

Participating Addendum
PSX #23PSX0229

This Participating Addendum is made by and between the State of Connecticut acting by its Department of Administrative Services (“DAS” or “Participating Entity”), in accordance with sections 4a-2, 4d-2 and 4a-53 of the Connecticut General Statutes, and Laser Technology, Inc. (“Contractor”).

The Contractor and DAS agree as follows:

1. DAS and the Contractor shall be bound by the terms of a certain National Association of State Procurement Officials (“NASPO”) master agreement number 24823 entered into between the Contractor and State of Washington Enterprise Services dated September 1, 2024 (the “Master Agreement”) for the purchase of speed enforcement and accident and crime scene reconstruction products and related services (the “Deliverables”).
2. The Master Agreement, attached to this Participating Addendum as Exhibit 1 and as modified by this Participating Addendum, binds DAS and Contractor, for purposes of enabling DAS to contract for the Deliverables and not to contract for any other purpose.
3. The Contractor and DAS are not bound to any modifications to the Master Agreement dated after the date of this Participating Addendum.
4. For purposes of this Participating Addendum, references in the Master Agreement to Washington or Enterprise Services shall be interpreted to mean DAS.
5. Order of Precedence:
 - A. This Contract and the Master Agreement shall be read to be consistent and complementary. Any ambiguity, conflict or inconsistency between them shall be resolved by giving priority to this Contract.
 - B. To the extent that any provisions in the Master Agreement and this Contract address the same or substantially the same subject matter, the provisions in this Contract shall prevail and replace, in their entirety, the provisions in the Master Agreement addressing the same or substantially the same subject matter. To the extent any provisions in the Master Agreement are titled the same or similarly titled as a provision in this Contract, the provisions in this Contract replace, in their entirety, the same or similarly titled provisions in the Master Agreement.
 - C. All terms listed or referenced in any solicitation documents or in the Contractor’s response to any solicitation documents are excluded from this Contract.

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- D. All other terms in the Master Agreement not specifically deleted or modified remain in full force and effect as to the Contractor, DAS and the Client Agency.
6. The following sections of the Master Agreement are deleted:
- a. Section 18 Dispute Resolution
 - b. Section 19.9 Limitation on Damages
 - c. Section 21.18 Attorney's Fees
7. The Contractor shall comply with the Connecticut Standard Terms, which are attached as Exhibit 2. As used in this Participating Addendum, the capitalized word "Contract" is deemed to refer to this Participating Addendum and its exhibits.
8. To the extent that DAS or the Client Agency fails to meet its obligations under this Participating Addendum, the Contractor's exclusive remedies will be to seek redress in accordance with applicable Connecticut law, including the claims commissioner process set forth in Chapter 53 of the Connecticut General Statutes concerning claims against the State.
9. Nothing in the Master Agreement as modified by this Participating Addendum shall be construed as a modification, compromise or waiver by DAS or the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State of Connecticut or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Master Agreement as modified by this Participating Addendum . To the extent that this section conflicts with any other section in the Master Agreement, this section shall govern.
10. Any Purchasing Entity or Client Agency may issue purchase orders against this Participating Addendum. "Purchasing Entity" or "Client Agency" means any department, commission, board, bureau, agency, institution, public authority, office, council, association, instrumentality or political subdivision of the State of Connecticut, non-profit organization organized in the State of Connecticut and any entity identified in Conn. Gen. Stat. Sec. 4a-54, as applicable, who is authorized and chooses to make purchases under, and pursuant to the terms and conditions of, this Participating Addendum.
11. Primary Contacts
- Participating Entity
- Name: State of Connecticut, Department of Administrative Services, Procurement Division
- Address: 450 Columbus Boulevard, Suite 1202, Hartford, CT 06103

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Contact: Marcie Wilson

Telephone: 860-713-5622

Email: Marcie.Wilson@CT.gov

Contractor:

Name: Laser Technology, Inc.

Address: 6912 South Quentin Street, Suite A, Centennial, CO 80112

Contact: Cheri Miller

Telephone: 303-649-1000

Email: cmiller@lasertech.com

12. Orders

Any order placed by a Client Agency shall be deemed to be a sale under and governed by the prices and terms of Exhibit 1, Master Agreement, and this Participating Addendum.

Client Agencies shall include the references to "Master Agreement No. 24823" and "DAS Contract No. 23PSX0229" in all Purchase Orders.

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The parties are executing this Participating Addendum on the date below their respective signatures.

Laser Technology, Inc.

By: 
Printed Name: Cheri Miller
Title: Date: 2/11/25

STATE OF CONNECTICUT
DEPARTMENT OF ADMINISTRATIVE SERVICES

By: *Marcie Wilson*
Printed Name: Marcie Wilson
Title: Contract Specialist
State of Connecticut
Date: 2-18-25

APPROVED AS TO FORM
STATE OF CONNECTICUT
Office of the Attorney General

BY: Jeffrey Zeman 
Digitally signed by Jeffrey Zeman
Date: 2025.03.05 09:23:32 -05'00'

Name: Jeffrey Zeman
Title: Assistant Attorney General
Date:

Exhibit 1 – Master Agreement



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

Laser Technology, Inc.

September 1, 2024

COOPERATIVE PURCHASING AGREEMENT

No. 24823

POLICE RADAR/LIDAR SPEED ENFORCEMENT & ACCIDENT SCENE RECONSTRUCTION

FOR

CONTRACT CATEGORY ONE, Group A3 – Speed Enforcement & Group C1 –Accident and Crime Scene Re-Construction

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 Laser Technology, Inc., a Delaware 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

Laser Technology, Inc.

Attn: Cheri Miller
Tel: 303 649 1000
Email: cmiller@lasertech.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

Laser Technology, Inc.

Attn: Roosevelt Rogers
Address: 6912 S. Quentin Street,
Suite A
Centennial, CO 80112
Email: cmiller@lasertech.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

LASER TECHNOLOGY, INC.
A DELAWARE CORPORATION

By: *Elena McGrew*
Elena McGrew

By: *Cheri Miller*
Cheri Miller

Its: Procurement Manager

Its: Contract/Bid Coordinator

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*.

INCLUDED GOODS AND/OR SERVICES AND PRICING

GROUP A: SPEED ENFORCEMENT

Line #	Product Name/Description	Manufacturer	MSRP	% Off MSRP	Contract Price	Delivery Days ARO
<i>Product Type: Radar HandHeld</i>						
1	TruSpeed	Laser Technology, Inc.	\$ 2,095.00	14.3%	\$1,795.42	30
2	TruSpeed LR	Laser Technology, Inc.	\$ 2,695.00	18.9%	\$2,185.65	30
3	TruSpeed S	Laser Technology, Inc.	\$ 1,595.00	10.0%	\$1,435.50	30
4	TruSpeed SXB	Laser Technology, Inc.	\$ 2,195.00	10.0%	\$1,975.50	30
5	LTI TruVision	Laser Technology, Inc.	\$ 6,995.00	10.0%	\$6,295.50	30
6	OPTION,DBC,TRUCAM II/TRUVISION	Laser Technology, Inc.	\$ 495.00	20.2%	\$395.01	30

GROUP C: ACCIDENT SCENE RE-CONSTRUCTION

Line #	Product Name/Description	Manufacturer	MSRP	% Off MSRP	Evaluated Price	Delivery Days ARO
1	TruPulse 200X Range-Range Mapping Kit.					
1a	TruPulse 200x - Laser rangefinder	Laser Technology, Inc.	\$1995	14%	\$1,710.11	30
1b	Total Pro AI Kit – Bipod and staff, and laser mounting bracket	Laser Technology, Inc.	\$900	6%	\$846.00	30
1c	Quickmap 3D data collector Data Collector Basic Pkg – Tablet, tablet mounting hardware, and software license. (Android or IOS accepted)	Laser Technology, Inc.	\$1875	6%	\$1,762.50	30
2	TruSpeed SXB Range-Range Mapping Kit.					
2a	TruSpeed SXB – Speed Laser	Laser Technology, Inc.	\$2195	10%	\$1,975.50	30
2b	Total Pro AI Kit – Bipod and staff, and laser mounting bracket	Laser Technology, Inc.	\$900	6%	\$846.00	30
2c	Quickmap 3D data collector Data Collector Basic Pkg – Tablet, tablet mounting hardware, and software license. (Android or IOS accepted)	Laser Technology, Inc.	\$1875	6%	\$1,762.50	30

GROUP C: ACCIDENT SCENE RE-CONSTRUCTION ADDITIONAL PRODUCTS

Line #	Product Name/Description	Manufacturer	Product Number (SKU)	MSRP	% Off MSRP	Contract Price	Delivery Days ARO
Mapping Kit							
1	ACCIDENT/CRIME SCENE INVESTIGATION KIT FOR TRUANGLE	Laser Technology, Inc.	7035070	\$1,305	6%	\$1,226.70	30
Mapping Software							
2	QUICKMAP 3D ANDROID SOFTWARE	Laser Technology, Inc.	3204724-E	\$595	6%	\$559.30	30
3	QUICKMAP 3D iOS SOFTWARE	Laser Technology, Inc.	3210012-E	\$595	6%	\$559.30	30
4	SPEEDSTAT SOFTWARE FOR WINDOWS	Laser Technology, Inc.	3204746-E	\$200	6%	\$188.00	30
5	FARO ZONE 2D INCIDENT MAPPING SOFTWARE	Laser Technology, Inc.	3204743-E	\$210	6%	\$197.40	30
6	FARO ZONE 3D PRO INCIDENT MAPPING SOFTWARE	Laser Technology, Inc.	3204758-E	\$3,500	6%	\$3,290.00	30
7	FARO ZONE SINGLE USER HARD LOCK	Laser Technology, Inc.	3204748-E	\$220	6%	\$206.80	30
8	FARO ZONE NETWORK USER SOFT LOCK	Laser Technology, Inc.	3204755-E	\$440	6%	\$413.60	30
Other							
9	MAPPING TRAINING, 2 DAY, USA ONLY	Laser Technology, Inc.	3014653	\$2,195	10.7%	\$1,960.14	30
10	MAPPING TRAINING, 1 DAY, USA ONLY	Laser Technology, Inc.	3014656	\$1,195	8.3%	\$1,095.82	30
11	MAPSTAR TRUANGLE	Laser Technology, Inc.	7006000	\$1,450	11%	\$1,290.50	30

