

PARTICIPATING ADDENDUM
NASPO ValuePoint
Public Safety Communication Equipment 06913
Lead by the State of Washington (hereinafter "Lead State")

PARTICIPATING ADDENDUM

Ceragon Networks, Inc
(hereinafter "Contractor")

And

State of Utah Contract No. AR2277
(hereinafter "Participating State")

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1. **Scope:** This addendum covers the purchase of public safety communication equipment and is for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts with the prior approval of the state's chief procurement official.

Contractor has been awarded the following categories:

Microwave Antennas

2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. **Participating State Modifications or Additions to Master Agreement:**

(These modifications or additions apply only to actions and relationships within the Participating Entity.)

1. **DEFINITIONS:**

- a. "Access to Secure Public Facilities, Data, and Technology" means Contractor will (A) enter upon secure premises controlled, held, leased, or occupied by the State of Utah or an Eligible User; (B) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by the State of Utah or an Eligible User; or (C) have access to or receive any Public Data or Confidential Information during the course of performing this Contract.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors or other agents of Contractor who need to access Public Data to enable the Contractor to perform its responsibilities under this Contract.
- c. "Confidential Information" means information that is deemed as confidential under applicable record laws. The State of Utah and the Eligible Users reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws by Contractor.
- d. "Contract" means this Participating Addendum, including all referenced attachments and documents incorporated by reference. This Contract may include any purchase orders that result from the parties entering into this Contract.
- e. "Contractor" means the individual or entity delivering the Goods, Custom Deliverables, or performing the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers,

employees, partners, and/or any other person or entity for which Contractor may be liable under federal, state, or local laws.

- f. "Custom Deliverable" means the Work Product that Contractor is required to deliver to Eligible Users under this Contract.
- g. "Data Breach" means the unauthorized access by a non-authorized person(s) which results in unauthorized acquisition of Public Data and compromises the security, confidentiality, or integrity of Public Data. It is within an Eligible User's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
- h. "Division" means the State of Utah Division of Purchasing.
- i. "DTS" means the Department of Technology Services.
- j. "Eligible User(s)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts will be allowed to use this Contract.
- k. "Federal Criminal Background Check" means an in depth background check conducted and processed by the FBI that covers all states. Federal Criminal Background Check reports will show if applicant has had any criminal cases filed against them that violated federal criminal law.
- l. "Good" means any deliverable not classified as a Custom Deliverable or Service that Contractor is required to deliver to the Eligible Users under this Contract.
- m. "Non-Public Data" means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State of Utah and the federal government because it contains information that is exempt by state, federal and local statutes, ordinances, or administrative rules from access by the general public as public information.
- n. "Personal Data" means data that includes information relating to a person that identifies the person by a person's first name or first initial and last name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
- o. "Protected Health Information" (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
- p. "Security Incident" means the potentially unauthorized access by non-authorized persons to Public Data that Contractor believes could reasonably result in the use, disclosure or theft of Public Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach. It is within an Eligible User's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
- q. "Services" means the furnishing of labor, time, or effort by Contractor as set forth in this Contract, including but not limited to installation, configuration, implementation, technical support, warranty maintenance, and other support services.
- r. "Public Data" means all Confidential Information, Non-Public Data, Personal Data, and Protected Health Information that is created or in any way originating with the State of Utah or an Eligible User whether such data or output is stored on the State of Utah's or an Eligible User's hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State of Utah, an Eligible User, or by Contractor. Public Data includes any federal data, that the State of Utah or an Eligible User controls or maintains, that is protected under federal laws, statutes, and regulations.

- s. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
- t. "Subcontractors" means subcontractors or subconsultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, and includes all independent contractors, agents, employees, or anyone else for whom the Contractor may be liable, at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
- u. "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the ordering Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all the Goods delivered under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
4. **NO WAIVER OF SOVEREIGN IMMUNITY:** In no event shall this Contract be considered a waiver by the Division, an Eligible User, or the State of Utah of any form of defense or immunity, whether sovereign immunity, governmental immunity, or any other 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.
5. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by an Eligible User to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah and federal auditors, and the Division access to all such records.
6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
- (1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
- (2) Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
- (3) Contractor's failure to comply with this section will be considered a material breach of this Contract.
- (4) Contractor shall protect, indemnify, and hold harmless the Division, the Eligible Users, and the State of Utah, and anyone that the State of Utah may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of Utah, unless disclosure has been made to the Division.
8. **CONFLICT OF INTEREST WITH STATE EMPLOYEES:** Contractor agrees to comply and cooperate in good faith will all conflict of interest and ethic laws.
9. **INDEPENDENT CONTRACTOR:** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the Division, the Eligible Users, or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor, as an independent contractor, shall have no authorization, express or implied, to bind the Division, the Eligible Users, or the State of Utah to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the Division, the Eligible Users, or the State of Utah. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.
10. **CONTRACTOR ACCESS TO SECURE Public FACILITIES, PUBLIC DATA, AND TECHNOLOGY:** An employee of Contractor or a Subcontractor may be required to complete a Federal Criminal Background Check, if said employee of Contractor or a Subcontractor will have Access to Secure Public Facilities, Public Data, and Technology. Contractor shall provide the Eligible User with sufficient personal information (at Contractor's own expense) so that a Federal Criminal Background Check may be completed by the Eligible User, at the Eligible User's expense. The Eligible User will also provide Contractor with a Disclosure Form and Confidentiality Agreement which must be filled out by Contractor and returned to the Eligible User. Additionally, each employee of Contractor or a Subcontractor, who will have Access to Secure Public Facilities, Public Data, and Technology, will be scheduled by the Eligible User to be fingerprinted, at a minimum of one week prior to having such access. At the time of fingerprinting, said employee of Contractor or a Subcontractor will disclose, in full, any past record of felony or misdemeanor convictions. The Eligible User is authorized to conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided. The Eligible User may use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) every two years and reserves the right to revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor agrees to notify the Eligible User if an arrest or conviction of any employee of Contractor or a Subcontractor that has Access to Secure Public Facilities, Public Data and Technology occurs during this Contract. Contractor, in executing any duty or exercising any right under this Contract, shall not cause or permit any of its employees or employees of a Subcontractor (if any) who have been convicted of a felony or misdemeanor to have Access to Secure Public Facilities, Public Data, and Technology. A felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred.
11. **DRUG-FREE WORKPLACE:** Contractor agrees to abide by the Eligible User's drug-free workplace policies while on the Eligible User's or the State of Utah's premises.
12. **CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor agrees to follow and enforce the applicable code of conduct. Contractor will assure that each employee or each employee of Subcontractor(s) under Contractor's supervision receives a copy of such code of conduct.
13. **INDEMNITY CLAUSE:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the Division, the Eligible User, or the State of Utah. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
14. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.
15. **SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
16. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract.

17. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract, by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
18. **TERMINATION:** Unless otherwise stated in this Contract, this Contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given fourteen (14) calendar days after notification to correct and cease the violations, after which this Contract may be terminated for cause at any time. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by either party, upon sixty (60) calendar days prior written notice being given the other party. The parties may also agree to terminate this Contract prior to the expiration of this Contract by written agreement.
- If Services apply to this Contract, then Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the Division, the Eligible Users, or the State of Utah is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract.
19. **SUSPENSION OF WORK:** Should circumstances arise which would cause the Division to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Division.
20. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Division or an Eligible User, if it is reasonably determined that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.
- If a written notice is delivered under this section, the Eligible User will reimburse Contractor for the Goods or Services properly ordered until the effective date of said notice. The Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
21. **SALES TAX EXEMPTION:** The Goods, Custom Deliverables, or Services being purchased by the Eligible Users under this Contract are being paid from the Eligible User's funds and used in the exercise of the Eligible User's essential function as an Eligible User. The Eligible User will provide Contractor with a copy of its sales tax exemption number upon request. It is the Contractor's responsibility to request the sales tax exemption number from the Eligible User.
22. **TITLE AND OWNERSHIP WARRANTY:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Good or Custom Deliverable delivered to the Eligible Users under this Contract. Contractor fully indemnifies the Eligible Users for any loss, damages or actions arising from a breach of this warranty without limitation.
23. **HARDWARE WARRANTY:** Contractor agrees to warrant and assume responsibility for all hardware portions of any Good or Custom Deliverable, that it licenses, contracts, or sells under this Contract, for a period of one (1) year. Contractor acknowledges that all warranties granted to the Division and Eligible Users by the Uniform Commercial Code of the State of Utah apply to this Contract. Product liability disclaimers and/or warranty disclaimers from Contractor are not applicable to this Contract. In general, the Contractor warrants that the hardware: (a) will perform as specified in the Proposal; (b) will live up to all specific claims listed in the Proposal; (c) will be suitable for the ordinary purposes for which the hardware is used; (d) will be suitable for any special purposes that the Division has relied on Contractor's skill or judgment to consider when it advised the Division about the hardware in the Proposal; (e) the hardware has been properly designed and manufactured; and (f) is free of significant defects or unusual problems.
24. **SOFTWARE WARRANTY:** Contractor warrants that for a period of ninety (90) days from the date of Acceptance that the software portions of the Goods and Custom Deliverables, that Contractor licenses, contracts, or sells to the Eligible Users under this Contract, will: (a) perform in accordance with the specific claims provided in the Proposal; (b) be suitable for the ordinary purposes for which such Goods and Custom Deliverables are used; (c) be suitable for any special purposes that the Eligible User has relied on Contractor's skill or judgment to consider when it advised the Eligible User about the Goods or Custom Deliverables in its Proposal; (d) have been properly designed and manufactured; and (e) be free of significant defects or unusual problems. Contractor agrees to provide the Eligible Users with bug fixes, including informing the Eligible Users of any known software bugs or software defects that may affect the Eligible User's use of the software during the Contract.
25. **WARRANTY REMEDIES:** Upon breach of the hardware or software warranty, Contractor will repair or replace (at no charge to the Eligible Users) the Goods or Custom Deliverables whose nonconformance is discovered and made known to Contractor. If the repaired and/or replaced products prove to be inadequate, or fail to meet the performance of its essential purpose, Contractor will refund the full amount of any payments that have been made for the failing products. 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.

