removing, repairing, correcting or replacing, and/or reinstalling any defective IT Goods; (b) re-perform or correct the non-conforming IT Services at no additional cost to *Purchasing Entity's*; or (c) refund the amounts paid for IT Services and IT Goods. The exclusive remedy for breach of the warranty against infringement is set forth in Section 17.3 (Indemnification – Intellectual Property).
- 6.7. FAILURE TO REMEDY. If *Contractor* does not remedy a defect or nonconformity within ten (10) calendar days after receipt of written notice from *Purchasing Entity*, or if an emergency exists rendering it impossible or impractical for *Purchasing Entity* to have *Contractor* provide a remedy, *Purchasing Entity* may, without prejudice to any other rights or remedies available to it, make or cause to be made required modifications, adjustments, or repairs, or may replace Goods, Services, IT Goods, or IT Services, in which case *Contractor* shall reimburse *Purchasing Entity* for its actual costs or, at *Purchasing Entity's* option, *Purchasing Entity* shall offset the costs incurred from amounts owing to *Contractor*.
- 6.8. TECHNICAL SUPPORT. During any applicable warranty period, *Contractor* shall provide all warranty service and telephone support, including after-hour technical support, at its own cost. *Contractor* shall maintain a technical support hotline to address breakdowns and safety incidents.
- 6.9. ADDITIONAL WARRANTY OPTIONS. *Contractor* may offer warranty terms beyond the minimum warranties set forth above. Such additional warranty options, if any, shall be as mutually agreed between *Contractor* and *Purchasing Entity* and consistent with the additional warranty options, if any, set forth in **Exhibit B – Included Goods and/or Services and Pricing** and *Contractor's* Products & Price list on the NASPO ValuePoint website.
- 7. SAFETY; SECURITY; CONTRACTOR REQUIREMENTS WHILE ON PURCHASING ENTITY'S PREMISES.** *Contractor's* failure to comply with any of the requirements in this Section shall be cause for termination.
- 7.1. REGULATORY REQUIREMENTS/SAFETY. *Goods and/or Services* supplied by *Contractor* shall meet all applicable health and safety-related federal, state, and/or local regulatory requirements applicable to the *Goods and/or Services*.
- 7.2. MATERIAL SAFETY DATA SHEETS. As applicable, *Contractor* shall provide *Purchasing Entities* with all appropriate current Material Safety Data Sheets ("MSDS") at the time of delivery of each shipment of *Goods and/or Services* that requires such compliance and/or and for materials used by *Contractor* while, on *Purchasing Entity's* premises, performing this *Cooperative Purchasing Agreement*.
- 7.3. CLEAN-UP. If *Contractor*, its agents, employees, or subcontractors perform on-site services, *Contractor*, at its cost, shall remove all excess materials, equipment, packaging, and garbage within the scope of its performance of services and leave that portion of the premises in which the work was performed in a clean condition. Should *Contractor* fail to clean up a site after completion of work, *Purchasing Entity* shall have the right to remove the materials and set off the cost of clean up against amounts owed to *Contractor*.
- 7.4. ACCIDENT AND INJURY REPORTING. If *Contractor*, its agents, employees, or subcontractors are present at *Purchasing Entity's* premises, *Contractor* promptly shall report in writing all injuries, accidents, property damage, near-miss incidents, or any claims regarding damages or injury

involving *Contractor*, its agents, employees, or subcontractors occurring at such premises. *Contractor* agrees to cooperate and assist *Purchasing Entity* in any investigation of incidents.

- 7.5. 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, health, and security requirements and not interfere with *Purchasing Entity's* operations.
- 7.6. CONFIDENTIALITY; SAFEGUARDING OF INFORMATION. *Contractor* shall not use or disclose any information concerning *Enterprise Services*, the State of Washington or *Purchasing Entity's* which may be classified as confidential, for any purpose not directly connected with the administration of this *Cooperative Purchasing Agreement*, except with prior written consent of *Enterprise Services* (or the applicable *Purchasing Entity*), or as may be required by law.
- 7.7. CONFIDENTIAL INFORMATION; DATA SECURITY; NETWORK ACCESS
 - (a) CONFIDENTIAL INFORMATION. For purposes of this Cooperative Purchasing Agreement, "Confidential Information" includes, but is not limited to, information that is deemed confidential under federal or state law, personal information as defined in [RCW 42.56.590](#), as well as any information identified, in writing, by Purchasing Entity as confidential or protected.
 - (b) PROTECTION OF CONFIDENTIAL INFORMATION. Notwithstanding any provision to the contrary, Contractor's use of Confidential Information will be in compliance with all applicable state and federal law. At a minimum, Contractor shall maintain records documenting: (i) the Confidential Information received pertaining to this Cooperative Purchasing Agreement; (ii) the purpose(s) for which the Confidential Information was received; (iii) who received and maintained the Confidential Information; and (iv) final disposition of the Confidential Information. Purchasing Entity reserves the right to monitor, audit, and/or investigate Contractor's use of Confidential Information used, collected, or acquired by Supplier pursuant to this Cooperative Purchasing Agreement.
 - (c) CONTRACTOR OBLIGATION – CONFIDENTIAL INFORMATION. If Confidential Information is collected, stored, or transmitted, Contractor shall: (i) hold Confidential Information in strictest confidence and not make use of Confidential Information for any purpose other than the performance of this Cooperative Purchasing Agreement; (ii) release Confidential Information only to authorized employees or agents requiring such information for the purpose of performing this Cooperative Purchasing Agreement and who have executed an appropriate nondisclosure agreement or data sharing agreement as approved by Purchasing Entity; (iii) implement and maintain physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information including, but not limited to, storing Confidential Information on secure servers with access to the data strictly controlled and limited to staff with appropriate training and clearance; and (iv) ensure that all Confidential Information is encrypted in transmission from and to Contractor, at rest in the data base or other data facility maintained or used by Contractor, and when transmitted to authorized recipients.
 - (d) CONTRACTOR OBLIGATION – DATA SECURITY. If the Cooperative Purchasing Agreement involves Purchasing Entity's Data and/or access to Purchasing Entity's IT network, Contractor, at its expense, will comply with the data security requirements set forth in *Attachment C – Data Security Requirements*.

- (e) **CONTRACTOR OBLIGATION – EXPIRATION OR TERMINATION.** Upon expiration or termination of this Purchase Order, Contractor, at Purchasing Entity's direction, timely will: (i) Certify to Purchasing Entity that all Confidential Information has been destroyed; or (ii) return all Confidential Information to Purchasing Entity; or (iii) take whatever other actions Purchasing Entity requires of Contractor to protect such Confidential Information.
- 7.8. **NETWORK ACCESS.** During its performance of this Cooperative Purchasing Agreement, Contractor may be granted access to Purchasing Entity's computer and telecommunication networks ("Networks"). As a condition of Network use, Contractor shall: (a) use the Networks in compliance with all applicable laws, rules, and regulations; (b) use software, protocols, and procedures as directed by Purchasing Entity to access and use the Networks; (c) only access Network locations made available to Contractor by Purchasing Entity; (d) not interfere with or disrupt other users of the Networks; (e) assure the transmissions over the Networks by Contractor (i) do not contain any libelous, defamatory, profane, offensive, obscene, pornographic, or unlawful material, and (ii) are not used to perform any illegal activities, including but not limited to, encouraging, selling, or soliciting illegal drugs, gambling, pornography, prostitution, robbery, spreading computer worms or viruses, hacking into computer systems, or trafficking credit card codes; and (f) upon termination or expiration of the Cooperative Purchasing Agreement, relinquish all IP addresses or address blocks assigned to them on the Networks. Additionally, Contractor shall comply with Purchasing Entity's IT policies.
- 7.9. **TREATMENT OF ASSETS.** Title to all property furnished by any *Participating Entity* and/or *Purchasing Entity* shall remain with such *Participating State* and/or *Purchasing Entity*, as applicable. Any property of any *Participating Entity* and/or *Purchasing Entity* furnished to *Contractor* shall, unless otherwise provided herein or approved by such *Participating Entity* and/or *Purchasing Entity*, be used only for the performance of this *Cooperative Purchasing Agreement*. *Contractor* shall be responsible for damages as a result of any loss or damage to property of any *Participating Entity* 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 Entity* and/or *Purchasing Entity* property is lost, destroyed, or damaged, *Contractor* immediately shall notify such *Participating Entity* and/or *Purchasing Entity* and shall take all reasonable steps to protect the property from further damage. *Contractor* shall surrender to such *Participating Entity* and/or *Purchasing Entity* all property of such *Participating Entity* and/or *Purchasing Entity* prior to settlement upon completion or termination of the applicable *Purchase Order*. 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 *Cooperative Purchasing Agreement*, shall pass to and vest in the *Purchasing Entity* upon delivery of such property by *Contractor* and acceptance by the *Purchasing Entity*. Title to other property, the cost of which is reimbursable to *Contractor* under this *Cooperative Purchasing Agreement*, shall pass to and vest in the *Purchasing Entity* upon: (a) issuance for use of such property in the performance of this *Cooperative Purchasing Agreement*; (b) commencement of use of such property in the performance of this *Cooperative Purchasing Agreement*; or (c) reimbursement of the cost thereof by the *Purchasing Entity* in whole or in part, whichever first occurs. Title to software shall not pass to *Purchasing Entity* but shall be licensed.