PARTS & ACCESSORIES

Group	Manufacturer	Product Type	Product Name/Description	Product Code (SKU)	MSRP	% Off MSRP	Contract Price
A	Laser Technology, Inc.	Accessories	TRIPOD YOKE MOUNT (TRUSPEED/TRUCAM II/TRUVISION)	7024785	\$85.00	10%	\$76.50
A	Laser Technology, Inc.	Accessories	TRUSERIES 3.5X MAGNIFIER W/POUCH	7035187	\$125.00	10%	\$112.50
A	Laser Technology, Inc.	Accessories	36" LTI 4-PIN TO DB9 DOWNLOAD CABLE	7053038	\$70.00	10%	\$63.00
A	Laser Technology, Inc.	Accessories	TRUSPEED SXB FOLIAGE FILTER W/TETHER	7035142	\$75.00	10%	\$67.50
A	Laser Technology, Inc.	Accessories	NIGHT MODE	3204742	\$495.00	20%	\$395.01
A	Laser Technology, Inc.	Accessories	TRUCAM II/TRUVISION HIGH CAPACITY BATTERY PACK	7025026	\$200.00	10%	\$180.00
A	Laser Technology, Inc.	Accessories	IR ILLUMINATOR KIT W/BACKET INSTALLED	7035195	\$620.00	10%	\$558.00
A	Laser Technology, Inc.	Accessories	TRUCAM II/TRUVISION DB9 SERIAL CABLE ASSEMBLY	7054659	\$95.00	10%	\$85.50
C	Laser Technology, Inc.	Accessories	FIXED TRIBRACH ADAPTER	3004670	\$47.25	10%	\$42.53
C	Laser Technology, Inc.	Accessories	TRIBRACH W/LASER PLUMMET	3005013	\$215.00	10%	\$193.50
A	Laser Technology, Inc.	Spare Parts	TRUSPEED S SERIES PELICAN HARD CASE	7035160	\$85.00	10%	\$76.50
A	Laser Technology, Inc.	Spare Parts	TRUVISION PELICAN HARD CASE	7035177	\$265.00	10%	\$238.50
A	Laser Technology, Inc.	Spare Parts	20" LTI 4-PIN (STRAIGHT) TO LTI 4-PIN (RIGHT ANGLE)	4824163	\$47.25	10%	\$42.53
C	Laser Technology, Inc.	Spare Parts	5/8-11 TO 1/4-20 INSERT (FOR TRUANGLE)	1144725	\$15.00	10%	\$13.50
C	Laser Technology, Inc.	Spare Parts	5/8-11 TO 3/8-16 INSERT (FOR TRUANGLE)	1144726	\$15.00	10%	\$13.50
C	Laser Technology, Inc.	Spare Parts	BRASS 5/8 TO 1/4-20 ADAPTER	3003021	\$35.00	10%	\$31.50
C	Laser Technology, Inc.	Spare Parts	BI-POD LEGS	3504272	\$210.00	10%	\$189.00
C	Laser Technology, Inc.	Spare Parts	CUSTOM DIGI-CAM TRIPOD	3504674	\$295.00	10%	\$265.50
C	Laser Technology, Inc.	Spare Parts	STROBE PRISM ASSY W/BATTERIES PKG	7035107	\$325.00	10%	\$292.50

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 Laser Tech Coop. Purchasing Agreement

Final Audit Report

2024-08-13

Created:	2024-08-12
By:	Brad Strinfellow (Brad.Stringfellow@des.wa.gov)
Status:	Signed
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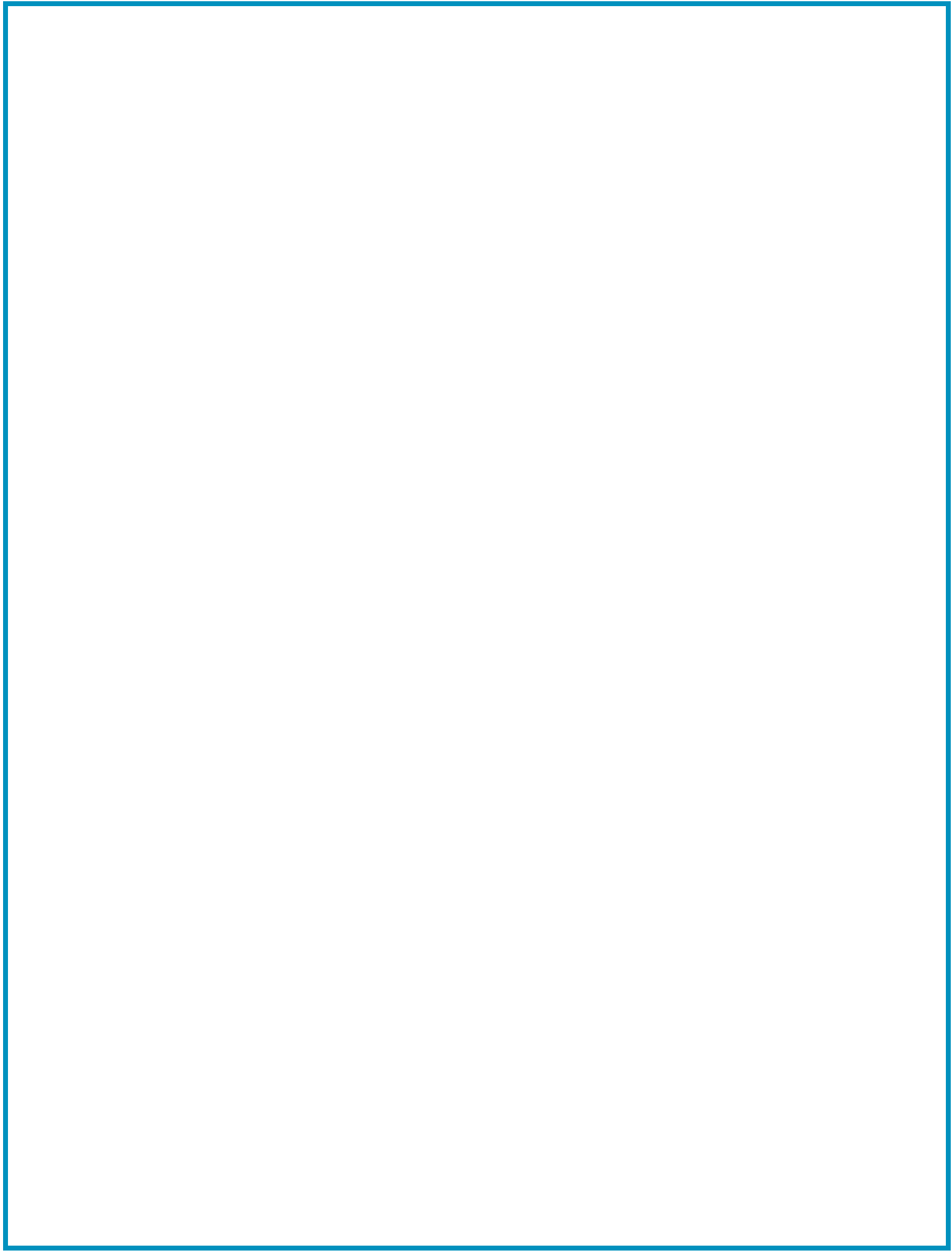


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1. Definitions

a. Acceptance

Determination made by the Client Agency upon successful User Acceptance Test that the Deliverable has satisfied the Acceptance Criteria itemized in the SOW, performs to the Specifications, and fulfills the business and technical requirements of this Contract.

b. Acceptance Criteria

Client Agency requirements for Deliverable Acceptance.

c. Acceptance Date

The date the Client Agency accepts a Deliverable or System in accordance with this Contract.

d. Business Day

A day of the week recognized by the Client Agency as a workday, exclusive of Saturdays, Sundays and any State or federal holiday.

e. Claims

All actions, suits, claims, demands, investigations, and proceedings of any kind, open, pending, or threatened, whether mature, un-matured, contingent, known or unknown, at law or in equity in any forum.

f. Client Agency Data

Any data or information of the Client Agency that Contractor receives or creates by any means and in any form in connection with this Contract, Deliverables or Performance, including data and information with respect to any one or more of the following: databases, systems, operations, facilities, and regulatory compliance.

g. Confidential Information

Any name, number or other information that may be used, alone or in conjunction with any other information, to identify a specific individual including, but not limited to, such individual's name, date of birth, mother's maiden name, motor vehicle operator's license number and residential address, Social Security number, employee identification number, employer or taxpayer identification number, alien registration number, government passport number, health insurance identification number, demand deposit account number, savings account number, credit card number, debit card number or unique biometric data such as fingerprint, voice print, retina or iris image, or other unique physical representation. Without limiting the foregoing, Confidential Information shall also include any information that DAS classifies as "confidential" or "restricted." Confidential Information shall not include information that may be lawfully obtained from publicly available sources or from federal, state, or local government records which are lawfully made available to the general public.

h. Confidential Information Breach

Generally, an instance where an unauthorized person or entity accesses Confidential Information in any manner, including but not limited to the following occurrences: (1) any Confidential Information that is not encrypted or protected is misplaced, lost, stolen or in any way

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compromised; (2) one or more third parties have had access to or taken control or possession of any Confidential Information that is not encrypted or protected without prior written authorization from the State; (3) the unauthorized acquisition of encrypted or protected Confidential Information together with the confidential process or key that is capable of compromising the integrity of the Confidential Information; or (4) if there is a substantial risk of identity theft or fraud to the Client Agency, the Contractor, or State.

i. Contractor Parties

Contractor's members, principals, directors, officers, shareholders, partners, managers, representatives, agents, servants, consultants, employees or any one of them or any other person or entity with whom the Contractor is in privity or with whom Contractor contracts to Perform under this Contract in any capacity.