26. **UPDATES AND UPGRADES:** Contractor grants to the Eligible Users a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the term of this Contract. Such upgrades and updates are subject to the terms of this Contract. The Eligible Users shall download, distribute, and install all updates as released by Contractor during this Contract, and Contractor strongly suggests that the Eligible Users also download, distribute, and install all upgrades as released by Contractor during this Contract.
27. **BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With an Eligible User's prior written authorization, Contractor may perform remote diagnostics to work on reported problems, subject to Contractor's obligation of this Contract. In the event that an Eligible User declines remote diagnostics, Contractor and the Eligible User may agree to on-site technical support, subject to the terms of this Contract.
28. **TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is a part of the Goods or Custom Deliverables that Contractor provides under this Contract, Contractor will use commercially reasonable efforts to respond, in a reasonable time, when technical support or maintenance requests regarding the Goods or Custom Deliverables are made to Contractor.
29. **SECURE PROTECTION AND HANDLING OF PUBLIC DATA:** If Contractor is given Public Data as part of this Contract, the protection of Public Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of Public Data. To the extent that Contractor is given Public Data, Contractor shall safeguard the confidentiality, integrity and availability of the Public Data and comply with the following conditions:
 1. **Network Security:** Contractor agrees at all times to maintain network security that - at a minimum - includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Contractor also agrees to maintain network security that conforms to one of the following:
 - (1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy* (copy available upon request);
 - (2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or
 - (3) Any generally recognized comparable standard that Contractor then applies to its own network and approved by DTS in writing.
 2. **Public Data Security:** Contractor agrees to protect and maintain the security of Public Data with protection that is at least as good as or better than that maintained by the State of Utah. These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification).
 3. **Public Data Transmission:** Contractor agrees that any and all transmission or exchange of system application data with the Eligible Users and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).
 4. **Public Data Storage:** Contractor agrees that all Public Data will be stored and maintained in data centers in the United States. Contractor agrees that no Public Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process. Contractor shall permit its employees and Subcontractors to access non-Public Data remotely only as required to provide technical support. Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.
 5. **Public Data Encryption:** Contractor agrees to store all data provided to Contractor, including State, as part of its designated backup and recovery process in encrypted form, using no less than 128 bit key.
 6. **Password Protection:** Contractor agrees that any portable or laptop computer that has access to the Eligible Users or State of Utah networks, or stores any Public Data is equipped with strong and secure password protection.
 7. **Public Data Re-Use:** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. Contractor further agrees that no Public Data of any kind shall be transmitted, exchanged, or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the Eligible Users.
 8. **Public Data Destruction:** The Contractor agrees that upon expiration or termination of this Contract it shall erase, destroy, and render unreadable all Public Data from all non-state computer systems and backups, and certify in writing

that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the Eligible User, whichever shall come first, unless the Eligible User provides Contractor with a written directive. It is understood by the parties that the Eligible User's written directive may request that certain data be preserved in accordance with applicable law.

9. **Services Shall Be Performed Within United States:** Contractor agrees that all of the Services related to Public Data that it provides to the Eligible Users will be performed by Contractor and Subcontractor(s) within the borders and jurisdiction of the United States.
30. **SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** Contractor shall immediately inform an Eligible User of any Security Incident or Data Breach.
1. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the Eligible User should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.
 2. **Security Incident Reporting Requirements:** Contractor shall report a Security Incident to the Eligible User immediately if Contractor reasonably believes there has been a Security Incident.
 3. **Breach Reporting Requirements:** If Contractor has actual knowledge of a confirmed Data Breach that affects the security of any Public Data that is subject to applicable data breach notification law, Contractor shall: (a) promptly notify the Eligible User within 24 hours or sooner, unless shorter time is required by applicable law; (b) take commercially reasonable measures to address the Data Breach in a timely manner; and (c) be responsible for its Data Breach responsibilities, as provided in the next Section.
31. **DATA BREACH RESPONSIBILITIES:** This Section only applies when a Data Breach occurs. Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification in accordance with DTS Policy 5000-0002 Enterprise Information Security Policy (copy available upon request). In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the Eligible User by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach; and (d) in accordance with applicable laws indemnify, hold harmless, and defend DTS and the State of Utah against any claims, damages, or other harm related to such Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the Eligible User. Contractor shall be responsible for all notification and remedial costs and damages.
32. **CHANGE MANAGEMENT:** If Contractor develops software for the State of Utah then the following paragraphs apply:
1. Contractor agrees to comply with DTS Policy 4000-0003, Software Development Life Cycle Policy. The Software Development Life Cycle Policy requires any Contractor developing software for the State of Utah to work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance. Upon request, the Division agrees to provide Contractor with a copy of the latest version of the Software Development Life Cycle Policy.
 2. Contractor agrees to comply with DTS Policy 4000-0004, Change Management Policy. Per the Change Management Policy, any Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify Eligible User's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. The Eligible User will notify Contractor if this change control requirement is applicable. Following this notification, any outages or Data Breaches which are a direct result of Contractor's failure to comply with the Eligible User's instructions and policies following notification will result in Contractor's liability for any and all damages resulting from or associated with the outage or Data Breach. Upon request, the Division agrees to provide Contractor with a copy of the latest version of the DTS Change Management Policy 4000-0004.
33. **PUBLIC INFORMATION:** Contractor agrees that this Contract, any related purchase orders, related invoices, related pricing lists, and the Proposal will be public documents, and may be available for distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, any related purchase orders, related invoices, related pricing lists, and Proposal in accordance with GRAMA. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation. The Division, the Eligible Users, or the State of Utah will not inform Contractor of any request for a copy of this Contract, including any related purchase orders, related invoices, related pricing lists, or the Proposal.
36. **DELIVERY:** Unless otherwise specified in this Contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Contractor is responsible for including any freight charges due by the Eligible User to Contractor when providing quotes to the Eligible User unless otherwise specified in this Contract. Invoices listing freight charges that were not identified in the quote prior to shipment, unless otherwise specified in this Contract, will be

returned to the Contractor to remove such costs. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Eligible Users except as to latent defects, fraud, and Contractor's warranty obligations.

37. **ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good or Custom Deliverable to Eligible Users or provide any Good and Custom Deliverable for download from the Internet, if approved in writing by the Eligible Users. Contractor should take all reasonable and necessary steps to ensure that the confidentiality of those electronic deliveries is preserved in the electronic delivery process, and are reminded that failure to do so may constitute a breach of obligations owed to the Eligible Users under this Contract. Contractor warrants that all electronic deliveries will be free of known, within reasonable industry standards, malware, bugs, Trojan horses, etc. Any electronic delivery that includes Public Data that Contractor processes or stores must be delivered within the specifications of this Contract.
38. **ACCEPTANCE PERIOD:** A Good, Custom Deliverable, or Service furnished under this Contract shall function in accordance with the specifications identified in this Contract. If the Goods and Custom Deliverables delivered do not conform to the specifications identified in this Contract ("Defects"), the Eligible Users shall within thirty (30) calendar days of the delivery date ("Acceptance Period") to notify Contractor in writing of the Defects. Contractor agrees that upon receiving such notice, it shall use reasonable efforts to correct the Defects within fifteen (15) calendar days ("Cure Period"). The Eligible User's acceptance of a Good, Custom Deliverable, or Services occurs at the end of the Acceptance Period or Cure Period.
- If after the Cure Period, a Good, Custom Deliverable, or Service still has Defects, then the Eligible User may, at its option: (a) declare Contractor to be in breach and terminate this Contract; (b) demand replacement conforming Goods, Custom Deliverables, or Services from Contractor at no additional cost to the Eligible User; or (c) continue the Cure Period for an additional time period agreed upon by the Eligible User and Contractor in writing. Contractor shall pay all costs related to the preparation and shipping of the products returned pursuant to this section. No products shall be accepted and no charges shall be paid until acceptance is met. The warranty period will begin upon the end of the Acceptance Period.
39. **ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the appropriate Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by the Eligible Users will be those prices listed in this Contract. The Eligible Users have the right to adjust or return any invoice reflecting incorrect pricing.
40. **PROMPT PAYMENT DISCOUNT:** Contractor may quote a prompt payment discount based upon early payment. Contractor shall list payment discount terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received.

41. **PAYMENT:**

1. Payments will be made within thirty (30) days from a correct invoice is received, whichever is later. After sixty (60) days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.
 2. Unless otherwise stated in this Contract, all payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Eligible User's purchasing card (major credit card). The Division will not allow Contractor to charge electronic payment fees of any kind.
 3. The acceptance by Contractor of final payment without a written protest filed with the Eligible User within ten (10) working days of receipt of final payment shall release the Eligible User, the Division, and the State of Utah from all claims and all liability to Contractor for fees and costs pursuant to this Contract.
 4. Contractor agrees that if during, or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Eligible Users to Contractor, then Contractor shall, upon written request, immediately refund to the Eligible Users any such overpayments.
42. **INDEMNIFICATION – INTELLECTUAL PROPERTY:** Contractor warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by the Eligible Users in unaltered form, will not, to Contractor's knowledge, infringe any third party copyrights, patents, trade secrets, and/or other proprietary rights that exist on the effective date of this Contract and/or that arise or are enforceable under the law of the United States of America.

Contractor will release, indemnify, and hold the Division, the Eligible Users, and the State of Utah harmless from liability or damages of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in Contractor's performance of this Contract. Additionally, if such a claim or liability is based upon an allegation that a Good, Custom Deliverable, or Service furnished by Contractor infringes on any right protected by any patent, copyright, trademark, trade secret, and/or proprietary right of any third party, Contractor agrees to indemnify and hold harmless the Division, the Eligible Users, and the State of Utah for any judgments, settlements, reasonable costs, and reasonable attorneys' fees resulting from

such a claim or liability. Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto; however, the Eligible Users shall have the right, at its option, to participate in the defense of any such action without relieving Contractor of any obligation hereunder. The parties agree that if there are any limitations of liability, including a limitation of liability clause in this Contract, such limitations of liability will not apply to this Section.

- 43. OWNERSHIP IN INTELLECTUAL PROPERTY:** The parties each recognize that each has no right, title, or interest, proprietary or otherwise, in or to the name or any logo, or intellectual property owned or licensed by the other. Each agree that, without prior written consent of the other or as described in this Contract, it shall not use the name, any logo, or intellectual property owned or licensed by the other.
- 44. OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the Eligible Users, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for Eligible Users and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible Users, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible Users any and all copyrights in and to the Custom Deliverables, subject to the following:
1. Contractor has received payment for the Custom Deliverables,
 2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and
 3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas, concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of Eligible Users (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.
 4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible Users.