8. SUBCONTRACTORS & CONTRACTOR RESPONSIBILITIES.

- 8.1. CONTRACTOR RESPONSIBILITY. Notwithstanding any provision to the contrary, in the event *Contractor* elects to utilize subcontractors to perform this *Cooperative Purchasing Agreement*, *Contractor* shall: (a) incorporate *Contractor's* responsibilities under this *Cooperative Purchasing Agreement* into its subcontracts; (b) be fully responsible for the performance of any such subcontractors (regardless of tier) and ensure that subcontractors comply with each and every *Contractor* obligation set forth in this *Cooperative Purchasing Agreement*; (c) be the sole point of contact for *Enterprise Services* and any *Purchasing Entities* regarding all contractual matters; (d) ensure that such subcontractors are registered in WEBS; and (e) defend, indemnify, and hold *Enterprise Services* and *Purchasing Entities* harmless in case of negligence, other tortious fault, or intentional misconduct by any such subcontractors (regardless of tier). Prior to utilizing any subcontractor to perform this *Cooperative Purchasing Agreement*, *Contractor* shall provide written notice to *Enterprise Services'* contract administrator. Such notice shall confirm that the subcontractor is registered in WEBS and provide the necessary information for *Enterprise Services'* contract administrator to include such subcontractor(s) in Washington's Purchasing Contract Management System (PCMS).
- 8.2. REPORTING. If *Contractor* is required to report to *Purchasing Entities* and/or *Enterprise Services*, such report(s) shall include subcontractor data, by subcontractor, for any data that *Contractor* is required to report as well as a consolidated 'rollup' report combining *Contractor* and subcontractor data.
- 8.3. SUBCONTRACTOR REPRESENTATIONS AND CERTIFICATIONS. Any *Contractor* representations or certifications set forth in this *Cooperative Purchasing Agreement* shall apply to subcontractors (at any tier) and *Contractor* shall not utilize any subcontractors (at any tier) who cannot provide such representations or certifications, excepting the certification to be registered with Washington's Statewide Payee Desk, unless *Purchasing Entities* shall pay such subcontractor directly.
- 8.4. CONTRACTOR RESPONSIBILITIES. *Contractor* shall be responsible for successful performance of the *Cooperative Purchasing Agreement* and for the successful performance of any and all of *Contractor's* partners. *Contractor* shall be the sole point of contact as applicable by *Cooperative Purchasing Agreement* with regard to contractual matters, payment of any and all charges resulting from the purchase of *Goods and/or Services* (including applicable warranties) for the term of the *Cooperative Purchasing Agreement*, unless otherwise specified by a *Participating Entity*, in a *Participating Addendum*, or the *Cooperative Purchasing Agreement*. *Contractor* shall be able to receive, process, and invoice Purchase Orders unless the *Participating Entity* has agreed to assign these functions to a partner. *Contractor* shall be responsible for compliance with requirements under the *Cooperative Purchasing Agreement*, even if requirements are delegated to partners. *Contractor* and its partners shall not in any way represent themselves in the name of the *Lead State*, NASPO ValuePoint or *Participating Entities*.

9. USING THE COOPERATIVE PURCHASING AGREEMENT – PURCHASES.

- 9.1. ORDERING REQUIREMENTS. *Purchasing Entities* shall order *Goods and/or Services* from this *Cooperative Purchasing 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*. The terms of this *Cooperative Purchasing Agreement* shall apply to any *Purchase Order*, and, in the event of any conflict, the terms of this

Cooperative Purchasing 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 Agreement*.

- (a) All Purchase Orders must, at a minimum, reference
 - This *Cooperative Purchasing 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 a *Purchasing Entity's Purchase Order(s)* shall be furnished solely to *Purchasing Entity's* authorized purchasing agent or to such other individual identified in writing in the *Purchase Order*.
- (c) *Purchase Orders* shall be placed pursuant to this *Cooperative Purchasing Agreement* prior to expiration or termination of this *Cooperative Purchasing Agreement*; but such *Purchase Orders* may have a delivery date or performance period up to 120 days after expiration of this *Cooperative Purchasing Agreement* and, in such event, *Contractor* shall perform in accordance with the terms of such *Purchase Orders*.
- (d) *Contractor* shall not honor any *Purchase Orders* that are: (1) placed after the expiration or termination of this *Cooperative Purchasing Agreement*; or (2) inconsistent with this *Cooperative Purchasing Agreement*. *Purchase Orders* from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this *Cooperative Purchasing Agreement* may not be placed after the expiration or termination of this *Cooperative Purchasing Agreement*, notwithstanding the term of any such indefinite delivery order agreement.

9.2. DELIVERY REQUIREMENTS. *Contractor* must ensure that delivery of *goods and/or services* will be made as required by this *Cooperative Purchasing Agreement*, the *Purchase Order* used by *Purchasing Entities*, 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 *Purchase Order* placement. Deliveries to be off-loaded at *Purchasing Entity's* receiving dock or designated job site by *Contractor*.

With the exception of Group B Speed Advisory Systems (if included within the *Goods and/or Services*), *Contractor* shall ship all goods purchased pursuant to this *Cooperative Purchasing Agreement* freight charges prepaid by *Contractor*, FOB *Purchasing Entity's* specified destination, with all transportation and handling charges included. Freight charges for Group B Speed Advisory Systems (if included within the *Goods and/or*

Services) must be mutually agreed in writing and set forth in the *Purchase Order*. *Contractor* shall bear all risk of loss, damage, or destruction of any *Goods and/or Services* ordered hereunder that occurs prior to delivery, except loss or damage attributable to *Purchasing Entity's* fault or negligence.

- (b) *Contractor* must deliver *Goods and/or Services* according to the ARO (After Receipt of Order) delivery days as indicated in *Contractor's* Products and Price list. Delivery days ARO must not exceed one-hundred eighty (180) days.
- (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 Agreement* shall be identified by the *Cooperative Purchasing Agreement* number set forth on the cover of this *Cooperative Purchasing 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 *Goods and/or Services* within thirty (30) days of receipt for full credit, minus any freight or reasonable restocking fee. *Contractor*, however, is responsible for shipping costs pertaining to *Purchasing Entity's* return of any defective *Goods and/or Services*.