j. Corrective Action Plan, or CAP

A detailed written plan produced by Contractor at the request of the Client Agency to correct or resolve a Breach identified by the Client Agency in accordance with the Breach section of this Contract.

k. Deliverable

Each (1) Good, Service, Improvement, Materials, Documentation, System, process or information of any type, whether stand-alone or intended as part of the integration of the System with existing hardware or software of the State, and whether or not used for administrative, maintenance, consulting, training, data warehousing, operations, support, hosting, or fulfillment of Performance; and (2) warranty of a Deliverable(s) that is listed in the Pricing Schedule or provided by Contractor as an element of Contractor's overall approach and solution to the requirements of this Contract. Any one of them or a combination of any of them may be developed or produced by Contractor or by a third party as a supplier or subcontractor to Contractor.

l. Deliverables Implementation Schedule

A schedule for Performance and delivery, including phases, the Go-Live Date, dates of completion, and the procedures for Acceptance by the Client Agency, as applicable or appropriate, for specific Deliverables to be provided pursuant to this Contract, or Statement of Work, as applicable, subject to extension by the Client Agency in accordance with this Contract or Statement of Work, as applicable.

m. Documentation

All Specifications; all technical, systems and user reference manuals; all System documentation related to each component of the System, Deliverables and processes; and any Improvements to any of them.

n. Effective Date

The date that the Connecticut Attorney General's Office approves this Contract, as evidenced by its signature.

o. Force Majeure Event

Strikes, lockouts, riot, sabotage, rebellion, insurrection, acts of war, acts of terrorism, failure of or inadequate permanent power, fire, flood, earthquake, epidemics, natural disasters, and acts of

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God.

p. Goods

All things which are movable, including, but not limited to, supplies, materials, equipment, hardware, software, specially manufactured things, a component incorporated into another thing and things that are attached to real property and that may be severed from the real property without material harm to the things.

q. Improvement

Any Contractor changes, patches, corrections, repairs, replacements, additions, modifications, enhancements, updates, releases, revisions, error fixes, bug fixes or any new versions of Deliverables, or any combination of the foregoing, that are to be or may be provided as a Deliverable from time to time. An Improvement may serve any purpose. Improvements do not include upgrades to software for which Contractor charges its customers, or upgrades by a Licensor that is charging Contractor for such upgrade.

r. Licensor

The party who licenses all or any part of a Deliverable either to the State, in the case of the Contractor, or to the Contractor, in the case of a third-party provider.

s. Materials

Collectively, software programs, literary works, other works of authorship, documented specifications, designs, analyses, processes, methodologies, concepts, inventions, know-how, programs, program listings, program tools, Documentation, reports, drawings, data bases, spreadsheets, machine readable text, models and work product, whether tangible or intangible.

t. Perform

All acts and things of the Contractor and Contractor Parties, severally and collectively, that are necessary or appropriate to fulfill or accomplish this Contract fully, including the Deliverables and all other Contract obligations. The word "Perform" includes all parts of speech.

u. Performance Criteria

Operation of the Deliverables in compliance with all Specifications and Documentation and complying with the requirements of this Contract and a Statement of Work, as applicable.

v. Purchase Order

A written or electronic document that the Client Agency issues for one or more Deliverables in accordance with the terms of this Contract.

w. Records

All working papers and such other information and materials furnished or prepared by the Contractor in Performing including but not limited to, documents, data, plans, books, computations, drawings, specifications, notes, reports, records, estimates, summaries, memoranda and correspondence, kept or stored in any form.

x. Replacement Deliverable

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Any new Deliverable that replaces a previously accepted Deliverable.

y. Services

The labor or work, necessary or appropriate for the Contractor to Perform.

z. Site

Location(s) specified by the Client Agency where Deliverables are to be installed, Services rendered, or materials furnished.

aa. Specifications

Contractor's published technical and non-technical detailed descriptions of each Deliverable's capabilities, or intended use or both, as more fully set forth in this Contract or a Statement of Work, as applicable.

bb. Sprint

A set period of time during which a certain project task or activity is completed and then reviewed.

cc. State

The State of Connecticut, including DAS, the Client Agency and any office, department, board, council, commission, institution or other agency of the State.

dd. Statement of Work ("SOW")

Statement issued in connection with a Purchase Order for a Deliverable available under this Contract which sets forth all work and payment requirements for Contractor's Performance in connection with said Purchase Order.

ee. System

Contractor furnished or otherwise supplied Deliverables that collectively and in an integrated fashion fulfill the Performance Criteria and the business and technical requirements of this Contract or SOW, as applicable.

ff. Term

The original term of this Contract plus any extensions exercised under this Contract.

gg. Termination

An end to this Contract prior to the end of its Term.

hh. Title

All ownership, title, licenses, rights and interest, including, but not limited to, perpetual use, of and to the Deliverable.

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ii. Warranty Period

The twenty-four (24) month period for Goods and twelve (12) month period for Services commencing upon the Acceptance Date for the System or Deliverable.

2. P-Card (Purchasing Credit Card)

- a. Purchases may be made using the State of Connecticut Purchasing Card Program ("P-Card Program or P-Card") in accordance with sections 4-98(c) and 42-133ff(a) of the Connecticut General Statutes.
- b. Contractor shall be equipped to receive orders issued by the Client Agency using the P- Card Program. The Contractor shall be responsible for the credit card user-handling fee associated with P-Card Program purchases. The Contractor shall charge to the P-Card only upon acceptance of Goods delivered to the Client Agency or rendering of Services.
- c. The Contractor shall capture and provide to its merchant bank, Level 3 reporting at the line item level for all orders placed by MasterCard.
- d. Questions regarding the state of Connecticut P-Card Program may be directed to the Procurement Card Program Administrator at DAS.PCardAdmin@ct.gov.

3. Purchase Orders

- a. This Contract itself is not an authorization for the Contractor to begin Performance in any way. The Contractor may begin Performance only after it has received a duly issued Purchase Order against this Contract for Performance.
- b. The Client Agency shall issue a Purchase Order against this Contract directly to the Contractor and to no other party.
- c. All Purchase Orders shall be in written or electronic form, bear the Contract number (if any) and comply with all other State and Client Agency requirements, particularly the Client Agency's requirements concerning procurement. Purchase Orders issued in compliance with such requirements shall be deemed to be duly issued.
- d. A Contractor Performing without a duly issued Purchase Order in accordance with this Section does so at the Contractor's own risk.
- e. The Client Agency may, in its sole discretion, deliver to the Contractor any or all duly issued Purchase Orders via electronic means only, such that the Client Agency shall not have any additional obligation to deliver to the Contractor a "hard copy" of the Purchase Order or a copy bearing any hand-written signature or other "original" marking.

4. Delivery

- a. Delivery shall be made as ordered and in accordance with this Contract. Unless otherwise specified in this Contract, delivery shall be to a loading dock or receiving platform. The Contractor or Contractor's shipping designee shall be responsible for removal of Goods from the carrier and placement on the Client Agency loading dock or receiving platform. The receiving personnel of the Client Agency are not required to assist in this process. The decision of DAS as to reasonable compliance with delivery terms shall be final and binding. The burden of proof of proper receipt of the order shall rest with the Contractor.

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- b. In order for the time of delivery to be extended, the Client Agency must first approve a request for extension from the time specified in this Contract, such extension applying only to the particular item or shipment.
- c. Goods shall be securely and properly packed for shipment, according to accepted standard commercial practice, without extra charge for packing cases, baling or sacks. The containers shall remain the property of the Client Agency unless otherwise stated in this Contract.
- d. All risk of loss and damage to the Goods transfers to the Client Agency upon Title vesting in the Client Agency.

5. Waiver

- a. No waiver of any Breach of this Contract shall be interpreted or deemed to be a waiver of any other or subsequent Breach. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided in this Contract or at law or in equity.
- b. A party's failure to insist on strict performance of any provision of this Contract shall only be deemed to be a waiver of rights and remedies concerning that specific instance of Performance and shall not be deemed to be a waiver of any subsequent rights, remedies or Breach.

6. Emergency Standby for Deliverables

If any Federal or State official, having authority to do so, declares an emergency or the occurrence of a natural disaster within the State of Connecticut, DAS and the Client Agency may request the Goods and Services on an expedited and prioritized basis. Upon receipt of such a request the Contractor shall make all necessary and appropriate commercially reasonable efforts to reallocate its staffing and other resources in order to give primary preference to Performing this Contract ahead of or prior to fulfilling, in whole or in part, any other contractual obligations that the Contractor may have. The Contractor is not obligated to make those efforts to Perform on an expedited and prioritized basis in accordance with this paragraph if doing so will make the Contractor materially breach any other contractual obligations that the Contractor may have.

Contractor shall acknowledge receipt of any request made pursuant to this paragraph within 2 hours from the time that the Contractor receives it via Purchase Order or through a request to make an expedited or prioritized purchase through the State of Connecticut P-Card Program. If the Contractor fails to acknowledge receipt within 2 hours, confirm its obligation to Perform or actually Perform, as set forth in the Purchase Order or through the P-Card Program, then DAS and the Client Agency may procure the Performance from another source without further notice to Contractor and without creating any right of recourse at law or in equity against DAS or Client Agency.

7. Data: Access and Ownership

- a. Access to Contract and State Data

The Contractor shall provide to the Client Agency access to any data, as defined in Conn. Gen Stat. Sec. 4e-1, concerning this Contract and the Client Agency that are in the possession or control of the Contractor upon demand and shall provide the data to the Client Agency in a format prescribed by the Client Agency and the State Auditors of Public Accounts at no additional cost.

- b. Ownership of Data

- 1. All ownership, title, licenses, proprietary rights and interest (including, but not limited to, perpetual use) (for purposes of this Ownership of Data Section, collectively, "Title") of and to

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any and all data as defined in section 4e-1 of the Connecticut General Statutes, ("Data") that is uploaded, collected, stored, held, hosted, located or utilized by the Client Agency or Contractor and Contractor Parties directly or indirectly in connection with this Contract at all times is and will always remain vested in the State. At no time will Contractor have Title to such Data, wherever located.