Contractor agrees to grant to the Eligible Users a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible Users and the State of Utah to use the Custom Deliverables. The Eligible Users reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's internal business operation under this Contract. The Eligible User and the Division may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

- 45. OWNERSHIP, PROTECTION AND USE OF RECORDS:** Except for confidential medical records held by direct care providers, the Eligible Users shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of the Eligible User. Contractor agrees to maintain the confidentiality of records it holds for the Eligible Users as required by applicable federal, state, or local laws.
- 46. PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES:** In the event that the Eligible User provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor agrees to hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Contract.
- 47. PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION:** All documents and data pertaining to work required by this Contract will be the property of the Eligible Users, and must be delivered to the Eligible Users within thirty (30) working days after termination or expiration of this Contract, regardless of the reason for contract termination, and without restriction or limitation to their future use. The costs for returning documents and data to the Eligible Users are included in this Contract.

48. **CONFIDENTIALITY:** Confidential Information may be disclosed to the Contractor under the terms of this Contract. If Confidential Information is disclosed to Contractor then Contractor agrees to adhere to the following:

Contractor will: (a) limit disclosure of any Confidential Information to Authorized Persons who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Contract relates, and only for that purpose; (b) advise its Authorized Persons of the proprietary nature of the Confidential Information and of the obligations set forth in this Contract and require such Authorized Persons to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties, except as otherwise agreed to in writing by the Eligible Users. Contractor will promptly notify the Eligible Users of any misuse or misappropriation of Confidential Information that comes to Contractor's attention.

Contractor shall be responsible for any breach of this duty of confidentiality contract by any of their officers, agents, subcontractors at any tier, and any of their respective representatives, including any required remedies and/or notifications under applicable law (Utah Code Section 13-44-101 thru 301 et al). Contractor shall indemnify, hold harmless, and defend the Division, the Eligible Users, and State of Utah from claims related to a breach of these confidentiality requirements by Contractor or anyone for whom the Contractor is liable. This duty of confidentiality shall be ongoing and survive the term of this Contract.

49. **ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Division.
50. **DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract: (a) nonperformance of contractual requirements or (b) a material breach of any term or condition of this Contract. The Division will issue a written notice of default providing a fourteen (14) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the Division may do one or more of the following: (a) exercise any remedy provided by law; (b) terminate this Contract and any related contracts or portions thereof; (c) impose liquidated damages, if liquidated damages are listed in the contract; (d) suspend Contractor from receiving future solicitations; or (e) request a full refund of the Goods, Custom Deliverables, or Services furnished by Contractor that are defective or Services that were inadequately performed under this Contract.
51. **TERMINATION UPON DEFAULT:** In the event this Contract is terminated as a result of a default by Contractor, the Division may procure or otherwise obtain, upon such terms and conditions as the Division deems appropriate, Goods, Custom Deliverables, or Services similar to those terminated, and Contractor shall be liable to the Division for any and all cover costs and damages arising therefrom, including attorneys' fees, excess costs and fees, and cost of cover together with incidental or consequential damages, incurred by the Division in obtaining similar Goods, Custom Deliverables, or Services.
52. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Division and the Eligible Users may immediately terminate this Contract after determining such delay will reasonably prevent successful performance of this Contract.
53. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
54. **WORKERS' COMPENSATION:** Contractor shall maintain during the term of this Contract, workers' compensation insurance for all its employees as well as any subcontractor employees related to this Contract. Worker's compensation insurance shall cover full liability under the worker's compensation laws of the jurisdiction in which the service is performed at the statutory limits required by said jurisdiction. Contractor acknowledges that within thirty (30) days of contract award, Contractor and/or Subcontractors must submit proof of certificate of insurance that meets the above requirements.
55. **LIABILITY INSURANCE:** Contractor agrees to provide and to maintain during the performance of this Contract, at its sole expense, a policy of general liability insurance. The limits of the policy shall be no less than \$1,000,000.00 for each occurrence and \$3,000,000.00 aggregate. It shall be the responsibility of Contractor to require any of their Subcontractor(s) to secure the same insurance coverage as prescribed herein for the Contractor.
- Contractor must provide proof of insurance to the Division and must add the State of Utah as an additional insured with notice of cancellation. Contractor acknowledges that within thirty (30) days of contract award, Contractor and/or Contractor's Subcontractors must submit proof of certificate of insurance that meets the above requirements. Failure to provide proof of insurance, as required, could result in this Contract being terminated for cause.
56. **CONFLICT OF TERMS:** Contractor terms and conditions that apply must be in writing and attached to this Contract. No other terms and conditions will apply to this Contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, purchase orders, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: (a) this Attachment A; (b) Contract Signature Page(s); (c) State of

Utah's Additional Terms and Conditions, if any; and (d) Contractor Terms and Conditions, if any. Attachment A will be given precedence over any provisions including, limitation of liability, indemnification, standard of care, insurance, or warranty, and will not be nullified by or exception created by more specific terms elsewhere in this Contract.

57. **ENTIRE AGREEMENT:** This Contract shall constitute the entire agreement between the parties, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
58. **SURVIVORSHIP:** This paragraph defines the specific contractual provisions that will remain in effect after expiration of, the completion of, or termination of this Contract, for whatever reason: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of Public Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records, including Residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, State, or Local Government Internal Business Processes, including Residuals of such confidential business processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration of, completion, or termination of this contract.
59. **WAIVER:** The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract.
60. **CONTRACT INFORMATION:** During the duration of this Contract, the Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.
61. **COMPLIANCE WITH ACCESSIBILITY STANDARDS:** Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractor acknowledges that all Goods and Custom Deliverables that it licenses, contracts, or sells to the Eligible Users under this contract are accessible to people with disabilities.
62. **RIGHT TO AUDIT:** Contractor agrees to, upon written request, permit Division, or a third party designated by the Division, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel; physical premises; records; technical and physical infrastructures; and any other person, place, or object which may assist the Division or its designee in completing such assessment. In addition, upon request, Contractor shall provide the Division with the results of any audit performed by or on behalf of Contractor that would assist the Division or its designee in confirming Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards.
63. **LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
64. **ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions and prices of this Contract.
65. **INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
66. **QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract.
67. **ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
68. **REPORTS AND FEES:**
 1. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be .40% and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
 2. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The quarterly report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address: salesreports@utah.gov.
 3. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30

June 30	July 31
September 30	October 31
December 31	January 31

4. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

If Services are applicable to this Contract, the following terms and conditions apply to this Contract:

69. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence.
70. **PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
72. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.
73. **STATE REVIEWS, LIMITATIONS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor.

4. **Primary Contacts:** The primary contact individuals for this participating addendum are as follows (or their named successors):

<u>Contractor</u>	
Name	Deepak Raghavan
Address	
Telephone	(925) 336-4164
Fax	
E-mail	deepakr@ceragon.com

<u>Participating Entity</u>	
Name	Wesley Sellers
Address	3150 State Office Building, Salt Lake City, UT 84114
Telephone	(801) 538-3709
Fax	
E-mail	wsellers@utah.gov

5. **Subcontractors:**

All Ceragon Networks, Inc. dealers/resellers/distributors authorized in the State of Utah, as shown on the NASPO ValuePoint website, are approved to provide sales and service support to participants in the NASPO Master Agreement. Ceragon Networks, Inc. dealer's/resellers/distributors participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

6. **Purchase Order Instructions:**

All orders should contain the following (1) Mandatory Language "PO is subject to NASPO ValuePoint Contract # 06913 (2) Your Name, Address, Contact, & Phone-Number (3) **Purchase order amount.** Please channel your PO through one of our authorized dealers/resellers/distributors so they can arrange for proper ordering and installation of your equipment. During Contract performance, Contractor shall identify and make available to Purchasers upon request a list of subcontractors, dealers, and distributors who will supply products or perform services in fulfillment of Contract requirements. Information shall include their name, the nature of services to be performed or products to be sold by product

category/subcategory, address, telephone, facsimile, email, and federal tax identification number (TIN) (if the company is authorized to sell and invoice for products and services).

7. Price Agreement Number:

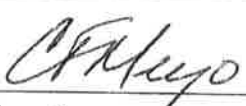
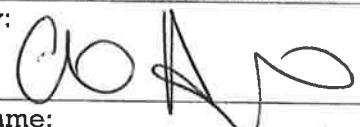
All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: **AR2277** and the Lead State Master Agreement number: 06913.

8. Individual Customer:

Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

This Participating Addendum and the Master Agreement number 06913 (administered by the State of Washington) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State:	Contractor:
	NEC Corporation of America Utah
By:	By:
	
Name:	Name:
CHARLES MAYO	Christopher Hughes
Title:	Title:
PRESIDENT	Assistant Director
Date:	Date:
11/3/16.	11/5/16

[Additional signatures as required by Participating State]

If you have questions about this Participating Addendum or the participation process, please contact:

NASPO ValuePoint

Name	Tim Hay, Cooperative Development Coordinator
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Telephone	503-428-5705
E-mail	thay@naspovalupoint.org

[Fully executed PDF copy of this document should be emailed to PA@naspovalupoint.org to support documentation of participation and posting in appropriate data bases]

CONTRACT/MASTER AGREEMENT

State of Washington, Department of Enterprise Services (DES),
on behalf of the NASPO ValuePoint Cooperative Purchasing Program



Contract/Master Agreement #06913 For Public Safety Communication Equipment

**Between
The State of Washington
And
Ceragon Networks, Inc.**

Under the Authority of
State of Washington, [Chapter 39.26 RCW](#)

Ceragon Networks, Inc. has been awarded the following Category:

Microwave Antennas

A small, handwritten signature or set of initials in the bottom right corner of the page.