- 9.3. RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. *Goods and/or Services* purchased under this *Cooperative Purchasing 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 Agreement* and *Purchasing Entity's* *Purchase Order*. *Purchasing Entity* may charge *Contractor* for the cost of inspecting rejected non-conforming *Goods and/or Services*. If there are any apparent defects in the *Goods and/or Services* at the time of delivery, *Purchasing Entity* shall notify *Contractor* within five (5) business days. At *Purchasing Entity's* option, and without limiting any other rights, *Purchasing Entity* may require *Contractor*, consistent with the warranty terms, to replace any non-conforming *Goods and/or Services*, at *Contractor's* expense 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 payment. Payment for any *Goods and/or Services* under such *Purchase Order* shall not be deemed acceptance of the *Goods and/or Services*.

- (a) All *Goods and/or Services* are subject to inspection at reasonable times and places before acceptance. *Contractor* shall provide right of access to the *Lead State*, or to any other authorized agent or official of the *Lead*

State or Participating Entity or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this *Cooperative Purchasing Agreement*. Any *Goods and/or Services* that do not meet specifications or requirements herein, may be rejected. 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 *Goods and/or Services* are put to use. Acceptance of such *Goods and/or Services* may be revoked in accordance with the provisions of the applicable commercial code, and *Contractor* shall be liable for any resulting expense incurred by *Purchasing Entity* related to the preparation and shipping of any *Goods and/or Services* rejected and returned.

- (b) If any *Goods and/or Services* do not conform to the specifications or requirements herein, *Purchasing Entity* may require *Contractor* to replace such non-conforming *Goods and/or Services*.

- 9.4. INSTALLATION. *Good and/or Services* requiring installation shall be performed by *Contractor* in a professional manner in accordance with industry standard best practices. *Purchasing Entity* reserves the right to require *Contractor* to repair any damage caused during installation or provide full compensation for such damage as determined by *Purchasing Entity*.
- 9.5. SOFTWARE LICENSE AGREEMENT. If any *Goods and/or Services* purchased pursuant to this *Cooperative Purchasing Agreement* require software or firmware to operate, *Contractor's* software license shall apply to such transaction. *Contractor's* software license agreement shall not conflict with the terms and conditions of this *Cooperative Purchasing Agreement* or specific security requirements of *Participating Entity*.
- 9.6. SUBSCRIPTION SERVICES AGREEMENT. If any *Goods and/or Services* purchased pursuant to this *Cooperative Purchasing Agreement* require subscription services to operate, *Contractor's* Subscription Services Agreement shall apply to such transaction. *Contractor's* Subscription Services Agreement shall not conflict with the terms and conditions of this *Cooperative Purchasing Agreement* or the specific security requirements of *Participating Entity*.
- 9.7. PRODUCT SUBSTITUTIONS. All product substitutions for *Goods and/or Services* must be mutually agreed between *Contractor* and *Purchasing Entity* prior to order delivery and must be for products included as *Goods and/or Services* pursuant to this *Cooperative Purchasing Agreement*.
- 9.8. CUSTOMER SERVICE. *Contractor* shall be available by telephone or email during regular business hours of operation between 8:00 a.m. to 5:00 p.m. in each time zone of the United States for which *Contractor* has executed a *Participating Addendum* with a *Participating Entity*. *Contractor* shall provide customer service representatives familiar with all products that *Contractor* sells that are included as *Goods and/or Services* pursuant to this *Cooperative Purchasing Agreement*. *Contractor* shall provide contact(s) available 24/7 in the event of an emergency.

10. INVOICING & PAYMENT.

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

- *Cooperative Purchasing Agreement* No. 24823
- *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 and/or Services*;
- Invoice amount; and
- Payment terms, including any available prompt payment discounts.

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

- 10.2. **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.
- 10.3. **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*.
- 10.4. **ADVANCE PAYMENT PROHIBITED.** Except as authorized by law, *Contractor* shall not request or receive advance payment for any *Goods and/or Services* supplied by *Contractor* pursuant to this *Cooperative Purchasing 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.
- 10.5. **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, *Contractor* shall not include or impose any additional charges including, but not limited to, handling, or payment processing.
- 10.6. **TAXES/FEES.** *Contractor* promptly shall pay all applicable taxes on its operations and activities pertaining to this *Cooperative Purchasing Agreement*. Failure to do so shall constitute breach of this *Cooperative Purchasing Agreement*. Unless otherwise agreed, *Purchasing Entity* shall pay applicable governmental sales tax 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*, *Purchasing Entity* has not provided *Contractor* with a valid exemption certificate from such federal excise taxes.

11. CONTRACT MANAGEMENT.

- 11.1. **CONTRACT ADMINISTRATION & NOTICES.** Except for legal notices, the *Parties* designate the following contract administrators as the respective single points of contact for purposes of this *Cooperative Purchasing Agreement*. *Enterprise Services'* contract administrator shall provide *Cooperative Purchasing Agreement* oversight. *Contractor's* contract administrator

shall be *Contractor's* principal contact for business activities under this *Cooperative Purchasing 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

Washington Dept. of Enterprise Services
Attn: Contract Administrator 24823
PO Box 41411
Olympia, WA 98504-1411
Tel: (360) 407-2218
Email: DESContractsTeamFir@des.wa.gov

Kustom Signals, Inc.

Attn: Jim Lindquist
Tel: 913 492 1400
Email: sales@kustomsignals.com

Notices shall be deemed effective upon date received, if mailed, or, if emailed, upon date of transmission to the designated email address.

- 11.2. CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE. *Contractor* shall designate a customer service representative (and notify *Enterprise Services* of the same) who shall be responsible for addressing *Purchasing Entity* issues pertaining to this *Cooperative Purchasing Agreement*. *Contractor* shall notify *Enterprise Services*, as soon as practicable, regarding any changes to the designated *Contractor* customer service representative.
- 11.3. LEGAL NOTICES. Any legal 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

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

Kustom Signals, Inc.

Attn: Chris Abel
Address: 10901 W 84th Terrace,
Suite 100
Lenexa, KS 66214
Email: sales@kustomsignals.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.

12. NASPO VALUEPOINT PROVISIONS. *NASPO ValuePoint* is not a party to this *Cooperative Purchasing Agreement*. The terms set forth in this section are for the benefit of *NASPO ValuePoint* as a third-party beneficiary of this *Cooperative Purchasing Agreement*.

12.1. ADMINISTRATIVE FEES

- (a) NASPO VALUEPOINT FEE. *Contractor* shall pay to *NASPO ValuePoint*, or its assignee, a *NASPO ValuePoint* Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The *NASPO ValuePoint* Administrative Fee must be submitted quarterly and is based on all sales of *Goods and/or Services* under this *Cooperative Purchasing Agreement* (less any charges

for taxes or shipping). The *NASPO ValuePoint* Administrative Fee is not negotiable. This fee is included as part of Contractor's pricing submitted with its bid in response to the *Lead State's Competitive Solicitation*.

- (b) STATE IMPOSED FEES. Some states may require an additional fee (e.g., administrative fee or contract management fee) be paid by *Contractor* directly to such state on purchases of *Goods and/or Services* pursuant to this *Cooperative Purchasing Agreement* made by *Purchasing Entities* within such state. For all such requests, the fee rate or amount, payment method, and schedule for such fee payments and reports shall be incorporated into the applicable *Participating Addendum* by the *Participating Entity*. Unless agreed to in writing by the *Participating Entity*, *Contractor* may not adjust the *Cooperative Purchasing Agreement* pricing to include such state fee for purchases of *Goods and/or Services* pursuant to this *Cooperative Purchasing Agreement* made by *Purchasing Entities* within the jurisdiction of such state. No such agreement shall affect the *NASPO ValuePoint* Administrative Fee percentage or the prices paid by *Purchasing Entities* outside the jurisdiction of such state requesting the additional fee.