2. At no cost to the State the Contractor and Contractor Parties shall, no later than fifteen (15) days after (i) receiving a written request from the Client Agency or (ii) Termination for any reason, deliver and transfer possession to the Client Agency all of the Data, in a format acceptable to the State.
3. At no cost to the State, the Contractor and Contractor Parties shall, no later than fifteen (15) days, unless otherwise mutually agreed to in writing by the Parties, after (i) receiving a written request from the Client Agency, (ii) receiving final payment from the Client Agency, or (iii) Termination for any reason, over-write and securely delete all of the Data, such that the Data will be expunged in a manner to make retrieval of the Data impossible.
4. The Contractor's failure to deliver and transfer possession of the Data to a duly authorized agent of the Client Agency shall constitute, without more, a de facto breach of this Contract. Consequently, the Contractor shall indemnify and hold harmless the Client Agency and the State, as appropriate, for any and all damages, costs and expenses associated directly or indirectly with such failure. The damages, costs and expenses shall include, but not be limited to, those resulting from any corresponding contracting for credit or identity protection services, or both, and from any subsequent non-State use of any Data. If Contractor Parties will Perform for any purpose under this paragraph, the Contractor represents and warrants that it shall cause each of the Contractor Parties to so Perform and that each has vested in the Contractor plenary authority to cause the Contractor Parties to Perform. For purposes of this Ownership of Data Section, "Perform" shall include, but not be limited to, the obligations relating to the sale, transfer of Title, removal and transfer of possession of the Data and indemnifying and holding harmless the Client Agency and the State. The Contractor on its own behalf and on behalf of the Contractor Parties shall also provide, no later than 30 days after receiving a request by the Client Agency, such information as the Client Agency may identify to ensure, in the Client Agency's sole discretion, compliance with the provisions of this Ownership of Data Section. This Ownership of Data Section survives Termination.

8. Change Order Within Scope

The Client Agency may, at any time, with thirty (30) calendar days' advance written notice to Contractor, request changes to the Deliverables that come within the scope of this Contract or the SOW, as applicable. Contractor shall not deny or delay approving the request. The request may include, but is not limited to, modifications or other changes required to correct System deficiencies, and changes required by new or amended State or federal laws and regulations or both. Contractor shall make any changes to the Deliverables that are required due to Deliverable deficiencies or failure in accordance with the requirements of this Contract, without charge. Contractor shall at its sole cost and expense conduct any investigation necessary to determine the source of the problem requiring the change. No additions or reductions in the Deliverables and prices for work completed in the Performance of any Purchase Order shall be permitted unless the Client Agency issues a change order in accordance with this Section.

9. Rejected Items; Abandonment

- a. The Contractor may deliver, cause to be delivered, or, in any other way, bring or cause to be brought, to any State premises or other destination, Goods, as samples or otherwise, and other supplies, materials, equipment or other tangible personal property. The State may, by written notice and in accordance with this Contract, direct the Contractor to remove any or all such

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Goods ("the "Rejected Goods") and any or all other supplies, materials, equipment or other tangible personal property (collectively, the "Contractor Property") from and out of State premises and any other location which the State manages, leases or controls. The Contractor shall remove the Rejected Goods and the Contractor Property in accordance with the terms and conditions of the written notice. Failure to remove the Rejected Goods or the Contractor Property in accordance with the terms and conditions of the written notice shall mean, for itself and all Contractor Parties, that:

1. they have voluntarily, intentionally, unconditionally, unequivocally and absolutely abandoned and left unclaimed the Rejected Goods and Contractor Property and relinquished all ownership, title, licenses, rights, possession and interest of, in and to (collectively, "Title") the Rejected Goods and Contractor Property with the specific and express intent of (A) terminating all of their Title to the Rejected Goods and Contractor Property, (B) vesting Title to the Rejected Goods and Contractor Property in the State of Connecticut and (C) not ever reclaiming Title or any future rights of any type in and to the Rejected Goods and Contractor Property;
 2. there is no ignorance, inadvertence or unawareness to mitigate against the intent to abandon the Rejected Goods or Contractor Property;
 3. they vest authority, without any further act required on their part or the State's part, in the Client Agency and the State to use or dispose of the Rejected Goods and Contractor Property, in the State's sole discretion, as if the Rejected Goods and Contractor Property were the State's own property and in accordance with law, without incurring any liability or obligation to the Contractor or any other party;
 4. if the State incurs any costs or expenses in connection with disposing of the Rejected Goods and Contractor Property, including, but not limited to, advertising, moving or storing the Rejected Goods and Contractor Property, auction and other activities, the State shall invoice the Contractor for all such cost and expenses and the Contractor shall reimburse the State no later than thirty (30) days after the date of invoice; and
 5. they do remise, release and forever discharge the State and its employees, departments, commissions, boards, bureaus, agencies, instrumentalities or political subdivisions and their respective successors, heirs, executors and assigns (collectively, the "State and Its Agents") of and from all Claims which they and their respective successors or assigns, jointly or severally, ever had, now have or will have against the State and Its Agents arising from the use or disposition of the Rejected Goods and Contractor Property.
- b. The Contractor shall secure from each Contractor Party, such document or instrument as necessary or appropriate as will vest in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to give full effect to all of the terms and conditions of this Section. The Contractor shall provide, no later than fifteen (15) days after receiving a request from the State, such information as the State may require to evidence, in the State's sole determination, compliance with this Section.

10. Replacement Deliverables

The Client Agency may order any Replacement Deliverables then available. Replacement Deliverables are subject to evaluation and Acceptance as set forth in this Contract.

11. Maintenance and Support

- a. Contractor represents and warrants that after Acceptance of the System by the Client Agency and throughout the duration of the Warranty Period, Contractor shall provide the following

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maintenance and support services at no additional cost:

1. Assistance in accordance with the requirements of this Contract; or a SOW as applicable;
 2. Improvements related to any and all Deliverables; and
 3. Improvements to any and all Deliverables to cause each Deliverable to operate under new versions or releases of the operating system(s), database system(s), application servers or report servers that comprise the Client Agency's computer operating environment.
- b. Upon expiration of the Warranty Period, maintenance and support and on-going services shall be provided by the Contractor on an annual basis if requested by the Client Agency.
- c. Provided the Client Agency is current on its maintenance and support and on-going services payments, the Contractor shall provide Services itemized in a SOW in addition to the following:
1. Assistance in accordance with the requirements this Contract; or a SOW as applicable;
 2. Improvements related to any and all Deliverables; and
 3. Improvements to any and all Deliverables to cause each to operate under new versions or releases of the operating system(s), database system(s), application servers or report servers that comprise the Client Agency's computer operating environment at no additional cost.
- d. Contractor shall provide a complete list of any platform requirements and specifications to provide technical support services.
- e. The Client Agency shall provide Contractor full and free access to each Deliverable for the limited purpose of providing Services required under this Contract, subject to the Client Agency's and the applicable Site's access policies.

12. State Comptroller's Specifications

In accordance with Conn. Gen. Stat. § 4d-31, this Contract is deemed to have incorporated within it, and Contractor shall deliver the Deliverables in compliance with, all specifications established by the State Comptroller to ensure that all policies, procedures, processes and control systems, including hardware, software and protocols, which are established or provided by Contractor or Contractor Parties, are compatible with and support the State's core financial systems, including but not limited to, accounting, payroll, time and attendance, and retirement systems.

13. Working and Labor Synergies

The Contractor shall be responsible for maintaining a tranquil working relationship between the Contractor work force, the Contractor Parties, their work force, State employees, and any other contractors present at the work site. The Contractor shall quickly resolve all labor disputes which result from the Contractor's or Contractor Parties' presence at the work site, or other action under their control. Labor disputes shall not be deemed to be sufficient cause to allow the Contractor to make any claim for additional compensation for cost, expenses or any other loss or damage, nor shall those disputes be deemed to be sufficient reason to relieve the Contractor from any of its obligations under this Contract.

14. Background Checks

The Contractor and Contractor Parties shall submit to and incur the cost of fingerprint supported

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federal and state criminal history background checks as may be required by the State, the State of Connecticut Department of Emergency Services and Public Protection, or as provided for in any State document that governs procedures for background checks. The Contractor and Contractor Parties shall cooperate fully as necessary or reasonably requested with the State and its agents in connection with such background checks.

15. Other Warranties

Contractor warrants that:

- a. Each Deliverable installed by Contractor, an authorized agent of Contractor or installed by the Client Agency in accordance with Contractor's instructions, will function according to the Specifications and Performance Criteria on the Acceptance Date for such Deliverable;
- b. During the Warranty Period, Contractor shall make Improvements to the Deliverable as necessary or appropriate to maintain ongoing reliability according to Performance Criteria as applicable; and
- c. Contractor shall provide each Deliverable within the time frames established under this Contract or a SOW, as applicable.
- d. Contractor does not exclude or modify the implied warranties of merchantability and fitness for a particular purpose concerning the Deliverables.

16. System Warranties

- a. Contractor represents and warrants that the System shall conform to this Contract, the Specifications, Performance Criteria, Documentation and as applicable, the SOW and that it shall be free from defects in material and workmanship upon the Acceptance Date of the System and through the Warranty Period, unless this Contract is Terminated earlier.
- b. During the Warranty Period, Contractor shall, at no charge, make Improvements to the Deliverables as necessary to maintain ongoing System reliability in accordance with the Specifications, Performance Criteria, Documentation, and as applicable, the SOW.