RFP 06913 Public Safety Communication Equipment

1.0 OVERVIEW

1.1 CONTRACT SCOPE

The purpose of this Contract is to enable authorized purchasers to purchase public safety communication equipment from one or more awarded contractors from one or more of the following product categories:

1. Radios – LMR (Land Mobile Radios)
 - Portable
 - Dual-band
 - Single-band
 - Tier I
 - Tier II
 - Tier III
 - Mobile
 - Dual-band
 - Single-band
 - Tier I
 - Tier II
 - Tier III
 - Desktop
 - Dual-band
 - Single-band
 - Tier I
 - Tier II
 - Base Station/Repeater
 - Single-band
 - Tier I
 - Tier II
 - In-vehicle Repeater
2. Microwave Radios
3. Dispatch Consoles
4. Microwave Antennas
5. Mobile Radio Antennas
6. Base Station/Repeater Radio Antennas
7. RF Transmission Lines
8. RF Filtering Equipment

RFP 06913 Public Safety Communication Equipment

New contracts may be established with other vendors as new equipment and additional product categories or subcategories are identified. This strategy will accommodate new technology introduced into the marketplace and made available to public safety customers.

1.2 CONTRACT SCOPE AND MODIFICATIONS

The DES reserves the right to modify this Contract by mutual agreement between the DES and the Contractor, so long as such modification is substantially within the scope of the original Contract. Such modifications will be evidenced by issuance of a written authorized amendment by the Contract Administrator.

1.3 RECITALS

The Department of Enterprise Services, on behalf of the state of Washington (acting as the Lead State for WSCA-NASPO), issued a Request for Proposal (RFP) for the purpose of purchasing equipment and services for public safety communication equipment in accordance with its authority under Chapter 39.26 RCW.

Ceragon Networks, Inc. submitted a timely response to the DES's solicitation (incorporated by reference).

The DES evaluated all properly submitted responses to the above-referenced RFP and has identified Ceragon Networks, Inc. as one of the apparently successful Contractors.

The DES has determined that entering into a contract/master agreement with Ceragon Networks, Inc. will meet Purchaser's needs and will be in Purchaser's best interest.

NOW THEREFORE, DES awards to Ceragon Networks, Inc. this Contract/Master Agreement, the terms and conditions of which shall govern Contractor's furnishing to Purchasers the equipment and services identified herein. This Contract is not for personal use.

IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

1.4 ESTIMATED USAGE

Based on past and/or projected future usage, it is estimated that purchases over the initial two (2) year term of the contract may approximate an aggregate total of \$250,000,000 for contract products and services. This estimate was provided solely for the purpose of assisting bidders in preparing their response. Orders will be placed by Purchasers (Purchasing Entities) only on an as needed basis.

The State of Washington/WSCA-NASPO does not represent or guarantee any minimum level of purchase.

RFP 06913 Public Safety Communication Equipment

1.5 CONTRACT TERM

The initial term of this Contract is for approximately two (2) years from the effective date of the Contract through June 30, 2016 with the option to extend for additional term(s) or portions thereof. Extension for each additional term shall be offered at the sole discretion of the DES and are subject to written mutual agreement. The total Contract term, including the initial term and all subsequent extensions, shall not exceed eight (8) years unless an emergency exists and/or special circumstances require a partial term extension. The DES reserves the right to extend with all or some of the Contractors, solely determined by the DES.

1.6 PURCHASERS/PURCHASING ENTITIES

Purchasers/Purchasing Entities include members of the WSCA-NASPO Cooperative Purchasing Program, a unified, nationally-focused cooperative purchasing program that potentially can leverage the collective expertise, experience, and demand of 50 states and their political subdivisions, and help spur innovation and competition in the marketplace.

WSCA- NASPO Cooperative Purchasing Program is a cooperative group-contracting consortium for state governments, serving their departments, institutions, institutions of higher education, agencies and political subdivisions (e.g., school districts, counties, cities, etc.). All 50 states, the District of Columbia, US Territories and other public entities may participate in the use of WSCA-NASPO contracts.

The following Participating Entities have signified their intent to participate in this Contract/Master Agreement and have listed their estimated annual spend (including participating political subdivisions): Alaska - \$6,210,000/year; Arkansas - \$3,250,000/year; Delaware - \$4,030,000/year; Iowa - \$2,000,000/year; Nevada - \$4,000,000/year; New Hampshire - \$2,000,000/year; Oregon - \$13,000,000/year; South Dakota - \$100,000/year; Utah - \$495,000/year; Washington - \$12,000,000/year; California - \$8,000,000/year. (See also *Appendix J Intent to Participate* and *Appendix K Individual States' Terms and Conditions*)

However, Intent to Participate documents are not binding. During the term of the Contract, states and public entities may use this Contract by executing a Participating Addendum between themselves and the Contractor.

2.0 CONTRACT ADMINISTRATION

2.1 DES CONTRACT ADMINISTRATOR

The DES shall appoint a single point of contact that will be the Contract Administrator for this contract and will provide oversight of the activities conducted hereunder. The contract Administrator will be the principal contact for Contractor concerning business activities under this Contract. The DES will notify Contractor, in writing, when there is a new Contract Administrator assigned to this Contract.

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2.2 ADMINISTRATION OF CONTRACT

DES will maintain Contract information and the level of price discount(s) and will make this information available on the DES web site.

2.3 CONTRACTOR SUPERVISION AND COORDINATION

Contractor shall:

1. Competently and efficiently, supervise and coordinate the implementation and completion of all Contract requirements specified herein;
2. Identify the Contractor's representative, who will be the principal point of contact for the DES Contract Administrator concerning Contractor's performance under this Contract.
3. Immediately notify the Contract Administrator in writing of any change of the designated Contractor's representative assigned to this Contract; and
4. Violation of any provision of this paragraph may be considered a material breach establishing grounds for Contract termination.
5. Be bound by all written communications given to or received from the Contractor's representative.

2.4 POST AWARD CONFERENCE

The Contractor may be required to attend a post award conference scheduled by the Procurement Coordinator to discuss contract performance requirements. The time and place of this conference will be scheduled following Contract award.

2.5 CONTRACTOR'S CONTRACT MANAGEMENT

Upon award of this Contract/Master Agreement, the Contractor shall:

1. Designate a single point of contract and alternate point of contract for the administration of this contract.
2. Review the impact of the award and take the necessary steps needed to ensure that contractual obligations will be fulfilled.
3. Promote and market the use of this Contract to all authorized Contract Purchasers/Purchasing Entities.
4. Ensure that those who endeavor to utilize this Contract are authorized Purchasers/Purchasing Entities under the terms and conditions of this contract.
5. At no additional charge, assist Purchasers/Purchasing Entities in the following manner to make the most cost effective, value based, Purchases including, but not limited to:
 - a) Visiting the Purchaser/Purchasing Entities site and providing them with materials/supplies/equipment recommendations.

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- b) Providing Purchaser/Purchasing Entities with a detailed list of contract products and services including current Contract pricing.
- 6. Provide contract customers with product and service information and assistance with order development, placement, and tracking. Provide Help Desk services for initial troubleshooting and possible resolution of the problems or for the initiation of repair or replacement services.
- 7. The Contractor shall designate a customer service representative who will be responsible for addressing Purchaser/Purchasing Entities issues including, but not limited to:
 - a) Logging requests for service, ensuring equipment repairs are completed in a timely manner, dispatching service technicians, and processing warranty claim documentation.
 - b) Providing Purchaser/Purchasing Entities with regular and timely status updates in the event of an order or repair fulfillment delay.
- 8. Acting as the lead and liaison between the Contractor and Purchaser/Purchasing Entities in resolving warranty claims for contract items purchased.

2.6 CHANGES

Alterations to any of the terms, conditions, or requirements of this Contract shall only be effective upon written issuance of a mutually agreed Contract amendment by the Contract Administrator, unless otherwise authorized within the Contract. However, changes to point of contact information or other administrative changes may be updated without the issuance of a mutually agreed contract amendment.

2.7 WSCA-NASPO eMARKET CENTER

Contractor will cooperate with WSCA-NASPO and SciQuest (and any authorized agent or successor entity to SciQuest) with uploading a hosted catalog or integrating a punchout site. (Reference Appendix C WSCA-NASPO MASTER AGREEMENT TERMS AND CONDITIONS, Section 36, for the details of this requirement.)

2.8 WSCA-NASPO CONTRACT ADMINISTRATION FEE

The Contract is subject to a WSCA-NASPO Administration Fee. Contractor has included this fee in Contract pricing and will not list it as a separate line item on its invoices to Purchasers/Purchasing Entities. The Contractor will collect the fees and distribute the fees to WSCA-NASPO Cooperative Purchasing Organization (or its assignee), as outlined below.

The WSCA-NASPO Administration Fee will be one-quarter of one percent (0.25% or 0.0025) on all purchases made under authority of the Contract. Purchases are defined as total invoice price less any applicable sales tax. No taxes will be assessed against this WSCA-NASPO Administration Fee.

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The WSCA-NASPO Administrative Fee shall be paid within sixty (60) days after the end of the calendar quarter. It is the Contractor's responsibility to calculate and remit the administrative fee since WSCA-NASPO does not issue an invoice for this fee. Contractor shall indicate the Contract number 06913 and include with the remittance, a quarterly sales report by WSCA-NASPO Contract participant. The administrative fee shall be paid to:

WSCA-NASPO COOPERATIVE PURCHASING ORGANIZATION
PROGRAM MANAGER
201 EAST MAIN STREET, SUITE 1450
LEXINGTON, KY 40507

In addition to the WSCA-NASPO Administration Fee as stated above, some states may require an additional fee be paid directly to the state on purchases made by purchasing entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Contract/Master Agreement. The Contractor may adjust the Contract/Master Agreement pricing accordingly for purchases made by Purchasers within the jurisdiction of the state. All such agreements may not affect the WSCA-NASPO Administrative Fee or the prices paid by the purchasers outside the jurisdiction of the state requesting the additional fee.

2.9 WSCA-NASPO CONTRACT SALES REPORTS

The Contractor shall submit summary sales data reports required by section 27 of Appendix C WSCA-NASPO Master Agreement Terms and Conditions directly to WSCA-NASPO using the WSCA-NASPO Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under the Contract shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than 30 day following the end of the calendar quarter (as specified in the reporting tool).

2.10 WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS)

Contractor shall be registered in the contractor registration system, Washington's Electronic Business Solution (WEBS) www.ga.wa.gov/webs, maintained by the Washington State Department of Enterprise Services. Contractors already registered need not re-register. It is the sole responsibility of Contractor to properly register with WEBS and maintain an accurate contractor profile in WEBS.