12.2. NASPO VALUEPOINT REPORTING REQUIREMENTS

- (a) SALES DATA REPORTING. In accordance with this section, *Contractor* shall report to *NASPO ValuePoint* all *Purchase Orders* under this *Cooperative Purchasing Agreement* for which *Contractor* has invoiced a *Purchasing Entity* ("Sales Data"). Timely and complete reporting of Sales Data is a material requirement of this *Cooperative Purchasing Agreement*. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by *NASPO ValuePoint* with reasonable notice to *Contractor* and without amendment to this *Cooperative Purchasing Agreement*. *NASPO ValuePoint* shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.
- (b) SUMMARY SALES DATA. "Summary Sales Data" is Sales Data reported as cumulative totals by state. *Contractor* shall, using the reporting tool or template provided by *NASPO ValuePoint*, report Summary Sales Data to *NASPO ValuePoint* for each calendar quarter no later than thirty (30) days following the end of the quarter. If *Contractor* has no reportable Sales Data for the quarter, *Contractor* shall submit a zero-sales report.
- (c) DETAILED SALES DATA. "Detailed Sales Data" is Sales Data that includes for each *Purchase Order* all information required by this *Cooperative Purchasing Agreement* or by *NASPO ValuePoint*, including *Purchasing Entity* information, *Purchase Order* information, and line-item details. *Contractor* shall, using the reporting tool or template provided by *NASPO ValuePoint*, report Detailed Sales Data to *NASPO ValuePoint* for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in

this *Cooperative Purchasing Agreement* or provided by *NASPO ValuePoint*. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.

- (d) **SALES DATA CROSSWALKS.** Upon request by *NASPO ValuePoint*, *Contractor* shall provide to *NASPO ValuePoint* tables of customer and Product information and specific attributes thereof for the purpose of standardizing and analyzing reported Sales Data ("Crosswalks"). Customer Crosswalks must include a list of existing and potential *Purchasing Entities* and identify for each the appropriate customer type as defined by *NASPO ValuePoint*. Product Crosswalks must include *Contractor's* part number or SKU for each Product in *Contractor's* catalog and identify for each the appropriate *Cooperative Purchasing Agreement* category (and subcategory/group, if applicable), manufacturer part number, product description, eight-digit UNSPSC Class Level commodity code, and (if applicable) EPEAT value and Energy Star rating. Crosswalk requirements and fields may be updated by *NASPO ValuePoint* with reasonable notice to *Contractor* and without amendment to this *Cooperative Purchasing Agreement*. *Contractor* shall work in good faith with *NASPO ValuePoint* to keep Crosswalks updated as *Contractor's* customer lists and product catalog change.
- (e) **NASPO VALUEPOINT EXECUTIVE SUMMARY.** *Contractor* shall, upon request by *NASPO ValuePoint*, provide *NASPO ValuePoint* with an executive summary that includes but is not limited to a list of states with an active *Participating Addendum*, states with which *Contractor* is in negotiations, and any *Participating Addendum* roll-out or implementation activities and issues. *NASPO ValuePoint* and *Contractor* will determine the format and content of the executive summary.
- (f) **REPORT OWNERSHIP.** Timely submission of these reports is a material requirement of this *Cooperative Purchasing 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.

13. NASPO VALUEPOINT COOPERATIVE PROGRAM MARKETING AND PERFORMANCE REVIEW

- 13.1. **STAFF EDUCATION.** *Contractor* shall work cooperatively with *NASPO ValuePoint* personnel. *Contractor* shall present plans to *NASPO ValuePoint* for the education of *Contractor's* contract administrator(s) and sales/marketing workforce regarding this *Cooperative Purchasing Agreement*, including the competitive nature of *NASPO ValuePoint* procurements, the cooperative purchasing agreement and participating addendum process, and the manner in which eligible entities can participate in this *Cooperative Purchasing Agreement*.
- 13.2. **ONBOARDING PLAN.** Upon request by *NASPO ValuePoint*, *Contractor* shall, as *Participating Addendums* are executed, provide plans to launch the program for the *Participating Entity*. Plans will include time frames to launch the agreement and confirmation that the *Contractor's* website has been updated to properly reflect the scope and terms of this *Cooperative Purchasing Agreement* as available to the *Participating Entity* and eligible *Purchasing Entities*.

- 13.3. ANNUAL SUPPLIER BUSINESS REVIEW. *Contractor* shall participate in an annual contract performance review with the *Lead State* and *NASPO ValuePoint*, which may at the discretion of the *Lead State* be held in person and which may include a discussion of marketing action plans, target strategies, marketing materials, *Contractor* reporting, and timeliness of payment of administration fees.
- 13.4. LOGOS. The NASPO ValuePoint logos may not be used by *Contractor* in sales and marketing until a separate logo use agreement is executed with *NASPO ValuePoint*.
- 13.5. MOST FAVORED CUSTOMER. *Contractor* shall, within thirty (30) days of their effective date, notify the *Lead State* and *NASPO ValuePoint* of any contractual most-favored-customer provisions in third-party contracts or agreements that may affect the promotion of this *Cooperative Purchasing Agreement* or whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or *Purchase Orders* from this *Cooperative Purchasing Agreement*. Upon request of the *Lead State* or *NASPO ValuePoint*, *Contractor* shall provide a copy of any such provisions.
- 13.6. CANCELLATION. In consultation with NASPO ValuePoint, the Lead State may, in its discretion, cancel the Cooperative Purchasing Agreement or not exercise an option to renew, when utilization of Contractor's Cooperative Purchasing Agreement does not warrant further administration of the Cooperative Purchasing Agreement. The Lead State may also exercise its right to not renew the Cooperative Purchasing Agreement if the Contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after execution of the Cooperative Purchasing Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Cooperative Purchasing Agreement or terminate for default subject to the terms herein. This subsection also does not limit any right of the Lead State to cancel the Cooperative Purchasing Agreement under applicable laws.
- 13.7. ADDITIONAL AGREEMENT WITH NASPO. Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Cooperative Purchasing Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Cooperative Purchasing Agreement.

14. RECORDS RETENTION & AUDITS.

- 14.1. RECORDS RETENTION. *Contractor* shall maintain books, records, documents, and other evidence pertaining to this *Cooperative Purchasing Agreement* and *Purchase Orders* placed by *Purchasing Entities* under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. *Contractor* shall retain such records for a period of six (6) years following expiration or termination of this *Cooperative Purchasing Agreement* or final payment for any *Purchase Order* placed by a *Purchasing Entity* against this *Cooperative Purchasing 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.
- 14.2. AUDIT. Upon reasonable advance written notice, *Enterprise Services* reserves the right to audit, or have a designated third-party audit, applicable records to ensure that *Contractor* has properly invoiced *Purchasing Entities* and that *Contractor* has paid all applicable fees

pertaining to this *Cooperative Purchasing Agreement*. 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 Agreement* or *Purchase 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 Agreement* or final payment for any *Purchase Order* placed by a *Purchasing Entity* against this *Cooperative Purchasing 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.

- 14.3. OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES. Without limiting any other remedy available to any *Purchasing Entity*, *Contractor* shall reimburse *Purchasing Entities* for any overpayments inconsistent with the terms of this *Cooperative Agreement* or *Purchase Orders*, at a rate of 125% of such overpayments, found as a result of the examination of the *Contractor's* records.