17. Contractor Guaranties

- a. Contractor shall:
 1. Perform fully under this Contract;
 2. Guarantee the Goods or Services against defective material or workmanship and to repair any damage or marring occasioned in transit or, at the Client Agency's option, replace them;
 3. Furnish adequate protection from damage for all work and to repair damage of any kind, for which its workers are responsible, to the Site, Goods, the Contractor's work or that of Contractor Parties;
 4. With respect to the provision of Services, pay for all permits, licenses and fees and give all required or appropriate notices.
 5. Adhere to all Contractual provisions ensuring the confidentiality of Records that the Contractor has access to and are exempt from disclosure under the State's Freedom of Information Act or other applicable law; and

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18. Representations and Warranties Regarding Motor Vehicles

If in the course of Performance or in any other way related to this Contract the Contractor at any time uses or operates "motor vehicles," as that term is defined by Conn. Gen. Stat. §14-1 (including, but not limited to such services as snow plowing, sanding, hauling or delivery of materials, freight or merchandise, or the transportation of passengers), the Contractor, represents and warrants for itself and the Contractor Parties, that:

- a. it is the owner of record or lessee of record of each such motor vehicle used in the Performance of this Contract, and each such motor vehicle is duly registered with the Connecticut Department of Motor Vehicles ("ConnDMV") in accordance with the provisions of Chapter 246 of the Connecticut General Statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV, for any reason or cause. If such motor vehicle is not registered with ConnDMV, then it shall be duly registered with another state or commonwealth in accordance with such other state's or commonwealth's applicable statutes. Each such registration shall be in valid status, and shall not be expired, suspended or revoked by such other state or commonwealth for any reason or cause.
- b. each such motor vehicle shall be fully insured in accordance with the provisions of Sections 14-12b, 14-112 and 38a-371 of the Connecticut General Statutes, as amended, in the amounts required by the said sections or in such higher amounts as have been specified by ConnDMV as a condition for the award of this Contract, or in accordance with all substantially similar provisions imposed by the law of the jurisdiction where the motor vehicle is registered.
- c. each Contractor Party who uses or operates a motor vehicle at any time in the Performance of this Contract shall have and maintain a motor vehicle operator's license or commercial driver's license of the appropriate class for the motor vehicle being used or operated. Each such license shall bear the endorsement or endorsements required by the provisions of Section 14-36a of the Connecticut General Statutes, as amended, to operate such motor vehicle, or required by substantially similar provisions imposed by the law of another jurisdiction in which the operator is licensed to operate such motor vehicle. The license shall be in valid status, and shall not be expired, suspended or revoked by ConnDMV or such other jurisdiction for any reason or cause.
- d. each motor vehicle shall be in full compliance with all of the terms and conditions of all provisions of the Connecticut General Statutes and regulations, or those of the jurisdiction where the motor vehicle is registered, pertaining to the mechanical condition, equipment, marking and operation of motor vehicles of such type, class and weight, including, but not limited to, requirements for intrastate carriers with motor vehicles having a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of 18,001 pounds or more or interstate carriers with motor vehicles having a gross vehicle weight rating or gross combination weight rating or gross vehicle weight or gross combination weight of 10,001 pounds or more otherwise described by the provisions of Conn. Gen. Stat. § 14-163c(a) and all applicable provisions of the Federal Motor Carrier Safety Regulations, as set forth in Title 49, Parts 382 to 399, inclusive, of the Code of Federal Regulations. If the Contractor is a "motor carrier," as that term is defined in section 49 CFR Part 390, and the Contractor is subject to an order issued by the Federal Motor Carrier Safety Administration that prohibits such Contractor from operating or allowing the operation of a motor vehicle, then the Contractor shall comply fully with such order. In addition, if a motor vehicle or its operator is declared out of service pursuant to Conn. Gen. Stat. § 14-163c(d)(4), then the Contractor shall not operate or allow the operation of that motor vehicle and shall not allow the operator to operate a motor vehicle while the respective subject out-of-service order is in effect.

19. Sales and Use Report

Contractor shall deliver a sales and use report on a quarterly basis, in form and content as pre-

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approved by DAS or the Client Agency. The Contractor shall deliver the report within ten (10) days following the end of each calendar quarter. The Contractor shall provide the Client Agency with any additional reports as the Client Agency may request from time to time within ten (10) days following receipt of the Client Agency's written request. Timely submission of these reports is a material requirement of this Contract. All Title and property rights and interests in and to the reports and the data in the media containing the reports at all times is and will always remain vested in the State. At no time will Contractor have Title to such reports, data or media, wherever located. Accordingly, the Client Agency shall have a perpetual, irrevocable, non-exclusive, transferable right to display, modify, copy and otherwise use the reports, data, and information provided under this Section.

20. Breach

- a. If one party (the "Non-breaching Party") determines that the other (the "Breaching Party") has failed to comply with any of the Breaching Party's corresponding Contract obligations (a "Breach"), then the Non-Breaching Party shall provide written notice of such failure to the Breaching Party in accordance with this Contract. The Non-breaching Party must provide the Breaching Party an opportunity to remedy the Breach within thirty (30) calendar days from the date of the notice. However, if Contractor is the Breaching Party, then the Client Agency may set forth any remedy period in the notice, so long as that period is otherwise consistent with the provisions of this Contract. The period set forth in the notice is known as the "Remedy Period." The Non-Breaching Party shall extend the Remedy Period if it is satisfied that the Breaching Party is making a good faith effort to remedy the Breach, but the nature of the Breach is such that it cannot be remedied within the Remedy Period.
- b. If the Client Agency determines that the Contractor has committed a Breach, then the Client Agency may require the Contractor to, and Contractor shall, prepare and submit to the Client Agency a CAP in connection with the identified Breach. Contractor shall provide in the CAP a detailed explanation of the deficiencies and other factors that contributed to the cited Breach, Contractor's assessment or diagnosis of Breach (identifying the deficiencies and factors in reasonable detail, with references to the applicable Specifications), and a specific proposal to remedy or resolve the Breach. Contractor shall submit the CAP to the Client Agency within (10) Business Days following the Client Agency's request for the CAP for the Client Agency's review and approval. Within (10) Business Days of receiving the CAP, the Client Agency must either approve the CAP, or reject it by delivering to Contractor a written explanation for the rejection. If the Client Agency fails to accept or reject the CAP within the (10) Business Days, then the CAP is deemed to have been approved, without more. The Client Agency's explanation for the rejection must include suggestions for changes to the CAP and the Contractor shall address the suggestions in such a manner to make it likely that the Client Agency will approve the CAP when the Contractor re-submits it to the Client Agency for review and approval. If the Client Agency rejects a CAP, then the parties will repeat this submittal and review process until the earliest of one of the following: (1) the Client Agency accepts a CAP, (2) the Client Agency waives its right to receive a CAP, (3) Contractor remedies the Breach, (4) the Client Agency waives the Breach, or (5) the Client Agency makes a determination to Terminate this Contract. After the first rejection, each of the parties will have (5) Business Days, instead of (10) Business Days, within which to review the CAP. Each subsequent revision and review will be for up to (3) Business Days each instead of (10) or (5) Business Days.
- c. If the Client Agency determines that the Contractor has Breached this Contract, then the Client Agency may withhold payment in whole or in part for any amounts due pending resolution of the Performance issue, provided that the Client Agency notifies Contractor in writing prior to the date that the payment would have been due.
- d. For purposes of the Client Agency determining whether there is a Breach under this Contract, or whether any statement in the Representations and Warranties Section of this Contract is false or misleading, the parties deem the Acts of the Contractor Parties to be the Acts of the Contractor itself, as if the Contractor itself was the subject of the Acts which the Client Agency considers in

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determining if there was a Breach, or an instance of false or misleading statements, or both.

- e. The written notice of the Breach may include an effective Termination date. If the identified Breach is not remedied by the stated Termination date, unless otherwise modified by the Non-breaching Party in writing before such date, no further action shall be required of any party to effect the Termination as of the stated date. If the notice does not set forth an effective Termination date, then the Non-breaching Party shall provide the Breaching Party no less than twenty-four (24) hours' prior written notice before terminating this Contract.
- f. Notwithstanding any provisions in this Contract, DAS may terminate this Contract with no Remedy Period for Contractor's Breach or violation of any of the representations or warranties in this Contract and revoke any consent to assignments given as if the assignments had never been requested or consented to, without liability to Contractor or Contractor Parties or any third party. Termination under this Breach section is subject to the provisions of the Termination Section of this Contract. In case of such revocation or Termination, the Client Agency will have no liability or responsibility to Contractor or Contractor Parties or any third party, or any of them, resulting from the Termination or revocation.
- g. None of the State's rights under this Breach Section diminishes the State's rights under the Termination Section of this Contract.

21. Continued Performance

The Contractor and Contractor Parties shall continue to Perform their obligations under this Contract while any dispute concerning this Contract is being resolved.

22. Representations and Warranties

Contractor represents and warrants to the State for itself and, as applicable, the Contractor Parties that:

- a. each is a duly and validly existing under the laws of each such entity's respective states of organization and authorized to conduct business in the State of Connecticut in the manner contemplated by this Contract. Further, as appropriate, each has taken all necessary action to authorize the execution, delivery and Performance of this Contract and have the power and authority to execute, deliver and Perform its obligations under this Contract;
- b. each will comply with all applicable State and Federal laws and municipal ordinances in satisfying its obligations to the State under and pursuant to this Contract, including, but not limited to (1) Connecticut General Statutes Title 1, Chapter 10, concerning the State's Codes of Ethics; Title 4a, Chapter 51 concerning State purchasing; and (3) Title 22a, Chapter 446c, section 22a-194a concerning the use of polystyrene foam;
- c. the execution, delivery and Performance of this Contract will not violate, be in conflict with, result in a Breach of or constitute (with or without due notice and/or lapse of time) a default under any of the following, as applicable: (1) any provision of law; (2) any order of any court or the State; or any indenture, agreement, document or other instrument to which it is a party or by which it may be bound;
- d. each is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity;
- e. as applicable, each has not, within the three years preceding the Effective Date of this Contract, in any of their current or former jobs, been convicted of, or had a civil judgment rendered against them or against any person who would Perform under this Contract, for commission of fraud or a

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criminal offense in connection with obtaining, attempting to obtain, or Performing a transaction or contract with any governmental entity. This includes, but is not limited to, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records or property, making false statements, or receiving stolen property;