3.0 PRICING

3.1 NO ADDITIONAL CHARGES

Unless otherwise specified herein, no additional charges by the Contractor will be allowed including, but not limited to: handling charges such as packing, wrapping, bags, containers, reels; or the processing fees associated with the use of credit

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cards. Notwithstanding the foregoing, in the event that market conditions, laws, regulations or other unforeseen factors dictate, at the Contract Administrator's sole discretion, additional charges may be allowed.

3.2 CONTRACT PRICING

During the term of the Contract, Contractor must have and maintain the national published and/or web-posted product price list for all public safety communication equipment products and services available through the Contract, including those identified in Appendix H Price Worksheets. A copy must be made available to Purchasers upon request and at no additional charge. The price list in effect at the time of order placement shall be used when applying price discounts specified in Appendix H Price Worksheets. However, if the Contractor has provided a specific price quote to the Purchaser than the prices quoted must be held firm for a minimum period of sixty (60) days after the date of the quote.

3.3 VOLUME/PROMOTIONAL DISCOUNTS

Contract prices, including the applicable price discount, shall be the maximum or ceiling price Contractor can charge Purchasers. However, the Contractor may offer a Purchaser a greater price discount for a volume order or for promotional purposes which would result in even lower purchase prices.

3.4 PRICE ADJUSTMENTS

Contractor may update or change its reference national published/posted product price list during the term of the Contract as necessary to delete discontinued products/services, add newly introduced products/services, or to pass-through price changes applied to all customers purchasing from the price list. Contractor shall provide the Contract Administrator notification of price list changes. This notification shall be handled as an administrative change and shall not require the execution of a Contract amendment as called for in section 2.6 Changes. Percentage discounts identified in Appendix H Price Worksheets shall remain unchanged.

A decrease in the level of price discount shall not be considered during the initial term of the Contract nor for any subsequent Contract extension. However, an increase in the level of price discount may be considered at any time during the initial term of the Contract and during each subsequent Contract extension.

For services available through this Contract, if pricing is listed at a per hour price (rather than as a percentage discount off list price) prices may be increased after initial term of the contract. A minimum of 60 calendar days advance written notice is required with accompanying sufficient documentation to justify the requested increase. Acceptance of the price increase will be at the discretion of the Contract Administrator and the adjusted price must not produce a higher profit margin that

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that established on the original contract pricing. Approved price increases must remain unchanged at least through the current extension term.

4.0 CONTRACTOR QUALIFICATIONS AND REQUIREMENTS

4.1 ESTABLISHED BUSINESS

Prior to commencing performance, or prior to that time if required by the DES, law or regulation, Contractor must be an established business firm with all required licenses, fees, bonding, facilities, equipment and trained personnel necessary to meet all requirements and perform the work as specified in the Solicitation. Contractor shall maintain compliance with these requirements throughout the life of this Contract.

The DES reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.

4.2 USE OF SUBCONTRACTORS/DEALERS/DISTRIBUTORS

In accordance with RFP requirements, Contractor agrees to take complete responsibility for all actions of its subcontractors/dealers/distributors involved in the Contract performance.

During Contract performance, Contractor shall identify and make available to Purchasers upon request a list of subcontractors, dealers, and distributors who will supply products or perform services in fulfillment of Contract requirements. Information shall include their name, the nature of services to be performed or products to be sold by product category/subcategory, address, telephone, facsimile, email, and federal tax identification number (TIN) (if the company is authorized to sell and invoice for products and services).

The Contract Administrator reserves the right to request the Contractor remove any subcontractor, dealer or distributor participating in the Contract. During the Contract Contractor may add or remove subcontractors, dealers or distributors participating in this Contract. Reference Appendix F National Network of Subcontractors/Dealers/Distributors for additional information.

Specific restrictions apply to contracting with current or former Washington state employees pursuant to Chapter 42.52 RCW and such restrictions may apply to contracting with current or former employees of other states.

4.3 ASSIGNMENT AND SUBCONTRACT/DEALER/DISTRIBUTOR INVOLVEMENT

Contractor shall not assign or otherwise transfer its obligations under this Contract without the prior written consent of the Contract Administrator. Contractor shall provide a minimum of thirty (30) calendar days advance notification of intent to assign or otherwise transfer its obligations under this Contract. Violation of this

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condition may be considered a material breach establishing grounds for Contract termination.

The Contractor shall be responsible to ensure that all Contract requirements are met whether performance is done by themselves or through designated and authorized subcontractors, dealers, or distributors also involved in the performance of this Contract. In no event shall the involvement of a subcontractor, dealer, or distributor release or reduce the liability of Contractor to the Purchaser for any breach in the performance of the Contractor's duties.

If during the performance of the contract or a purchase order, any named individual specifically identified in the response to work on this engagement is not available, the Purchaser reserves the right to approve or reject any personnel substitutions.

4.4 CONTRACTOR AUTHORITY AND INFRINGEMENT

Contractor is authorized to sell under this Contract, only those materials, supplies, services and/or equipment as stated herein and allowed for by the provisions of this Contract. Contractor shall not represent to any Contract Purchaser/Purchasing Entity that they have the Contract authority to sell any other materials, supplies, services and/or equipment. Further, Contractor may not intentionally infringe on other contracts established by Washington State or Participating Entities.

4.5 MATERIALS AND WORKMANSHIP

The Contractor shall be required to furnish all materials, supplies, equipment and/or services necessary to perform contractual requirements. Materials, supplies and workmanship used in the construction of equipment for this Contract shall conform to all applicable federal, state, and local codes, regulations and requirements for such equipment, specifications contained herein, and the normal uses for which intended. Materials, supplies and equipment shall be manufactured in accordance with the best commercial practices and standards for this type of materials, supplies, and equipment.

4.6 MERCURY CONTENT AND PREFERENCE

Contractor shall provide mercury-free products when available. Should mercury-free products not exist, contractors shall provide products with the lowest mercury content available. Contractor shall disclose products that contain added mercury and provide an explanation that includes the amount or concentration of mercury, and justification as to why added mercury is necessary for the function or performance of the product.

The DES reserves the right to require receipt of proof of compliance with said requirements within ten (10) calendar days from the date of request, and to terminate this Contract as a material breach for noncompliance with any requirement of this paragraph.



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5.0 DELIVERY REQUIREMENTS

5.1 ORDER FULFILLMENT REQUIREMENTS

Authorized Purchasers/Purchasing Entities may place orders against this Contract either in person, electronically, facsimile or by phone. Once an order is issued, the following shall apply:

1. For purposes of price verification and auditing, upon receipt of a purchase order the Contractor shall send the Purchaser an order confirmation notification that identifies applicable Contract prices to be applied to the order.
2. Upon the request of the Purchaser, the Contractor shall supply Purchaser documentation needed to verify Contract pricing compliance.
3. Product damaged prior to acceptance will either be replaced or repaired in an expedited manner at Contractor's expense. Alternatively, at the Purchaser's option, any possible damage to the product can be noted on the receiving report and the cost deducted from final payment.

The Contractor is responsible to verify delivery conditions/requirements with the Purchaser prior to the delivery.

5.2 SHIPPING AND RISK OF LOSS

Contractor shall ship all products purchased pursuant to this Contract, freight charges prepaid by the Contractor, F.O.B. Purchaser's specified destination with all transportation and handling charges included. However, for the category Microwave Antennas only, additional freight charges may be prepaid and added to the invoice to cover the additional cost of shipment from the nearest port city to the Purchaser's receiving facility located outside the contiguous United States, provided the Purchaser approves the additional freight charge at the time of order placement.

The method of shipment shall be consistent with the nature of the products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the products ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Contractor from any obligation hereunder. After delivery, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence.

5.3 DELIVERY

Delivery of products must be made during Purchaser's normal work hours and within time frames mutually agreed in writing between the Purchaser and Contractor at the time of order placement.

Failure to comply with agreed upon delivery times may subject Contractor to damages. The Purchaser may refuse shipment when delivered after normal working

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hours. The Contractor shall verify specific working hours of individual Purchasers and instruct carrier(s) to deliver accordingly. The acceptance by the Purchaser of late performance, with or without objection or reservation by the Purchaser, shall not waive the right to claim damage for such breach, nor preclude the DES or Purchaser from pursuing any other remedy provided herein, including termination, nor shall such acceptance of late performance constitute a waiver of the requirements for the timely performance of any obligation remaining to be performed by Contractor.

All deliveries are to be made to the applicable delivery location as indicated in the order document. When applicable, the Contractor shall take all necessary actions to safeguard items during inclement weather. In no case shall the Contractor initiate performance prior to receipt of written or verbal authorization from authorized Purchasers. Expenses incurred otherwise shall be borne solely by the Contractor.

5.4 SITE SECURITY

While on Purchaser's premises, Contractor, its agents, employees, subcontractors, dealers or distributors shall conform in all respects with physical, fire, or other security regulations.

5.5 INSPECTION, ACCEPTANCE AND REJECTION

The Purchaser's inspection of all materials, supplies and equipment upon delivery is for the purpose of forming a judgment as to whether such delivered items are what was ordered, were properly delivered and ready for acceptance. Such inspection shall not be construed as final acceptance, or as acceptance of the materials, supplies or equipment, if the materials, supplies or equipment does not conform to contractual requirements.

If there are any apparent defects in the materials, supplies, or equipment at the time of delivery, the Purchaser will promptly notify the Contractor. Without limiting any other rights, the Purchaser may require the Contractor to: (1) repair or replace, at Contractor's expense, any or all of the damaged goods; (2) refund the price of any or all of the damaged goods; or (3) accept the return of any or all of the damaged goods.

5.6 INSTALLATION

When applicable, installation shall be performed in a professional manner in accordance with industry standard best practices. The premises shall be left in a neat, clean, and undamaged condition. The Purchaser reserves the right to require Contractor to repair any damage caused during installation or provide full compensation as determined by the Purchaser.