15. INSURANCE.

- 15.1. REQUIRED INSURANCE. During the term of this *Cooperative Purchasing 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 and/or Services* and no additional payment shall be made.
- 15.2. WORKERS COMPENSATION. *Contractor* shall comply with applicable workers compensation statutes and regulations (e.g., Title 51 RCW, 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 Agreement*. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from *Contractor*. If *Contractor* performs services on behalf of a *Purchasing Entity* in the State of Washington, and only to the extent of claims against *Contractor* by *Purchasing Entity* under the Indemnity obligations in this *Cooperative Purchasing Agreement*, *Contractor* expressly waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW. *Contractor's* indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third-party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The parties expressly acknowledge and certify that the waiver of immunity under Title 51 RCW was mutually negotiated and agreed upon.
- 15.3. 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: (a) names the State of Washington and *Enterprise Services* as additional insureds; (b) provides for written notice of cancellation delivered in accordance with the policy provisions; and (c) provides that the *Contractor's* liability insurance policy shall be primary, with any liability insurance of any *Participating Entity* 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.

16. PUBLIC INFORMATION & PUBLIC RECORDS DISCLOSURE REQUESTS.

- 16.1. WASHINGTON'S PUBLIC RECORDS ACT. Unless statutorily exempt from public disclosure, this *Cooperative Purchasing Agreement* and all related records are subject to public disclosure as required by Washington's Public Records Act, RCW 42.56.
- 16.2. PARTICIPATING ADDENDUMS. *Participating Addendums* and related records shall be subject to public disclosure as required by applicable law pertaining to such *Participating Entity* or *Purchasing Entity*.
- 16.3. CONTRACTOR OBLIGATION. *Contractor* shall identify and mark the precise portion(s) of the relevant page(s) of any records provided to *Enterprise Services* that *Contractor* believes are statutorily exempt from disclosure and identify the precise statutory basis for exemption from disclosure. In addition, if, in *Contractor's* judgment, certain portions of such records are not statutorily exempt from disclosure but are sensitive because particular portions of *Contractor's* records (NOT including pricing) include highly confidential, proprietary, or trade secret information (or the equivalent) that *Contractor* protects through the regular use of confidentiality or similar agreements and routine enforcements through court enforcement actions, *Contractor* shall identify and mark the precise portion(s) of the relevant page(s) of any records that include such sensitive information.
- 16.4. ENTERPRISE SERVICES' OBLIGATION. In the event that *Enterprise Services* receives a public records disclosure request pertaining to records that *Contractor* has submitted and marked either as (a) statutorily exempt from disclosure; or (b) sensitive, *Enterprise Services*, prior to disclosure, shall do the following: *Enterprise Services'* Public Records Officer shall review any records marked by *Contractor* as statutorily exempt from disclosure. In those situations, where the designation comports with the stated statutory exemption from disclosure, *Enterprise Services* shall redact or withhold the record(s) as appropriate. For records marked 'sensitive' or for records where *Enterprise Services* determines that no statutory exemption to disclosure applies or is unable to determine whether the stated statutory exemption to disclosure properly applies, *Enterprise Services* shall notify *Contractor*, at the address provided in the Contract, of the public records disclosure request and identify the date that *Enterprise Services* intends to release that the record(s) (including records marked 'sensitive' or exempt from disclosure) to the requester unless *Contractor*, at *Contractor's* sole expense, timely obtains a court order enjoining *Enterprise Services* from such disclosure. In the event *Contractor* fails to timely file a motion for a court order enjoining such disclosure, *Enterprise Services* shall release the requested record(s) on the date specified. *Contractor's* failure properly to identify exempted or sensitive 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 records are exempt or protected from public disclosure.

17. CLAIMS.

- 17.1. 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 Agreement*. *Enterprise Services* has made no representations regarding any factor affecting *Contractor's* risks. *Contractor* shall pay for all damage to any *Purchasing Entity's* property resulting directly or indirectly from *Contractor's* acts or omissions under this *Cooperative Purchasing Agreement*, to the extent attributable to negligence by *Contractor* or its agents.
- 17.2. THIRD-PARTY CLAIMS; INDEMNITY. To the fullest extent permitted by law, *Contractor* shall defend, indemnify, and hold *Enterprise Services*, any *Purchasing Entity*, and *NASPO ValuePoint* and their respective employees and agents harmless 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") to the extent arising out of *Contractor's* or its successors', agents', and/or subcontractors' negligence, other tortious fault, or intentional misconduct under this *Cooperative Purchasing Agreement*. *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. The *Parties* agree that this section is not subject to any limitations of liability in this *Cooperative Purchasing Agreement* or in any other document executed in conjunction with this *Cooperative Purchasing Agreement*.
- 17.3. INDEMNIFICATION – INTELLECTUAL PROPERTY. To the fullest extent permitted by law, *Contractor* shall defend, indemnify, and hold *Enterprise Services*, any *Purchasing Entity*, and *NASPO ValuePoint* and their employees and agents harmless from against any and all Claims resulting from allegations of infringement of any patents, copyrights, trade secret, or similar intellectual property rights covering the *Goods and/or Services* provided, or the use of the *Goods and/or Services* under this *Cooperative Purchasing Agreement*. If *Purchasing Entity's* use of *Goods and/or Services* provided by *Contractor* is enjoined based on an intellectual property infringement Claim, *Contractor* shall, at its own expense, either procure for *Purchasing Entity* the right to continue using the *Goods and/or Services* or, after consulting with *Purchasing Entity* and obtaining *Purchasing Entity's* consent, replace or modify the *Goods and/or Services* with substantially similar and functionally equivalent non-infringing *Goods and/or Services*.
- 17.4. CLAIM PROTOCOL. *Purchasing Entity* shall give *Contractor*: (i) prompt written notice of a claim pursuant to Section 17.2 or 17.3; and (ii) assistance and information reasonably requested by *Contractor*. Notwithstanding the foregoing, *Contractor* shall not be liable for any infringement arising from: (i) the integration or combination of the Goods together with other software, materials or products not integrated or combined by *Contractor*, if the infringement would have been avoided in the absence of such integration or combination; (ii) modifications to the Goods that were not authorized by *Contractor*; or (iii) *Purchasing Entity's* use of the Goods in a manner that does not comply with this the *Contractor's* software license agreement (pursuant to Section 9.5) and documentation.

- 18. DISPUTE RESOLUTION.** The *Parties* shall cooperate to resolve any dispute pertaining to this *Cooperative Purchasing 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.

19. TERMINATION; EXPIRATION; SUSPENSION; & REMEDIES.

19.1. TERMINATION. This *Cooperative Purchasing Agreement* may be terminated:

- (a) Upon the mutual written agreement of the *Parties*;
- (b) By the non-breaching party where the breach is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in this *Cooperative Purchasing Agreement*; and
- (c) As otherwise expressly provided for in this *Cooperative Purchasing Agreement*.

This *Cooperative Purchasing Agreement* shall terminate automatically and without further action if a party becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate this *Cooperative Purchasing Agreement* as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach will not affect rights or obligations accrued or owed before the effective date of the termination notice.

19.2. TERMINATION FOR WITHDRAWAL OF AUTHORITY. *Enterprise Services* may suspend or terminate this *Cooperative Purchasing 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 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* shall be entitled to seek compensation to the extent *Contractor* provides documentary evidence that *Contractor* has incurred additional costs as a result of the suspension.

19.3. TERMINATION FOR PUBLIC CONVENIENCE. *Enterprise Services*, for public convenience, may terminate this *Cooperative Purchasing Agreement*; Provided, however, that such termination for public convenience must, in *Enterprise Services'* judgment, be in the best interest of the State of Washington; and Provided further, that such termination for public convenience shall only be effective upon sixty (60) days prior written notice; and Provided further, that such termination for public 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 public convenience, neither *Enterprise Services* nor any *Participating Entity* or *Purchasing Entity* shall have any obligation or liability to *Contractor*.