- f. each is not presently indicted for or otherwise criminally or civilly charged by any governmental entity with commission of any of the offenses listed above;
- g. they have notified DAS in writing whether they have had any contracts with any governmental entity Terminated for cause within the three (3) years preceding the Effective Date;
- h. none has employed or retained any entity or person, other than a bona fide employee working solely for them, to solicit or secure this Contract and it has not paid or agreed to pay any entity or person, other than a bona fide employee working solely for them, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this Contract or any assignments made in accordance with the terms of this Contract;
- i. to the best of each entity's knowledge, there are no Claims involving Contractor or Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under this Contract;
- j. each shall disclose, to the best of its knowledge, to the State in writing any Claims involving it that would be required disclosure on Form 8-K of the Securities Exchange Act of 1934 no later than ten (10) calendar days after becoming aware or after it should have become aware of any such Claims. For purposes of the Contractor's obligation to disclose any Claims to the State, the ten (10) calendar days in the Section of this Contract concerning disclosure of Contractor Parties litigation shall run consecutively with the ten (10) days provided for in this representation and warranty;
- k. each entity's participation in the solicitation process is not a conflict of interest or a breach of ethics under the provisions of Title 1, Chapter 10 of the Connecticut General Statutes concerning the State's Code of Ethics;
- l. the proposal submitted by Contractor in response to the Solicitation was not made in connection or concert with any other person, entity or proposer, including any affiliate (as defined in the Tangible Personal Property Section of this Contract) of the proposer, submitting a proposal for the same solicitation, and is in all respects fair and without collusion or fraud;
- m. each is able to Perform under this Contract using their own resources or the resources of a party who has not submitted a proposal;
- n. if Contractor does not have plenary authority to make the representations and warranties in this Section, as applicable, on behalf of Contractor Parties, then Contractor shall enter into a written contract with Contractor Parties, in which contract Contractor Parties shall make all of the applicable representations and warranties in this Section;
- o. each has paid all applicable workers' compensation second injury fund assessments concerning all previous work done in Connecticut; they have a record of compliance with Occupational Health and Safety Administration regulations without any unabated, willful or serious violations;
- p. none owes unemployment compensation contributions;
- q. none is delinquent in the payment of any taxes owed, or, that they have filed a sales tax security bond, and they have, if and as applicable, filed for motor carrier road tax stickers and have paid

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all outstanding road taxes;

- r. all of each entity's vehicles have current registrations and, unless such vehicles are no longer in service, they shall not allow any such registrations to lapse;
- s. each Contractor Party has vested in the Contractor plenary authority to bind the Contractor Parties to the full extent necessary or appropriate to ensure full compliance with and Performance in accordance with all of the terms of this Contract and that all appropriate parties shall also provide, no later than fifteen (15) days after receiving a request from DAS or the Client Agency, such information as DAS or the Client Agency may require to evidence, in their sole determination, compliance with this Section;
- t. each either owns or has the authority to use all the Deliverables;
- u. to the best knowledge of Contractor, the Deliverables do not infringe or misappropriate any patent, copyright, trade secret or other intellectual property right of a third party;
- v. to the best knowledge of Contractor, the Client Agency's use of any Deliverables in a manner consistent with this Contract shall not infringe or misappropriate any patent, trade secret or other intellectual property right of a third party;
- w. if any party shall procure any Deliverables, they shall sublicense such Deliverables and that the Client Agency shall be afforded the full benefits of any manufacturer or subcontractor licenses for the use of the Deliverables; and
- x. each shall assign or otherwise transfer to the Client Agency or afford the Client Agency the full benefits of any manufacturer's warranty for the Deliverables, to the extent that such warranties are assignable or otherwise transferable to the Client Agency.

23. Further Assurances

The parties shall provide such information, execute and deliver any instruments and documents and take such other actions as may be necessary or reasonably requested by the other party which are not inconsistent with the provisions of this Contract and which do not involve the vesting of rights or assumption of obligations other than those provided for in this Contract, in order to give full effect to this Contract and to carry out the intent of this Contract.

24. Advertising

The Contractor shall not refer to sales to the State for advertising or promotional purposes, including, but not limited to, posting any material or data on the Internet, without DAS' prior written approval.

25. Contractor Changes

The Contractor shall notify DAS in writing no later than ten (10) days from the effective date of any change in:

- a. its certificate of incorporation or other organizational document;
- b. more than a controlling interest in the ownership of the Contractor; or
- c. the individual(s) in charge of the Performance.

This change shall not relieve the Contractor of any responsibility for the accuracy and completeness of the Performance. DAS, after receiving written notice by the Contractor of any such change, may

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require such agreements, releases and other instruments evidencing, to DAS' satisfaction, that any individuals retiring or otherwise separating from the Contractor have been compensated in full or that provision has been made for compensation in full, for all work performed under terms of this Contract. The Contractor shall deliver such documents to DAS in accordance with the terms of DAS' written request. DAS may also require, and the Contractor shall deliver, a financial statement showing that solvency of the Contractor is maintained. The death of any Contractor Party, as applicable, shall not release the Contractor from the obligation to Perform under this Contract; the surviving Contractor Parties, as appropriate, must continue to Perform under this Contract until Performance is fully completed.

26. Contractor Responsibility

- a. The Contractor shall be responsible for the entire Performance under this Contract regardless of whether the Contractor itself Performs. The Contractor shall be the sole point of contact concerning the management of this Contract, including Performance and payment issues. The Contractor is solely and completely responsible for adherence by the Contractor Parties to all applicable provisions of this Contract.
- b. The Contractor shall exercise all reasonable care to avoid damage to the State's property or to property being made ready for the State's use, and to all property adjacent to any work site. The Contractor shall promptly report any damage, regardless of cause, to the State.

27. Continuity of Systems

- a. This Section is intended to comply with Conn. Gen. Stat. §4d-44. Nothing in this Section shall be construed to prevent Contractor from being paid for its Performance that is provided in accordance with this Contract.
- b. Contractor acknowledges that the Deliverables, the Systems and associated Services are important to the function of State government and that they must continue without interruption. Pursuant to Conn. Gen. Stat. §4d-44, if the work under this Contract, any subcontract, or amendment to either, is transferred back to the State or to another contractor at any time for any reason, then Contractor shall cooperate fully with the State, and do and Perform all acts and things that DAS deems to be necessary or appropriate, to ensure continuity of the Client Agency information system and telecommunication system facilities, equipment and Services so that there is no disruption or interruption in Performance as required or permitted in this Contract. Contractor shall not enter into any subcontract for any part of the Performance under this Contract without approval of such subcontract by DAS, as required by Conn. Gen. Stat. §4d-32 and without such subcontract including a provision that obligates the subcontractor to comply fully with Conn. Gen. Stat. §4d-44 as if the subcontractor were in fact the Contractor. Contractor shall make a full and complete disclosure of and delivery to DAS or its representatives of all Records and "Public Records," as that term is defined in Conn. Gen. Stat. §4d-33 in whatever form they exist or are stored and maintained and wherever located, directly or indirectly concerning this Contract.
- c. The parties shall follow the below applicable and respective procedures in order to ensure the orderly transfer to the State:
 1. Facilities and Equipment:

Unless a shorter period is necessary or appropriate to ensure compliance with Conn. Gen. Stat. §4d-44 , in which case that shorter period shall apply, Contractor shall deliver to the State, F.O.B. Hartford, Connecticut or other State location which the State identifies, all Deliverables, Systems, facilities and equipment related to or arising out of this Contract, subcontract or amendment, (other than any of the Deliverables, Systems, facilities or

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equipment in which Contractor has title under this Contract) no later than ten (10) days from the date that the work under this Contract is transferred back to the Client Agency or to another contractor for any reason. Contractor shall deliver the Deliverables, Systems, facilities or equipment to the State, during the State's business hours, in good working order and in appropriately protective packaging to ensure delivery without damage. Concurrent with this delivery, Contractor shall also deliver all related operation manuals and other Documentation in whatever form they exist and a list of all related passwords and security codes;

2. Software Deliverables created or modified pursuant to this Contract, subcontract or amendment: Unless a shorter period is necessary or appropriate to ensure compliance with Conn. Gen. Stat. §4d-44, in which case that shorter period shall apply, Contractor shall deliver to the State, F.O.B. Hartford, Connecticut or other location which the Client Agency identifies, all Deliverables, Materials and Systems, no later than 10 days from the date that the work under the SOW or this Contract is transferred back to the State or to another contractor for any reason. Contractor shall deliver such Deliverables, Materials and Systems to the Client Agency, during the Client Agency's Business Hours, in good working order, and if the Client Agency's equipment shall be delivered, in appropriately protective packaging to ensure delivery without damage. Concurrent with this delivery, Contractor shall also deliver all Deliverable-related operation manuals and other Documentation in whatever form they exist, if delivery of such manuals and documentation is required by this Contract or the SOW for such Deliverable, and a list of all Deliverable passwords and security codes; and
3. Public Records, as defined in Conn. Gen. Stat. §4d-33, which Contractor or Contractor Parties possess or create pursuant to this Contract, subcontract or amendment: Unless a shorter period is necessary or appropriate to ensure compliance with Conn. Gen. Stat. §4d-44, in which case that shorter period shall apply, Contractor shall deliver to the Client Agency, F.O.B. Hartford, Connecticut or other State location which Client Agency identifies, all Public Records created or modified pursuant to this Contract, any SOW, subcontract or amendment and requested in writing by the Client Agency (provided that Contractor may redact confidential information of Contractor, its personnel or third parties to the extent permitted by applicable law) no later than the latter of (1) the time specified in the section in this Contract concerning Termination for the return of Public Records and (2) ten (10) days from the date that the work under this Contract or SOW is transferred back to the Client Agency or to another contractor for any reason. Contractor shall deliver to the Client Agency during the Client Agency's Business Hours those Public Records in electronic, magnetic or other intangible form in a non-proprietary format, such as, but not limited to, ASCII or TXT. Contractor shall deliver to the Client Agency, during the Client Agency's business hours, those Public Records and a list of all applicable passwords and security codes, all in appropriately protective packaging to ensure delivery without damage.
- d. If Contractor employs former State employees, Contractor shall facilitate the exercising of any reemployment rights that such State employees may have with the State, including, but not limited to, affording them all reasonable opportunities during the workday to interview for State jobs. Contractor shall include language similar to this Section in all of its contracts with its subcontractors and applicable Contractor Parties so that they are similarly obligated.