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5.7 TITLE TO PRODUCT

Upon Delivery or Acceptance, whichever is applicable, Contractor shall convey to purchaser good title to the goods free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

5.8 TREATMENT OF ASSETS

1. Title to all property furnished by the Purchaser shall remain with the Purchaser, as appropriate. Title to all property furnished by the Contractor, the cost for which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vests in the Purchaser upon delivery of such property by the Contractor and acceptance by the Purchaser. Title to other property, the cost of which is reimbursable to the Contractor under this Contract, shall pass to and vest in the Purchaser upon (i) issuance for use of such property in the performance of this Contract, or (ii) commencement of use of such property in the performance of this Contract, or (iii) reimbursement of the cost thereof by the Purchaser in whole or in part, whichever first occurs.
2. Any property of the Purchaser furnished to the Contractor shall, unless otherwise provided herein or approved by the Purchaser, be used only for the performance of this Contract.
3. The Contractor shall be responsible for damages as a result of any loss or damage to property of the Purchaser which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances.
4. If any Purchaser property is lost, destroyed, or damaged, the Contractor shall immediately notify the Purchaser and shall take all reasonable steps to protect the property from further damage.
5. The Contractor shall surrender to the Purchaser all property of the Purchaser prior to settlement upon completion, termination, or cancellation of this Contract.
6. All reference to the Contractor under this clause shall also include Contractor's employees, agents, subcontractors, dealers or distributors.

5.9 LABELING

Individual shipping cartons shall be labeled with the name of the ordering agency, order number, Contract number, Contractor, state stock numbers, and where applicable, date of manufacture, batch number, storage requirements, conditions, and recommended shelf life. Contractors are encouraged to offer product packaging with recycled content.

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5.10 SOFTWARE LICENSE AGREEMENT,

If the communication equipment ordered and delivered under the term and conditions of this Contract requires software or firmware to operate, the Contractor may require the Purchaser/Purchasing Entity to sign a software license agreement prior to shipment of the equipment. A software license agreement approved by the Contractor has been provided as Appendix M Software License Agreement."

6.0 PAYMENT

6.1 ADVANCE PAYMENT PROHIBITED

No advance payment shall be made for the products and services furnished by Contractor pursuant to this Contract.

Notwithstanding the above, maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter.

6.2 IDENTIFICATION

All invoices, packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Contract shall be identified by the Contract number and the applicable Purchaser's order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.

6.3 PAYMENT, INVOICING AND DISCOUNTS

Payment is the sole responsibility of, and will be made by, the Purchaser.

Contractor shall provide a properly completed invoice to Purchaser. All invoices are to be delivered to the address indicated in the purchase order.

Each Invoice shall be identified by the associated WSCA-NASPO Contract/Master Agreement number or the Participating Addendum number, and the Purchaser's Contract/Purchase Order number (as applicable), and shall be in U.S. dollars. Invoices shall be prominently annotated by the Contractor with all applicable prompt payment and/or volume or promotional discount(s). Hard copy credit memos are to be issued when the Purchaser has been overcharged.

Invoices for payment will accurately reflect all discounts due the Purchaser. Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in U.S. dollars and until all invoiced items are received and satisfactory performance of Contractor has been accepted by the Purchaser. If an adjustment in payment is necessary due to damage or dispute, any prompt payment discount period shall commence on the date final approval for payment is authorized.

If Purchaser fails to make timely payment(s), Contractor may invoice for 1% per month on the amount overdue or a minimum of \$1.00. (In Washington State

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reference Chapter 39.76 RCW.) Payment will not be considered late if a check or warrant is mailed within the time specified. If no terms are specified, net 30 days will automatically apply. Payment(s) made in accordance with Contract terms shall fully compensate the Contractor for all risk, loss, damages or expense of whatever nature and acceptance of payment shall constitute a waiver of all claims submitted by Contractor.

Payment for materials, supplies and/or equipment received and for services rendered shall be made by Purchaser and be redeemable in U.S. dollars. Unless otherwise specified, the Purchaser's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the Contractor.

6.4 TAXES, FEES AND LICENSES

Taxes:

Where required by statute or regulation, the Contractor shall pay for and maintain in current status all taxes that are necessary for Contract performance. Unless otherwise indicated, Washington purchasers agree to pay State of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. Purchasers located in other states may be required to pay their own state and local taxes on the purchase as required by local state laws and regulations. No charge by the Contractor shall be made for federal excise taxes and the purchaser agrees to furnish Contractor with an exemption certificate where appropriate.

Collection of Retail Sales and Use Taxes:

In general, contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state contractors must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in the State of Washington is significantly associated with contractor's ability to establish or maintain a market for its products in Washington State. Examples of such activity include where the contractor either directly or by an agent or other representative:

1. Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;
2. Maintains an in-state inventory or stock of goods for sale;
3. Regularly solicits orders from purchasers located within the State of Washington via sales representatives entering the State of Washington;
4. Sends other staff into the State of Washington (e.g. product safety engineers, etc.) to interact with purchasers in an attempt to establish or maintain market(s); or
5. Other factors are identified applicable to Washington Purchasers are found in WAC 458-20.

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Washington State Department of Revenue Registration for Out-of-State Contractors:

Out-of-state contractors meeting any of the above criteria must register and establish an account with the Washington State Department of Revenue. Refer to WAC 458-20-193, and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state contractors are not required to collect and remit "use tax," purchasers located in the State of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

Fees/Licenses:

After award of contract, and prior to commencing performance under the contract, the Contractor shall pay for and maintain in a current status any licenses, fees, assessments, permit charges, etc., which are necessary for contract performance. It is the Contractor's sole responsibility to maintain licenses and to monitor and determine any changes or the enactment of any subsequent regulations for said fees, assessments, or charges and to immediately comply with said changes or regulations during the entire term of this Contract.

Customs/Brokerage Fees:

Contractor shall take all necessary actions, including, but not limited to, paying all customs, duties, brokerage, and/or import fees, to ensure that materials, supplies, and/or equipment purchased under the Contract are expedited through customs. Failure to do so may subject Contractor to liquidated damages as identified herein and/or to other remedies available by law or contract. Neither the DES nor the purchaser will incur additional costs related to Contractor's payment of such fees.

Taxes on Invoice:

Contractor shall calculate and enter the appropriate Washington State and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

6.5 OVERPAYMENTS TO CONTRACTOR

Contractor shall refund to Purchaser the full amount of any erroneous payment or overpayment under this Contract within thirty (30) days' written notice. If Contractor fails to make timely refund, Purchaser may charge Contractor one percent (1%) per month on the amount due, until paid in full.

6.6 AUDITS

The DES Contract Administrator and/or the Purchaser reserves the right to audit, or have a designated third party audit, applicable records to ensure that the Purchaser has been properly invoiced. Any remedies and penalties allowed by law to recover monies determined owed will be enforced. Repetitive instances of incorrect invoicing may be considered complete cause for contract termination.

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7.0 QUALITY ASSURANCE

7.1 RIGHT OF INSPECTION

Contractor shall provide right of access to its facilities to DES, or any of DES's officers, or to any other authorized agent or official of the state of Washington or other Participating or Purchasing Entity, or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Contract.

7.2 CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any written commitment by Contractor within the scope of this Contract shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this Contract. For purposes of this section, a commitment by Contractor includes: (i) prices, discounts, and options committed to remain in force over a specified period of time; and (ii) any warranty or representation made by Contractor in its response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its response or used to effect the sale to Purchaser.

7.3 PRODUCT WARRANTY

Warranty(ies): Unless otherwise specified, full parts and labor warranty period shall be for a minimum period of one (1) year after receipt of materials or equipment by the Purchaser. All materials or equipment provided shall be new and unused (or like new with no blemishes or defects), of the latest model or design and of recent manufacture. A copy of the equipment warranty shall be provided with the equipment at the time of equipment delivery.

In the event of conflict between Contract terms and conditions and Contractor's submitted warranty, the Contract terms and conditions shall prevail; except, to afford the Purchaser maximum benefits, the Purchaser may avail itself of the Contractor's warranty if deemed more beneficial to the Purchaser.

7.4 WARRANTIES

Contractor warrants that all materials, supplies, services and/or equipment provided under this Contract shall be fit for the purpose(s) for which intended, for merchantability, and shall conform to the requirements and specifications herein. Acceptance of any materials, supplies, service and/or equipment, and inspection incidental thereto, by the Purchaser shall not alter or affect the obligations of the Contractor or the rights of the Purchaser.

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The Contractor warrants for a period of one year(s) from the date of acceptance that: (a) the product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the product is suitable for the ordinary purposes for which such product is used, (c) the product is suitable for any special purposes identified in the solicitation or for which the Purchaser has relied on the Contractor's skill or judgment, (d) the product is designed and manufactured in a commercially reasonable manner, and (e) the product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchaser) the product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced product fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

THESE WARRANTIES ARE THE COMPLETE WARRANTIES FOR THE EQUIPMENT AND SOFTWARE PROVIDED UNDER THIS AGREEMENT AND ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES. CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED.

Ceragon offers the following warranty period: (i) 12 month as of Acceptance, or (ii) 15 months as of delivery, whichever occurs first.

7.5 DATE WARRANTY

Contractor warrants that all products provided under this Contract: (i) do not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; (iii) will lose no functionality, data integrity, or performance with respect to any date; and (iv) will be interoperable with other software used by Purchaser that may deliver date records from the products, or interact with date records of the products ("date warranty"). In the event a date warranty problem is reported to Contractor by Purchaser and such problem remains unresolved after three (3) calendar days, at Purchaser's discretion, Contractor shall send, at Contractor's sole expense, at least one (1) qualified and knowledgeable representative to Purchaser's premises. This representative will continue to address and work to remedy the failure, malfunction, defect, or nonconformity on Purchaser's premises. This date warranty shall last perpetually. In the event of a breach of any of these representations and warranties, Contractor shall indemnify and hold harmless Purchaser from and against any and all harm, injury, damages, costs, and expenses incurred by Purchaser arising out of said breach.

7.6 COST OF REMEDYING DEFECTS

All defects, indirect and consequential costs of correcting, removing or replacing any or all of the defective materials or equipment will be charged against the Contractor.

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7.7 TRAINING

Contractor shall provide Purchasers training as requested following equipment delivery on basic operations and at no additional cost. Specialized training is available at an additional charge as scheduled between Purchaser and Contractor as described in Appendix E Contract Management and Performance. Free of Charge training shall be provided once for not more than 10 participants per project.

7.8 OPERATOR MANUAL

Instruction and maintenance manuals shall be furnished for all delivered Contract equipment. The most current manual must be provided at no cost upon customer request. Manuals shall contain, but not be limited to the following:

- A section describing the capability of the equipment.
- A section on equipment specifications.
- A section describing operating instructions.
- A section describing the use of the equipment.
- A section describing general maintenance instructions.
- A section describing software installation and user guides (if applicable).