- 19.4. PURCHASING ENTITY OBLIGATIONS – EXPIRATION. Upon expiration of this *Cooperative Purchasing Agreement*, *Purchasing Entity* shall accept and take delivery of all outstanding and not yet fulfilled *Purchase Orders* and pay *Contractor* the price as set out in this *Cooperative Purchasing Agreement*. Notwithstanding any provision to the contrary, in no event shall a *Purchasing Entity's Purchase Order* pursuant to this *Cooperative Purchasing Agreement* that is executed prior to expiration of this *Cooperative Purchasing Agreement* allow for *Contractor* to provide *Goods and/or Services* more than twelve (12) months beyond the expiration date of the *Cooperative Purchasing Agreement*.
- 19.5. CONTRACTOR OBLIGATIONS – EXPIRATION OR TERMINATION. Upon expiration or termination of this *Cooperative Purchasing Agreement*, *Contractor* shall: (a) continue to fulfill its warranty obligations with respect to any *Goods and/or Services* sold hereunder and all provisions of the *Cooperative Purchasing Agreement* that, by their nature, would continue beyond the expiration, termination, or cancellation of the *Cooperative Purchasing Agreement* shall so continue and survive; and (b) promptly return to *Purchasing Entity* all keys, badges, and other materials supplied by *Purchasing Entity* for the performance of any *Purchase Order* entered into pursuant to this *Cooperative Purchasing Agreement*.
- 19.6. DEFAULT. Any of the following events shall constitute cause for *Enterprise Services* to declare *Contractor* in default of this *Cooperative Purchasing Agreement*:
 - (a) *Contractor* fails to perform or comply with any of the terms or conditions of this *Cooperative Purchasing Agreement*;
 - (b) *Contractor* fails to timely report sales required by this *Cooperative Purchasing Agreement* when due;
 - (c) *Contractor* fails to timely pay fees required by this *Cooperative Purchasing Agreement* when due;
 - (d) *Contractor* fails to maintain the insurance coverages specified herein or timely provide to *Enterprise Services* the Certificate of Insurance and updates thereto specified herein;
 - (e) *Contractor* breaches any representation or warranty provided herein; or
 - (f) *Contractor* enters into proceedings relating to bankruptcy, whether voluntary or involuntary.
- 19.7. SUSPENSION & TERMINATION FOR DEFAULT. *Enterprise Services* may suspend *Contractor's* operations under this *Cooperative Purchasing Agreement* immediately by written cure notice of any default. *Contractor* may be required to submit a written cure plan within five (5) business days of such 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 if *Contractor* has not completed all of the actions set forth in the written cure plan within the timeframe identified in the written cure plan, *Enterprise Services* may terminate *Contractor's* rights under this *Cooperative Purchasing Agreement*. All of *Contractor's* obligations to *Enterprise Services* and *Purchasing Entities*

survive termination of Contractor's rights under this Cooperative Agreement, until such obligations have been fulfilled.

19.8. REMEDIES FOR DEFAULT.

- (a) *Enterprise Services'* rights to suspend and terminate *Contractor's* rights under this *Cooperative Purchasing 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 Entities* 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 Agreement* price and the replacement or cover price 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* and *Purchasing Entities* shall 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 section regarding its participation in the *Cooperative Purchasing Agreement*, in addition to those set forth in its *Participating Addendum*. Unless otherwise specified in a *Purchase Order*, a *Purchasing Entity* shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable *Participating Addendum* with respect to a *Purchase Order* placed by the *Purchasing Entity*. Nothing in this *Cooperative Purchasing Agreement* shall be construed to limit the rights and remedies available to *Purchasing Entity* under the applicable commercial code.

19.9. 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 and that each party's liability shall not exceed \$2,000,000 per occurrence; Provided, however, that nothing contained in this section shall in any way exclude or limit: (a) a party's liability for all damages arising out of that party's intentional acts or omissions; (b) the operation of any *Goods and/or Services* warranty provided in this *Cooperative Purchasing Agreement*; or (c) damages subject to the Intellectual Property Indemnity section of this *Cooperative Purchasing Agreement*; (d) non-payment for delivered Goods and/or Services due ONLY by the receiving *Purchasing Entity* (see Section 3.2 & 3.3); and (e) infringement or misappropriation of the intellectual property rights of *Contractor*. Any limitation of either party's obligations under this *Cooperative Purchasing Agreement*, by delivery slips or other documentation is void.

19.10. SUSPENSION/TERMINATION PROCEDURE. Regardless of basis, in the event of suspension or termination (in full or in part), the *Parties* shall cooperate to ensure an orderly and efficient suspension or termination. Accordingly, *Contractor* shall deliver to *Purchasing Entities* all *Goods and/or Services* that are complete (or with approval from *Enterprise Services*, substantially complete) and *Purchasing Entities* shall inspect, accept, and pay for the same in accordance with this *Cooperative Purchasing Agreement* and the applicable *Purchase Order*.

Unless directed by *Enterprise Services* to the contrary, *Contractor* shall not process any *Purchase Orders* after notice of suspension or termination inconsistent therewith.

20. PURCHASE ORDER TERMINATION. *Purchase Orders* between *Purchasing Entities* and *Contractor* may be terminated as follows:

- (a) upon the mutual written agreement of the parties to the *Purchase Order*;
- (b) by the non-breaching party where the breach of the *Purchase Order* is not cured within thirty (30) calendar days after written notice of breach is delivered to the breaching party, unless a different time for cure is otherwise stated in the applicable *Purchase Order*; and
- (c) as otherwise expressly provided for in the applicable *Purchase Order*.

Purchase Orders shall terminate automatically and without further action if a party to such *Purchase Order* becomes insolvent or is placed in receivership, reorganization, liquidation, or bankruptcy. In addition to any other available remedies, the non-breaching party may terminate the *Purchase Order* as provided in subsection (b) above without further liability by written notice to the breaching party. A termination for breach shall not affect rights or obligations accrued or owed before the effective date of the termination notice.

21. GENERAL PROVISIONS.

- 21.1. TIME IS OF THE ESSENCE. Time is of the essence for each and every provision of this *Cooperative Purchasing Agreement*.
- 21.2. COMPLIANCE WITH LAW. *Contractor* shall comply with all applicable laws. *Contractor* shall obtain all necessary permits and approvals and give all stipulations, certifications, and representations that may be required for it to perform this *Cooperative Purchasing Agreement*.
- 21.3. NONDISCRIMINATION.
 - (a) Nondiscrimination Requirement. During the term of this *Cooperative Purchasing Agreement*, *Contractor*, including any subcontractor, shall not discriminate on the bases enumerated at RCW 49.60.530(3). In addition, *Contractor*, including any subcontractor, shall give written notice of this nondiscrimination requirement to any labor organizations with which *Contractor*, or subcontractor, has a collective bargaining or other agreement.
 - (b) Obligation to Cooperate. *Contractor*, including any subcontractor, shall cooperate and comply with any Washington state agency investigation regarding any allegation that *Contractor*, including any subcontractor, has engaged in discrimination prohibited by this *Cooperative Purchasing Agreement* pursuant to RCW 49.60.530(3).
 - (c) Default. Notwithstanding any provision to the contrary, *Enterprise Services* may suspend *Contractor*, including any subcontractor, upon notice of a failure to participate and cooperate with any state agency investigation into alleged discrimination prohibited by this *Cooperative Purchasing Agreement*, pursuant to RCW 49.60.530(3). Any such suspension will remain in place until *Enterprise Services* receives notification that *Contractor*, including any subcontractor, is cooperating with the

investigating state agency. In the event Contractor, or subcontractor, is determined to have engaged in discrimination identified at RCW 49.60.530(3), Enterprise Services may terminate this Cooperative Purchasing Agreement in whole or in part, and Contractor, subcontractor, or both, may be referred for debarment as provided in RCW 39.26.200. Contractor or subcontractor may be given a reasonable time in which to cure this noncompliance, including implementing conditions consistent with any court-ordered injunctive relief or settlement agreement.