28. Security and/or Property Entrance Policies and Procedures

Contractor shall adhere to established security and/or property entrance policies and procedures for each Client Agency. It is the responsibility of Contractor to understand and adhere to the Client Agency's policies and procedures prior to entering the Client Agency Site to Perform under this Contract.

29. Disclosure of Contractor Parties Litigation

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Contractor shall require that all Contractor Parties, as appropriate, disclose in writing to Contractor, to the best of their knowledge, any Claims involving the Contractor Parties that might reasonably be expected to materially adversely affect their businesses, operations, assets, properties, financial stability, business prospects or ability to Perform fully under this Contract, no later than ten (10) calendar days after becoming aware of or after they should have become aware of any such Claims.

30. Protection of Confidential Information

- a. Contractor and Contractor Parties have a duty to and shall, at their own expense, protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with the highest current industry standards and best practices, as they may be amended from time to time.
- b. Contractor and all Contractor Parties shall develop, implement and maintain a comprehensive written information security policy for the protection of Confidential Information that meets or exceeds current industry standards and best practices as they may be amended from time to time. The safeguards contained in the written information security policy must meet or exceed the standards for the protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and State law and in written policy of the Client Agency or DAS concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
 - 1. A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
 - 2. Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept and an auditable electronic system of logging and tracking the viewing, accessing or both of Confidential Information;
 - 3. A process for reviewing policies and security measures at least annually;
 - 4. Creating secure access controls to Confidential Information, including but not limited to passwords; and
 - 5. Encrypting of Confidential Information that is stored on laptops, portable devices and storage media or that is being transmitted electronically.
- c. Contractor and Contractor Parties shall notify DAS, the Client Agency and the Connecticut Office of the Attorney General as soon as practical, but no later than the next Business Day, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred which, in the sole opinion of the Client Agency after consultation with the Attorney General, constitutes a breach of security as defined in Connecticut General Statutes, § 36a- 701b, or otherwise (Breach), the Contractor shall, within three (3) Business Days after the notification, present a credit monitoring and protection plan to the Commissioner of DAS, the Client Agency, and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring and protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to, reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Breach. Neither Contractor's nor any Contractor Party's costs and expenses for the credit monitoring and protection plan shall be recoverable

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from DAS, the Client Agency, or any State of Connecticut entity or any affected individuals and shall be outside of any liability cap or limitation contained in this Contract.

- d. Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- e. Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to the provisions of this Contract concerning the obligations of the Contractor to the Client Agency or DAS.

31. Confidentiality; Non-Disclosure

The State shall exercise at least the same degree of care to safeguard any trade secrets or confidential information of Contractor as the State does its own property of a similar nature and shall take reasonable steps to ensure that neither the confidential information of Contractor nor any part of it will be disclosed for reasons other than its own business interests. Such prohibition on disclosures does not apply to disclosures by the State to its employees, agents or representatives, provided such disclosures are reasonably necessary to the State's use of the Deliverable, and provided further that the State will take all reasonable steps to ensure that the Deliverable is not disclosed by such parties in contravention of this Contract. The State's performance of the requirements of this Section shall be subject to the State of Connecticut Freedom of Information Act ("FOIA").

All Records, Client Agency Data, and any Data owned by the State in any form, in the possession of the Contractor or Contractor Parties, whether uploaded, collected, stored, held, hosted, located or utilized by Contractor and Contractor Parties directly or indirectly, must remain within the continental United States.

32. Disclosure of Records Concerning Governmental Functions

This Contract may be subject to the provisions of Section 1-218 of the Connecticut General Statutes. In accordance with this statute, each contract in excess of two million five hundred thousand dollars between a public agency and a person for the performance of a governmental function shall (a) provide that the public agency is entitled to receive a copy of records and files related to the performance of the governmental function, and (b) indicate that such records and files are subject to FOIA and may be disclosed by the public agency pursuant to FOIA. No request to inspect or copy such records or files shall be valid unless the request is made to the public agency in accordance with FOIA. Any complaint by a person who is denied the right to inspect or copy such records or files shall be brought to the Freedom of Information Commission in accordance with the provisions of Sections 1-205 and 1-206 of the Connecticut General Statutes.

33. Contractor's Obligation to Notify DAS Concerning Public Records

In accordance with Conn. Gen. Stat. § 4d-38, if the Contractor or Contractor Parties learn of any violation of the provisions of Conn. Gen. Stat. §§ 4d-36 or 4d-37 they shall, no later than seven calendar days after learning of such violation, notify the Chief Information Officer of such violation.

34. General Assembly Access to Records

In accordance with Conn. Gen. Stat. § 4d-40, the Joint Committee on Legislative Management and each nonpartisan office of the General Assembly shall continue to have access to DAS records that is not less than the access that said committee and such offices have on July 1, 1997.

35. Profiting from Public Records

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In accordance with Conn. Gen. Stat. § 4d-37, neither Contractor nor Contractor Parties shall sell, market or otherwise profit from the disclosure or use of any public records which are in their possession pursuant to this Contract or any contract, subcontract or amendment to a contract or subcontract, except as authorized in this Contract. For purposes of this Section, "public records" shall have the meaning set forth in Conn. Gen. Stat. § 1-200, as it may be modified from time to time.

36. Application of FOIA to Public Records Provided to Contractor

In accordance with Conn. Gen. Stat. § 4d-35, any public record which a state agency provides to Contractor or Contractor Parties shall remain a public record for the purposes of subsection (a) of Conn. Gen. Stat. § 1-210 and as to such public records, the State, Contractor and Contractor Parties shall have a joint and several obligation to comply with the obligations of the state agency under the Freedom of Information Act (FOIA), as defined in Conn. Gen. Stat. § 1-200, provided that the determination of whether or not to disclose a particular record or type of record shall be made by such state agency.

37. Ownership Rights and Integrity of Public Records

In accordance with Conn. Gen. Stat. § 4d-34, (a) neither Contractor nor Contractor Parties shall have any Title in or to (1) any public records which the Contractor or Contractor Parties possess, modify or create pursuant to a contract, subcontract or amendment to a contract or subcontract, or (2) any modifications by such contractor, subcontractor, employee or agent to such public records; (b) neither Contractor nor Contractor Parties shall impair the integrity of any public records which they possess or create; and (c) public records which Contractor or Contractor Parties possess, modify or create pursuant to this Contract or other contract, subcontract or amendment to a contract or subcontract shall at all times and for all purposes remain the property of the State. For purposes of this Section, "public records" shall have the meaning set forth in Conn. Gen. Stat. § 4d-33, as it may be modified from time to time.

38. Nondisclosure of Public Records

In accordance with Conn. Gen. Stat. § 4d-36, neither Contractor nor Contractor Parties shall disclose to the public any public records (a) which they possess, modify or create pursuant to this Contract or any contract, subcontract or amendment to a contract or subcontract and (b) that a state agency (1) is prohibited from disclosing pursuant to state or federal law in all cases, (2) may disclose pursuant to state or federal law only to certain entities or individuals or under certain conditions or (3) may withhold from disclosure pursuant to state or federal law. This provision shall not be construed to prohibit the Contractor from disclosing such public records to any Contractor Parties to carry out the purposes of its subcontract. For purposes of this section, "public records" shall have the meaning set forth in Conn. Gen. Stat. § 1-200, as it may be modified from time to time.

39. Audit and Inspection of Plants, Places of Business and Records

- a. The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the Performance of this Contract.
- b. Contractor shall maintain, and shall require each Contractor Party to maintain, accurate and complete Records. Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- c. The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty- four (24) hours' notice prior to the requested audit and inspection

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date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.

- d. Contractor shall pay for all costs and expenses of any audit or inspection which reveals information that, in the sole determination of the State, is sufficient to constitute a Breach by the Contractor under this Contract. The Contractor will remit full payment to the State for such audit or inspection no later than 30 days after receiving an invoice from the State. If the State does not receive payment within such time, the State may setoff the amount from any moneys which the State would otherwise be obligated to pay the Contractor in accordance with this Contract.
- e. Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (1) final payment under this Contract, or (2) the expiration or earlier termination of this Contract, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.
- f. Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- g. Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

40. Forum and Choice of Law

The parties deem this Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of this Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

41. Assignment

The Contractor shall not assign any of its rights or obligations under this Contract, voluntarily or otherwise, in any manner without the prior written consent of DAS. DAS may void any purported assignment in violation of this Section and declare the Contractor in breach of Contract. Any Termination by DAS for a breach is without prejudice to DAS' or the State's rights or possible Claims.

42. Tangible Personal Property

- a. Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
 - 1. For the Term, Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such

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Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus with the State under the provisions of Chapter 219 to be required to collect Connecticut use tax;

2. A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
 3. Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in this Contract if any, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
 4. Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
 5. Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in this Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under Chapter 219 of the Connecticut General Statutes.
- b. For purposes of this Section of this Contract, the word "Affiliate" means any person, as defined in section 12-1 of the Connecticut General Statutes, that controls is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten percent of the voting securities of the other person. The term "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.
- c. Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

43. Americans with Disabilities Act

Contractor represents that it is familiar with the terms of the Americans with Disabilities Act, 42 U.S.C. §§12101 et seq, and that it is in compliance with the law. Failure of Contractor to satisfy this standard either now or during the Term as it may be amended will render this Contract voidable at the option of the State upon notice to Contractor. Contractor warrants that it will hold the State harmless from any liability that may be imposed upon the State as a result of any failure of Contractor to be in compliance with the Americans with Disabilities Act.

44. Executive Orders and Other Enactments

- a. All references in this Contract to any Federal, State, or local law, statute, public or special act, executive order, ordinance, regulation or code (collectively, "Enactments") shall mean Enactments that apply to the Contract at any time during its Term, or that may be made applicable to the Contract during its Term. This Contract shall always be read and interpreted in accordance with the latest applicable wording and requirements of the Enactments. Unless otherwise provided by Enactments, the Contractor is not relieved of its obligation to Perform under this Contract if it chooses to contest the applicability of the Enactments or the State's authority to require compliance with the Enactments.