8.0 INFORMATION AND COMMUNICATIONS

8.1 ADVERTISING

Contractor shall not publish or use any information concerning this Contract in any format or media

8.2 RETENTION OF RECORDS

The Contractor shall maintain all books, records, documents, data and other evidence relating to this Contract and the provision of materials, supplies, services and/or equipment described herein, including, but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. Contractor shall retain such records for a period of seven (7) years following the date of final payment. At no additional cost, these records, including materials generated under the Contract, shall be subject at all reasonable times to inspection, review, or audit by the DES, personnel duly authorized by the DES, personnel duly authorized by the Purchaser, the Washington State Auditor's Office, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the seven (7) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

8.3 NON-ENDORSEMENT AND PUBLICITY

Neither the DES nor the Purchasers are endorsing the Contractor's products or services, nor suggesting that they are the best or only solution to their needs.

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Contractor agrees to make no reference to the state of Washington, DES, and Purchaser in any literature, promotional material, brochures, sales presentation or the like, regardless of method of distribution, without the prior review and express written consent of the DES and/or the impacted Participating Entity.

8.4 PROTECTION OF CONFIDENTIAL AND PERSONAL INFORMATION

Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Contract or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either Chapter 42.56 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, agency source code or object code, agency security data, or information identifiable to an individual that relates to any of these types of information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this Contract, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this Contract, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who have signed a nondisclosure agreement, the terms of which have been previously approved by Purchaser. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

"Personal information" including, but not limited to, "Protected Health Information" (PHI) under Health Insurance Portability And Accountability Act (HIPAA), individuals' names, addresses, phone numbers, birth dates, and social security numbers collected, used, or acquired in connection with this Contract shall be protected against unauthorized use, disclosure, modification or loss.

HIPAA establishes national minimum standards for the use and disclosure of certain health information. The Contractor must comply with all HIPAA requirements and rules when determined applicable by the Purchaser. If Purchaser determines that (1) Purchaser is a "covered entity" under HIPAA, and that (2) Contractor will perform "business associate" services and activities covered under HIPAA, then at Purchaser's request, Contractor agrees to execute Purchaser's business associate Contract in compliance with HIPAA.

Contractor shall ensure its directors, officers, employees, Subcontractors or agents use personal information solely for the purposes of accomplishing the services set forth herein. Contractor and its Subcontractors agree not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal

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information without the express written consent of the Agency or as otherwise required by law.

Any breach of this provision may result in termination of the Contract and demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the State of Washington and the Purchaser for any damages related to both: (1) the Contractor's unauthorized use of personal information and (2) the unauthorized use of personal information by unauthorized persons as a result of Contractor's failure to sufficiently protect against unauthorized use, disclosure, modification, or loss.

Contractor shall maintain a log documenting the following: the Confidential Information received in the performance of this Contract; the purpose(s) for which the Confidential Information was received; who received, maintained and used the Confidential Information; and the final disposition of the Confidential Information. Contractor's records shall be subject to inspection, review or audit in accordance with Retention of Records.

Purchaser reserves the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this Contract. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.

Violation of this section by Contractor or its Subcontractors may result in termination of this Contract and demand for return of all Confidential Information, monetary damages, or penalties.

Immediately upon expiration or termination of this Contract, Contractor shall, at Purchaser's option: (i) certify to Purchaser that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser requires of Contractor to protect Purchaser's Confidential Information.

9.0 GENERAL PROVISIONS

9.1 WSCA-NASPO MASTER AGREEMENT TERMS AND CONDITIONS

Appendix C WSCA-NASPO Master Agreement Terms and Conditions shall supplement the terms and conditions of this Contract. To the extent there is any inconsistent or conflicting term between the two, the conflict or inconsistency shall be resolved in a manner most favorable to a Purchaser or Purchasing Entity.

9.2 GOVERNING LAW/VENUE

This Contract shall be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

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9.3 SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract that can be given effect without the invalid provision, and to this end the provisions of this Contract are declared to be severable.

9.4 SURVIVORSHIP

All transactions executed for products and services provided pursuant to the authority of this Contract shall be bound by all of the terms, conditions, prices and price discounts set forth herein, notwithstanding the expiration of the initial term of this Contract or any extension thereof. Further, the terms, conditions and warranties contained in this Contract that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this Contract shall so survive. In addition, the terms of the sections titled Overpayments to Contractor; Contractor's Commitments, Warranties and Representations; Protection of Confidential and Personal Information; Order of Precedence, Incorporated Documents, Conflict and Conformity; Non-Endorsement and Publicity; Retention of Records; Proprietary or Confidential Information; Disputes and Remedies; and Limitation of Liability shall survive the termination of this Contract.

9.5 INDEPENDENT STATUS OF CONTRACTOR

In the performance of this Contract, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this contract. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under Chapter 41.06 RCW, or Title 51 RCW.

9.6 GIFTS AND GRATUITIES

Contractor shall comply with all state laws regarding gifts and gratuities, including but not limited to: RCW 39.26, RCW 42.52.150, RCW 42.52.160, and RCW 42.52.170 under which it is unlawful for any person to directly or indirectly offer, give or accept gifts, gratuities, loans, trips, favors, special discounts, services, or anything of economic value in conjunction with state business or contract activities.

Under RCW 39.26 and the Ethics in Public Service Law, Chapter 42.52 RCW state officers and employees are prohibited from receiving, accepting, taking or seeking gifts (except as permitted by RCW 42.52.150) if the officer or employee participates in contractual matters relating to the purchase of goods or services.

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9.7 PERSONAL LIABILITY

It is agreed by and between the parties hereto that in no event shall any official, officer, employee or agent of the State of Washington when executing their official duties in good faith, be in any way personally liable or responsible for any agreement herein contained whether expressed or implied, nor for any statement or representation made herein or in any connection with this agreement.

9.8 NONDISCRIMINATION

During the performance of this Contract, the Contractor shall comply with all applicable federal and state nondiscrimination laws, regulations and policies, including, but not limited to, Title VII of the Civil Rights Act, 42 U.S.C. section 12101 et. seq.; the Americans with Disabilities Act (ADA); and, Chapter 49.60 RCW, Discrimination – Human Rights Commission.

9.9 OSHA AND WISHA REQUIREMENTS

Contractor agrees to comply with conditions of the Federal Occupational Safety and Health Administration (OSHA) and, if manufactured or stored in the State of Washington, the Washington Industrial Safety and Health Act (WISHA) and the standards and regulations issued there under, and certifies that all items furnished and purchased will conform to and comply with said laws, standards and regulations. Contractor further agrees to indemnify and hold harmless DES and Purchaser from all damages assessed against Purchaser as a result of Contractor's failure to comply with those laws, standards and regulations, and for the failure of the items furnished under the Contract to so comply.

9.10 ANTITRUST

The DES maintains that, in actual practice, overcharges resulting from antitrust violations are borne by the purchaser. Therefore, the Contractor hereby assigns to the State of Washington any and/or Purchasing Entity all of the Contractor's claims for such price fixing or overcharges which arise under federal or state antitrust laws, relating to the materials, supplies, services and/or equipment purchased under this Contract.

9.11 WAIVER

Failure or delay of the DES or Purchaser to insist upon the strict performance of any term or condition of the Contract or to exercise any right or remedy provided in the Contract or by law; or the DES's or Purchaser's acceptance of or payment for materials, supplies, services and/or equipment, shall not release the Contractor from any responsibilities or obligations imposed by this Contract or by law, and shall not be deemed a waiver of any right of the DES or Purchaser to insist upon the strict performance of the entire agreement by the Contractor. In the event of any claim for breach of Contract against the Contractor, no provision of this Contract shall be

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construed, expressly or by implication, as a waiver by the DES or Purchaser of any existing or future right and/or remedy available by law.

10.0 DISPUTES AND REMEDIES

10.1 PROBLEM RESOLUTION AND DISPUTES

Problems arising out of the performance of this Contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. If a problem persists and cannot be resolved, it may be escalated within each organization.

In the event a bona fide dispute concerning a question of fact arises between DES or the Purchaser and Contractor and it cannot be resolved between the parties through the normal escalation processes, either party may initiate the dispute resolution procedure provided herein.

The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three business days. The initiating party shall have three business days to review the response. If after this review a resolution cannot be reached, both parties shall have three business days to negotiate in good faith to resolve the dispute.

If the dispute cannot be resolved after three business days, a dispute resolution panel may be requested in writing by either party who shall also identify the first panel member. Within three business days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the dispute resolution panel within the next three business days.

The dispute resolution panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a dispute resolution panel whenever possible.

Unless irreparable harm will result, neither party shall commence litigation against the other before the dispute resolution panel has issued its decision on the matter in dispute.

DES, the Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract that are not affected by the dispute.

If the subject of the dispute is the amount due and payable by Purchaser for materials, supplies, services and/or equipment being provided by Contractor, Contractor shall continue providing materials, supplies, services and/or equipment

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pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

10.2 ADMINISTRATIVE SUSPENSION

When it is in the best interest of the state of Washington, the DES may at any time, and without cause, suspend the Contract or any portion thereof for a period of not more than thirty (30) calendar days per event by written notice from the Contract Administrator to the Contractor's representative. Contractor shall resume performance on the next business day following the 30th day of suspension unless an earlier resumption date is specified in the notice of suspension. If no resumption date was specified in the notice of suspension, the Contractor can be demanded and required to resume performance within the 30 day suspension period by the Contract Administrator providing the Contractor's representative with written notice of such demand.

10.3 FORCE MAJEURE

The term "force majeure" means an occurrence that causes a delay that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fire, floods, epidemics, or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this Contract if, and to the extent that, such party's performance of this Contract is prevented by reason of force majeure.

Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by Contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

Rights Reserved: The DES reserves the right to authorize an amendment to this Contract, terminate the Contract, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall have no recourse against the Purchaser/Purchasing Entity.

10.4 ALTERNATIVE DISPUTE RESOLUTION FEES AND COSTS

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method,

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including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

10.5 NON-EXCLUSIVE REMEDIES

The remedies provided for in this Contract shall not be exclusive but are in addition to all other remedies available under law.