- (d) Remedies for Breach. Notwithstanding any provision to the contrary, in the event of Cooperative Purchasing Agreement termination or suspension for engaging in discrimination, Contractor, subcontractor, or both, shall be liable for contract damages as authorized by law including, but not limited to, any cost difference between this Cooperative Purchasing Agreement and the replacement or cover contract and all administrative costs directly related to the replacement contract, which damages are distinct from any penalties imposed under Chapter 49.60, RCW. Enterprise Services and/or Purchasing Entities shall have the right to deduct from any monies due to Contractor or subcontractor, or that thereafter become due, an amount for damages Contractor or subcontractor will owe Enterprise Services and/or Purchasing Entities for default under this provision.

- 21.4. ENTIRE AGREEMENT. This *Cooperative Purchasing 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.
- 21.5. AMENDMENT OR MODIFICATION. Except as set forth herein, this *Cooperative Purchasing Agreement* may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 21.6. AUTHORITY. Each party to this *Cooperative Purchasing 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 Agreement* and that its execution, delivery, and performance of this *Cooperative Purchasing Agreement* has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 21.7. 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 Agreement*. Neither party is an agent of the other party nor authorized to obligate it.
- 21.8. ASSIGNMENT. *Contractor* may not assign its rights under this *Cooperative Purchasing 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* (a) provides written notice to *Enterprise Services* within thirty (30) days of such event and (b) timely executes *Enterprise Services'* Assignment, Assumption and Consent Agreement. *Contractor* may assign its rights under this *Cooperative Purchasing 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 Agreement* notwithstanding any prior assignment of its rights.

- 21.9. BINDING EFFECT; SUCCESSORS & ASSIGNS. This *Cooperative Purchasing Agreement* shall be binding upon and shall inure to the benefit of the *Parties* hereto and their respective successors and assigns.
- 21.10. 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 to *Purchasing Entities* in Washington for the purpose of carrying out *Contractor's* obligations under this *Cooperative Purchasing Agreement*, including, at *Enterprise Services'* option, the right to control any such litigation on such claim for relief or cause of action.
- 21.11. FEDERAL FUNDS. To the extent that any *Purchasing Entity* uses federal funds to purchase *Goods and/or Services* pursuant to this *Cooperative Purchasing Agreement*, such *Purchasing Entity* shall specify, with its *Purchase Order*, any applicable requirement or certification that must be satisfied by *Contractor* at the time the order is placed or upon delivery of such *Goods and/or Services* to *Purchasing Entity*.
- 21.12. SEVERABILITY. If any provision of this *Cooperative Purchasing Agreement* is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this *Cooperative Purchasing Agreement*, and to this end the provisions of this *Cooperative Purchasing 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 Agreement*.
- 21.13. 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 Agreement*, nor shall any purported oral modification or rescission of this *Cooperative Purchasing 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.
- 21.14. SURVIVAL. All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this *Cooperative Purchasing Agreement* shall survive and remain in effect following the expiration or termination of this *Cooperative Purchasing Agreement*, Provided, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 21.15. GOVERNING LAW.
- (a) Cooperative Purchasing Agreement. The validity, construction, performance, and enforcement of this *Cooperative Purchasing Agreement* shall be governed by and construed in accordance with the

laws of the State of Washington, without regard to any choice of law principles that would provide for the application of the laws of another jurisdiction.

- (b) Participating Addendum & Purchase Orders. The validity, construction, and effect of any *Participating Addendum* pertaining to the *Cooperative Purchasing Agreement* or *Purchase 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 without regard to any choice of law principles that would provide for the application of the laws of another jurisdiction.

21.16. JURISDICTION & VENUE.

- (a) Cooperative Purchasing Agreement. In the event that any action is brought to enforce any provision of this *Cooperative Purchasing 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.
- (b) Purchase Orders. Venue for any claim, dispute, or action concerning any *Purchase Order* placed against the *Cooperative Purchasing Agreement* or the effect of a *Participating Addendum* shall be in the Purchasing Entity's state.

21.17. SOVEREIGN IMMUNITY. In no event shall this *Cooperative Purchasing Agreement*, any *Participating Addendum*, or any *Purchase Order* issued thereunder, or any act of the *Lead State*, a *Participating Entity*, or *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.

21.18. ATTORNEYS' FEES. In the event of litigation or other action brought to enforce this *Cooperative Purchasing Agreement*, each party shall bear its own attorneys' fees and costs.

21.19. FAIR CONSTRUCTION & INTERPRETATION. The provisions of this *Cooperative Purchasing 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 Agreement*. Each party hereto and its counsel has reviewed and revised this *Cooperative Purchasing 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 Agreement*. Each term and provision of this *Cooperative Purchasing Agreement* to be performed by either party shall be construed to be both a covenant and a condition.

21.20. FURTHER ASSURANCES. In addition to the actions specifically mentioned in this *Cooperative Purchasing Agreement*, the Parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this *Cooperative Purchasing Agreement* including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this *Cooperative Purchasing Agreement*.

- 21.21. EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this *Cooperative Purchasing Agreement* in their entirety.
- 21.22. CAPTIONS & HEADINGS. The captions and headings in this *Cooperative Purchasing 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 Agreement* nor the meaning of any provisions hereof.
- 21.23. ELECTRONIC SIGNATURES. An electronic signature or electronic record of this *Cooperative Purchasing 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 Agreement* or such other ancillary agreement for all purposes.
- 21.24. COUNTERPARTS. This *Cooperative Purchasing 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 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 Agreement*.

EXECUTED as of the date and year first above written.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

KUSTOM SIGNALS, INC.
A KANSAS CORPORATION

By: *Elena McGrew*
Elena McGrew
Its: Procurement Manager

By: *Chris Abel*
Chris Abel
Its: President

INSURANCE REQUIREMENTS

1. **INSURANCE OBLIGATION.** During the term of this *Cooperative Purchasing 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 \$2,000,000 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.
 - d. **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE** (required if *Contractor* is accessing Purchasing Entity's premises). 'Symbol 1' commercial automobile liability coverage (and, if necessary, commercial umbrella liability insurance) including coverage for all owned, hired, and non-owned vehicles. The combined single limit per accident shall not be less than \$1,000,000.

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.** When specified as a required insurance coverage (see § 1 – Insurance Obligation, above) Commercial General Liability, Commercial Automobile Liability, and Pollution Liability Insurance shall include the State of Washington and all authorized *Purchasing Entities* (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 Agreement*, *Contractor* shall furnish to *Enterprise Services*, as evidence of the insurance coverage required by this *Cooperative 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, shall result in termination of this *Cooperative Purchasing Agreement*. **All policies**

and certificates of insurance shall include the ***Cooperative Purchasing Agreement*** number stated on the cover of this ***Cooperative Purchasing Agreement***. All certificates of Insurance and any related insurance documents shall be delivered to *Enterprise Services* via email sent to the email address set forth below :

Email: DESContractsTeamFir@des.wa.gov

Note: the Email Subject line must state:

Insurance Certificate: Cooperative Purchasing Agreement

No. 24283 Police Radar/Lidar

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 Entities* 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, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part 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 Agreement* number stated on the cover of this *Cooperative Purchasing 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 Agreement*.