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- b. This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of this Contract as if they had been fully set forth in it.
- c. This Contract may be subject to (1) Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services; and (2) Executive Order No. 61 of Governor Dannel P. Malloy promulgated December 13, 2017 concerning the Policy for the Management of State Information Technology Projects, as issued by the Office of Policy and Management, Policy ID IT-SDLC-17-04. If any of the Executive Orders referenced in this subsection is applicable, it is deemed to be incorporated into and made a part of this Contract as if fully set forth in it.

45. Non-Discrimination

- a. For purposes of this Section, the following terms are defined as follows:
 - 1. "Commission" means the Commission on Human Rights and Opportunities;
 - 2. "Contract" and "contract" include any extension or modification of the Contract or contract;
 - 3. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
 - 4. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose;
 - 5. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
 - 6. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
 - 7. "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;
 - 8. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
 - 9. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
 - 10. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures,

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grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, unless the contract is a municipal public works contract or quasi-public agency project contract, (2) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in C.G.S. § 1-267, (3) the federal government, (4) a foreign government, or (5) an agency of a subdivision, state or government described in the immediately preceding enumerated items (1), (2), (3), or (4).

- b. (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, status as a victim of domestic violence, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to ensure that applicants with job-related qualifications are employed and that employees are treated when employed without regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, status as a veteran, status as a victim of domestic violence, intellectual disability, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.
- c. Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- d. The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- e. The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing

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such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

- f. The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- g. (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.
- h. The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- i. Pursuant to subsection (c) of section 4a-60 and subsection (b) of section 4a-60a of the Connecticut General Statutes, the Contractor, for itself and its authorized signatory of this Contract, affirms that it understands the obligations of this section and that it will maintain a policy for the duration of the Contract to assure that the Contract will be performed in compliance with the nondiscrimination requirements of such sections. The Contractor and its authorized signatory of this Contract demonstrate their understanding of this obligation by (A) having provided an affirmative response in the required online bid or response to a proposal question which asks if the contractor understands its obligations under such sections, (B) signing this Contract, or (C) initialing this nondiscrimination affirmation in the following box:

46. Whistleblower Provision

This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions

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of such statute, Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty percent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

47. Summary of State Ethics Laws

Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes (a) the State has provided to the Contractor the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes, which summary is incorporated by reference into and made a part of this Contract as if the summary had been fully set forth in this Contract; (b) the Contractor represents that the chief executive officer or authorized signatory of the Contract and all key employees of such officer or signatory have read and understood the summary and agree to comply with the provisions of state ethics law; (c) prior to entering into a contract with any subcontractors or consultants, the Contractor shall provide the summary to all subcontractors and consultants and each such contract entered into with a subcontractor or consultant on or after July 1, 2021, shall include a representation that each subcontractor or consultant and the key employees of such subcontractor or consultant have read and understood the summary and agree to comply with the provisions of state ethics law; (d) failure to include such representations in such contracts with subcontractors or consultants shall be cause for Termination of the Contract; and (e) each contract with such contractor, subcontractor or consultant shall incorporate such summary by reference as a part of the contract terms.

48. Campaign Contribution Restriction

For all State contracts, defined in section 9-612 of the Connecticut General Statutes as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract represents that they have received the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice.

49. Certification as a Small Contractor or Minority Business Enterprise

The Contractor shall be in breach of this Contract if the Contractor is certified as a "small contractor" or a "minority business enterprise" under Conn. Gen. Stat. § 4a-60g and that certification lapses during the Term of this Contract.

50. Notice

- a. All notices, demands, requests, consents, approvals or other communications required or permitted to be given or which are given with respect to this Contract (for the purpose of this Section collectively called "Notices") shall be deemed to have been effected at such time as the notice is placed in the U.S. mail, first class and postage pre-paid, return receipt requested or placed with a recognized, overnight express delivery service that provides for a return receipt. All such Notices shall be in writing and shall be addressed as follows:

If to DAS:

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State of Connecticut Department of Administrative Services
Procurement Division
450 Columbus Boulevard, Suite 1202
Hartford, CT 06103

Attention: Marcie Wilson

If to the Contractor:
Name: Laser Technology, Inc.
Address: 6912 South Quentin Street, Suite A, Centennial, CO 80112
Contact: Cheri Miller
Telephone: 303-649-1000
Email: cmiller@lasertech.com

- b. Details regarding invoices and all technical or day-to-day administrative matters pertaining to this Contract shall be directed to:

Client Agency: The individual specified in the applicable Purchase Order.

Contractor: The individual designated by Contractor in writing to the Client Agency.

51. Headings

The headings given to the Sections in this Contract are inserted only for convenience and are in no way to be construed as part of this Contract or as a limitation of the scope of the particular Section to which the heading refers.

52. Number and Gender

Whenever the context so requires, the plural or singular shall include each other and the use of any gender shall include all genders.

53. Amendments, Supremacy, Entirety of Contract

No amendment to or modification of this Contract shall be valid or binding unless made in writing, signed by the parties and, if applicable, approved by the Connecticut Attorney General. Any and all Purchase Orders, Statements of Work or other documents authorized in connection with this Contract shall be subject to the terms of this Contract. Any additional terms within any such Purchase Order, Statement of Work, or other document that contradict the terms of this Contract shall have no force or effect and shall in no way affect, change or modify any of the terms of this Contract. This Contract contains the complete and exclusive statement of the terms agreed to by the parties.

54. Severability

If any term or provision of this Contract or its application to any person, entity or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Contract or the application of such term or provision shall not be affected as to persons, entities or circumstances other than those as to whom or to which it is held to be invalid or unenforceable. Each remaining term and provision of this Contract shall be valid and enforced to the fullest extent possible by law.

55. Chief Information Officer Approval of Subcontractors

In accordance with Conn. Gen. Stat. § 4d-32, Contractor shall not award a subcontract for work under

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this Contract without having first obtained the written approval of the Chief Information Officer of the Department of Administrative Services or their designee of the selection of the subcontractor and of the provisions of the subcontract.

56. Iran Energy Investment Certification

- a. Pursuant to Conn. Gen. Stat. § 4-252a, the Contractor certifies that it has not made a direct investment of twenty million dollars or more in the energy sector of Iran on or after October 1, 2013, as described in Section 202 of the Comprehensive Iran Sanctions, Accountability and Divestment Act of 2010, and has not increased or renewed such investment on or after said date.
- b. If the Contractor makes a good faith effort to determine whether it has made an investment described in subsection (a) of this Section then the Contractor shall not be deemed to be in breach of the Contract or in violation of this Section. A "good faith effort" for purposes of this subsection includes a determination that the Contractor is not on the list of persons who engage in certain investment activities in Iran created by the Department of General Services of the state of California pursuant to Division 2, Chapter 2.7 of the California Public Contract Code. Nothing in this subsection shall be construed to impair the ability of the State or quasi-public agency to pursue a breach of contract action for any violation of the provisions of the Contract.

57. Large State Contract Representation for Contractor

Pursuant to Conn. Gen. Stat. § 4-252 and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the Contractor, for itself and on behalf of all of its principals or key personnel who submitted a bid or proposal, represents:

- (1) That no gifts were made by (A) the Contractor, (B) any principals and key personnel of the Contractor, who participate substantially in preparing bids, proposals or negotiating State contracts, or (C) any agent of the Contractor or principals and key personnel, who participates substantially in preparing bids, proposals or negotiating State contracts, to (i) any public official or State employee of the State agency or quasi- public agency soliciting bids or proposals for State contracts, who participates substantially in the preparation of bid solicitations or requests for proposals for State contracts or the negotiation or award of State contracts, or (ii) any public official or State employee of any other State agency, who has supervisory or appointing authority over such State agency or quasi-public agency;
- (2) That no such principals and key personnel of the Contractor, or agent of the Contractor or of such principals and key personnel, knows of any action by the Contractor to circumvent such prohibition on gifts by providing for any other principals and key personnel, official, employee or agent of the Contractor to provide a gift to any such public official or State employee; and
- (3) That the Contractor is submitting bids or proposals without fraud or collusion with any person.

58. Large State Contract Representation for Official or Employee of State Agency

Pursuant to Conn. Gen. Stat. § 4-252 and Acting Governor Susan Bysiewicz Executive Order No. 21-2, promulgated July 1, 2021, the State official or employee represents that the selection of the person, firm or corporation was not the result of collusion, the giving of a gift or the promise of a gift, compensation, fraud or inappropriate influence from any person.

59. Consumer Data Privacy and Online Monitoring

Pursuant to section 4e-72a of the Connecticut General Statutes, Contractor shall at all times comply with all applicable provisions of sections 42-515 to 42-525, inclusive, of the Connecticut General Statutes, as the same may be revised or modified.

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60. Consulting Agreements Representation

Pursuant to Conn. Gen. Stat. § 4a-81, the person signing this Contract on behalf of the Contractor represents, to their best knowledge and belief and subject to the penalty of false statement as provided in Conn. Gen. Stat. § 53a-157b, that the Contractor has not entered into any consulting agreements in connection with this Contract, except for the agreements listed below. "Consulting agreement" means any written or oral agreement to retain the services, for a fee, of a consultant for the purposes of (A) providing counsel to a contractor, vendor, consultant or other entity seeking to conduct, or conducting, business with the State, (B) contacting, whether in writing or orally, any executive, judicial, or administrative office of the State, including any department, institution, bureau, board, commission, authority, official or employee for the purpose of solicitation, dispute resolution, introduction, requests for information, or (C) any other similar activity related to such contracts. "Consulting agreement" does not include any agreements entered into with a consultant who is registered under the provisions of chapter 10 of the Connecticut General Statutes as of the date such contract is executed in accordance with the provisions of Conn. Gen. Stat. §4a-81.

Consultant's Name and Title	Name of Firm (if applicable)
Start Date	End Date
	Cost

The basic terms of the consulting agreement are:

Description of services provided:

Is the consultant a former State employee or former public official? ☐ YES ☐ NO

If YES: _____ _____
 Name of Former State Agency Termination Date of Employment