* * * END OF INSURANCE REQUIREMENTS * * *

INCLUDED GOODS AND/OR SERVICES AND PRICING**GROUP A: SPEED ENFORCEMENT – 28% OFF MSRP**

Line #	Product	Product ID	Contract Price	Delivery Days ARO
In-Car RADAR				
1.	Eagle II Single KA Band Radar	CRS 36	\$ 1,501.63	30 days
2.	Eagle II Dual KA Band Radar	CRS 39	\$ 1,917.66	30 days
3.	Golden Eagle II Single KA Band Radar	CRS 54	\$ 1,877.56	30 days
4.	Golden Eagle II Dual KA Band Radar	CRS 57	\$ 2,263.53	30 days
5.	Directional Golden Eagle II Single KA Band Radar	CRS 825	\$ 2,388.84	30 days
6.	Directional Golden Eagle II Dual KA Band Radar	CRS 826	\$ 2,794.85	30 days
7.	Raptor Single K Band Radar with Same Lane	CRS 831	\$ 1,441.48	30 days
8.	Raptor Dual K Band Radar with Same Lane	CRS 833	\$ 1,667.04	30 days
9.	Raptor Single KA Band Radar with Same Lane	CRS 847	\$ 1,731.20	30 days
10.	Raptor Dual KA Band Radar with Same Lane	CRS 849	\$ 2,142.22	30 days
11.	Eagle 3 Single KA Band Radar	CRS 3002	\$ 2,088.09	30 days
12.	Eagle 3 Dual KA Band Radar	CRS 3003	\$ 2,839.96	30 days
Handhelds				
13.	Falcon HR Stationary Radar with Fastest	CRS 7000	\$ 814.91	45 days
14.	Directional Talon II Stationary Radar with Fastest	CRS 1670	\$ 1,416.41	45 days
LASER Products				
15.	LaserCam 4 Lidar with Carrying Case	CRS 2100	\$ 6,559.24	45 days
16.	ProLaser 4 Lidar with Carrying Case	CRS 2000	\$ 2,328.69	45 days

GROUP B: SPEED ADVISORY SYSTEMS -28% OFF MSRP

Line #	Product	Product ID	Contract Price	Delivery Days ARO
Pole Mounted Displays				
1.	PMD 18	CRS 1806	\$ 3,503.28	60 days
2.	PMD 12	CRS 5102	\$ 3,083.49	60 days
3.	PMD 12 w/50W Solar	CRS 5104	\$ 3,651.84	60 days
4.	PMD 12 w/ AC Power	CRS 5105	\$ 3,065.38	30 days
RADAR Messaging Displays				
5.	VMS Model I Autonomous	CRS 1508	\$ 17,543.75	60 days
6.	VMS Model II Autonomous	CRS 1509	\$ 15,288.13	60 days
7.	VMS Model III Autonomous	CRS 1510	\$ 14,430.99	60 days
8.	VMS Model IV Autonomous	CRS 1506	\$13,830.49	60 days
9.	VMS HT Autonomous	CRS 1514	\$ 16,636.49	60 days
10.	VMS Model I - No Solar	CRS 1511	\$ 16,636.49	60 days
11.	VMS Model II - No Solar	CRS 1512	\$ 15,288.13	60 days
12.	VMS Model III - No Solar	CRS 1513	\$ 14,430.99	60 days
RADAR Speed Trailers				
13.	SMART 12 Trailer	CRS 5002	\$ 5,764.38	75 days
14.	SMART 18 Trailer	CRS 1800	\$ 9,241.35	75 days
15.	SMART 18+ Trailer	CRS 1801	\$ 9,819.49	75 days
16.	SMART 18 HP+ Trailer	CRS 1805	\$ 12,024.99	75 days
17.	SMART 18 Camera Ready Trailer	CRS 1802	\$ 11,228.00	75 days
Traffic Data Collection				
18.	StealthStat II	CRS 5200	\$ 2,902.24	45 days

DATA SECURITY REQUIREMENTS

- (a) **SECURITY COMPLIANCE.** Where required, Contractor is responsible for establishing an information security program and maintaining physical, technical, administrative, and organizational safeguards, that comply with: (a) applicable industry standards and guidelines; (b) American Institute of Certified Public Accountants (AICPA) System and Organization Controls (SOC) 1; and (c) Washington State Office of Chief Information Officer (OCIO) Policy 141.10 – *Securing Information Technology Assets Standards* located at <https://ocio.wa.gov/policy/securing-information-technology-assets-standards>.
- (b) **ANNUAL SECURITY CERTIFICATIONS.** Where required, Contractor will, at the commencement of this Contract and annually thereafter provide Enterprise Services the following reports and certifications: (a) AICPA Statement of Standards for Attestation Engagement (SSAE) No. 18 SOC 1 Type II fiscal year cycle audit report; (b) SOC 2 Type I report in accordance with AICPA AT 101; and (c) attestation that Contractor's Services are in compliance with OCIO Security Policy 141.10 – *Securing Information Technology Assets Standards*. Enterprise Services may accept, at its sole discretion, alternative reports, audits or reporting formats which Enterprise services determines to be equivalent or better to the reports and certifications described herein.
- (c) **DATA BREACH.** Where required, Contractor must have an incident response process that follows National Institute of Standards and Technology (NIST) of Standards and Technology (NIST) standards and includes breach detection, breach notification and breach response. Upon discovery or reasonable belief of any access, destruction, loss, theft, use or disclosure of Enterprise Services' Data by an unauthorized party ("Data Breach"), Contractor shall notify Enterprise Services by the fastest means available and also in writing. Contractor shall provide such notification within forty-eight (48) hours after Contractor reasonably believes there has been such a Data Breach. Contractor's notification shall identify:
- 1) The nature of the Data Breach;
 - 2) The Data accessed, used or disclosed;
 - 3) The person(s) who accessed, used, disclosed and/or received Data (if known);
 - 4) What Contractor has done or will do to quarantine and mitigate the Data Breach; and
 - 5) What corrective action Contractor has taken or will take to prevent future Data Breaches.

Contractor shall quarantine the Data Breach, ensure secure access to Data, and restore Services as needed to comply with terms and conditions of this Contract. Contractor shall conduct an investigation of the Data Breach and shall share the report of the investigation with Enterprise Services.

In the event of the Data Breach, Contractor agrees to comply with all applicable state and federal statutory provisions, including but not limited to RCW 19.255.010 and [RCW 42.56.590](#). Where notifications are required to the public or regulators, Contractor shall coordinate and cooperate with Enterprise Services in the development of a communication plan, and promptly and at no cost, provide advance copies of any notifications for Enterprise Services review before disseminating. If a Data Breach occurs and is found to be the result of Contractor's acts, omissions or negligence, Contractor shall assume complete responsibility for notification of affected parties, and be liable for all associated costs incurred by Enterprise Services in responding to or recovering from the Data Breach.

- (d) **TECHNICAL EXAMINATION AND AUDIT.** Upon advance written request, Contractor agrees that Enterprise Services or its designated representative shall have reasonable access to Services purchased by Enterprise Services under this contract, its operational documentation, records and databases, including online inspections. The online inspection shall allow Enterprise Services, its authorized agents, or a mutually acceptable third party hired by Enterprise Services, to test that controls are in place and working as intended. Tests may include, but not be limited to, the following:
- 1) Operating system/network vulnerability scans;
 - 2) Web application vulnerability scans;
 - 3) Database application vulnerability scans; and

- 4) Any other scans to be performed by Enterprise Services or representatives on behalf of Enterprise Services.

Contractor shall allow Enterprise Services reasonable access to Services security logs, latency statistics, and other related Services security data that affect this Contract and Enterprise Services' Data, at no cost to Enterprise Services. After any significant Data loss, specific to data stored within the Services platform, or as a result of any disaster or catastrophic failure, Contractor will at its expense have an independent, industry-recognized third party perform an information security audit. This does not apply to data loss resulting from interruptions in the Services stemming from Enterprise Services' computers, network hardware, internet connectivity, or other elements owned or controlled by Enterprise Services that are reasonably required to use Services. The audit results shall be shared with Enterprise Services within seven (7) days of Contractor's receipt of such results. Upon Contractor receiving the results of the audit, Contractor will provide Enterprise Services with written evidence of planned remediation within thirty (30) days and promptly modify its security measures in order to meet its obligations under this Contract.

24823 Kustom Signals Coop. Purchasing Agreement

Final Audit Report

2024-08-06

Created:	2024-08-05
By:	Brad Strinfellow (Brad.Stringfellow@des.wa.gov)
Status:	Signed
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