10.6 LIMITATION OF LIABILITY

The parties agree that neither Contractor, DES nor Purchaser shall be liable to each other, regardless of the form of action, for consequential, incidental, indirect, or special damages except a claim related to bodily injury or death, or a claim or demand based on patent, copyright, or other intellectual property right infringement, in which case liability shall be as set forth elsewhere in this Contract. This section does not modify any sections regarding liquidated damages or any other conditions as are elsewhere agreed to herein between the parties. The damages specified in the sections titled Termination for Default and Retention of Records are not consequential, incidental, indirect, or special damages as that term is used in this section.

Neither the Contractor, the DES nor Purchaser shall be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of the Contractor, the DES or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than the DES or the Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of the Contractor, the DES or the Purchaser, or their respective subcontractors.

If delays are caused by a subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

Neither party shall be liable for personal injury to the other party or damage to the other party's property except personal injury or damage to property proximately caused by such party's respective fault or negligence.

Except for breach of confidentiality, personal injury, or death, Contractor's total liability, whether for breach of contract, warranty, negligence, strict liability in tort or otherwise, will be limited to the value of the prior year's Contract sales.

Limitation of Liability. Except for liability arising out of the gross negligence or willful misconduct of a party, the aggregate liability of either party to the other for all claims for any loss, damage or indemnity whatsoever resulting from its performance

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or nonperformance of this Agreement shall in no case exceed the amounts due from Purchaser to Supplier under this Agreement.

10.7 FEDERAL FUNDING

In the event that a federally funded acquisition results from this procurement, the Contractor may be required to provide additional information (free of charge) at the request of the DES or Purchaser. Further, the Contractor may be subject to those federal requirements specific to the commodity.

10.8 FEDERAL RESTRICTIONS ON LOBBYING

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no Federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

10.9 FEDERAL DEBARMENT AND SUSPENSION

The Contractor certifies, that neither it nor its "principals" (as defined in 49 CFR. 29.105 (p)) is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

11.0 CONTRACT TERMINATION

The following sections (11.1 – 11.9) may also apply to an executed Participating Addendum. The Participating State/Entity may exercise the following actions regarding the management and administration of its Participating Addendum between themselves and the Contractor and/or those specified in Appendix C WSCA-NASPO Master Agreement Terms and Conditions.

11.1 MATERIAL BREACH

A Contractor may be terminated for cause by the DES, at the sole discretion of the Contract administrator, for failing to perform a contractual requirement or for a material breach of any term or condition. Material breach of a term or condition of the Contract may include but is not limited to:

1. Contractor failure to perform services or deliver materials, supplies, or equipment by the date required or by an alternate date as mutually agreed in a written amendment to the Contract;
2. Contractor failure to carry out any warranty or fails to perform or comply with any mandatory provision of the Contract;

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3. Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
4. Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from creditors and/or debtors that endangers the Contractor's proper performance hereunder;
5. Appointment of any receiver, trustee, or similar official for Contractor or any of the Contractor's property and such appointment endangers the Contractor's proper performance hereunder;
6. A determination that the Contractor is in violation of federal, state, or local laws or regulations and that such determination renders the Contractor unable to perform any aspect of the Contract.

11.2 OPPORTUNITY TO CURE

In the event that Contractor fails to perform a contractual requirement or materially breaches any term or condition, the DES may issue a written cure notice. The Contractor may have 30 calendar days in which to cure. The DES is not required to allow the Contractor to cure defects if the opportunity for cure is not feasible as determined solely within the discretion of the DES. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages, or otherwise affects any other remedies available against Contractor under the Contract or by law.

If the breach remains after Contractor has been provided the opportunity to cure, the DES may do any one or more of the following:

1. Exercise any remedy provided by law;
2. Terminate this Contract and any related contracts or portions thereof;
3. Procure replacements and impose damages as set forth elsewhere in this Contract;
4. Impose actual or liquidated damages;
5. Suspend or bar Contractor from receiving future solicitations or other opportunities;
6. Require Contractor to reimburse the state for any loss or additional expense incurred as a result of default or failure to satisfactorily perform the terms of the Contract.

11.3 TERMINATION FOR CAUSE

In the event the Contract Administrator, in its sole discretion, determines that the Contractor has failed to comply with the conditions of this Contract in a timely manner or is in material breach, the Contract Administrator has the right to suspend or terminate this Contract, in part or in whole. The Contract Administrator shall notify the Contractor in writing of the need to take corrective action. If corrective



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action is not taken within thirty (30) calendar days or as otherwise specified by the Contract Administrator, or if such corrective action is deemed by the Contract Administrator to be insufficient, the Contract may be terminated. The Contract Administrator reserves the right to suspend all or part of the Contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach and pending corrective action by the Contractor or a decision by the Contract Administrator to terminate the Contract.

In the event of termination, the DES shall have the right to procure for all Purchasers any replacement materials, supplies, services and/or equipment that are the subject of this Contract on the open market. In addition, the Contractor shall be liable for damages as authorized by law including, but not limited to, any price difference between the original Contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

If it is determined that: (1) the Contractor was not in material breach; or (2) failure to perform was outside of Contractor's or its subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience". The rights and remedies of the DES and/or the Purchaser provided in this Contract are not exclusive and are in addition to any other rights and remedies provided by law.

11.4 TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Contract, the DES, by mutual agreement, may terminate this Contract, in whole or in part by giving thirty (30) calendar days written notice beginning on the second day after mailing to the Contractor. If this Contract is so terminated, Purchasers shall be liable only for payment required under this Contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and Accepted by the Purchaser prior to the effective date of Contract termination. Neither the DES nor the Purchaser shall have any other obligation whatsoever to the Contractor for such termination. This Termination for Convenience clause may be invoked by the DES when it is in the best interest of the State of Washington and/or WSCA.

11.5 TERMINATION FOR WITHDRAWAL OF AUTHORITY

In the event that the DES and/or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this Contract and prior to normal completion, the DES may terminate this Contract, in whole or in part, by thirty (30) calendar days written notice to Contractor.

11.6 TERMINATION FOR NON-ALLOCATION OF FUNDS

If funds are not allocated to Purchaser(s) to continue this Contract in any future period, DES may terminate this Contract by thirty (30) calendar days written notice



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to Contractor or work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser will not be obligated to pay any further charges for materials, supplies, services and/or equipment including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. DES and/or Purchaser agrees to notify Contractor in writing of such non-allocation at the earliest possible time.

No penalty shall accrue to the Purchaser in the event this section shall be exercised. This section shall not be construed to permit DES to terminate this Contract in order to acquire similar materials, supplies, services and/or equipment from a third party.

11.7 TERMINATION FOR CONFLICT OF INTEREST

DES may terminate this Contract by written notice to Contractor if it is determined, after due notice and examination, that any party to this Contract has violated Chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this Contract is so terminated, the DES and /or Purchaser shall be entitled to pursue the same remedies against Contractor as it could pursue in the event that the Contractor breaches this Contract.

11.8 TERMINATION BY MUTUAL AGREEMENT

The DES and the Contractor may terminate this Contract in whole or in part, at any time, by mutual agreement.

11.9 TERMINATION PROCEDURE

In addition to the procedures set forth below, if the DES terminates this Contract, Contractor shall follow any procedures the Contract Administrator specifies in the termination notice.

Upon termination of this Contract and in addition to any other rights provided in this Contract, Contract Administrator may require the Contractor to deliver to the Purchaser any property specifically produced or acquired for the performance of such part of this Contract as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Purchaser shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service(s) Accepted by the Purchaser, and the amount agreed upon by the Contractor and the Purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are Accepted by the Purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case the DES and the Purchaser shall determine the extent of the liability of the Purchaser. Failure to agree with such determination shall be a dispute within the meaning of the

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"Disputes" clause of this Contract. The Purchaser may withhold from any amounts due the Contractor such sum as the Contract Administrator and Purchaser determine to be necessary to protect the Purchaser against potential loss or liability.

The rights and remedies of the DES and/or the Purchaser provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

After receipt of a termination notice, and except as otherwise expressly directed in writing by the Contract Administrator, the Contractor shall:

1. Stop all work, order fulfillment, shipments, and deliveries under the Contract on the date, and to the extent specified, in the notice;
2. Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the Contract except as is necessary to complete or fulfill such portion of the Contract that is not terminated;
3. Complete or fulfill such portion of the Contract that is not terminated in compliance with all contractual requirements;
4. Assign to the Purchaser, in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Purchaser has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
5. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Contract Administrator and/or the Purchaser to the extent Contract Administrator and/or the Purchaser may require, which approval or ratification shall be final for all the purposes of this clause;
6. Transfer title to the Purchaser and deliver in the manner, at the times, and to the extent directed by the Contract Administrator on behalf of the Purchaser any property which, if the Contract had been completed, would have been required to be furnished to the Purchaser;
7. Take such action as may be necessary, or as the Contract Administrator and/or the Purchaser may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the DES and/or the Purchaser has or may acquire an interest.

12.0 CONTRACT EXECUTION

12.1 PARTIES

This Contract/Master Agreement is entered into by and between the state of Washington, acting by and through the Department of Enterprise Services (DES), Master Contracts &

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Consulting (MCC), an agency of Washington State government ("DES" or "State") located at 1500 Jefferson Street SE, Olympia WA 98501, and Ceragon Networks, Inc., a corporation licensed to conduct business in the state of Washington ("Contractor"), located at 10 Forest Avenue, Suite 120 Paramus, NJ 07652 for the purpose of providing products and services for the public safety communication equipment.

12.2 ENTIRE AGREEMENT

This Contract/Master Agreement document and all subsequently issued amendments comprise the entire agreement between the DES and the Contractor. No other statements or representations, written or oral, shall be deemed a part of the Contract/Master Agreement.

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and except as provided in the section titled **Contractor Commitments, Warranties and Representations**, understandings, agreements, representations, or warranties not contained in this Contract or a written amendment hereto shall not be binding on either party. Except as provided herein, no alteration of any of the terms, conditions, delivery, price, quality, or specifications of this Contract will be effective without the written consent of both parties.

12.3 ORDER OF PRECEDENCE, INCORPORATED DOCUMENTS, CONFLICT AND CONFORMITY

Incorporated Documents:

Each of the documents listed below is, by this reference, incorporated into this Contract as though fully set forth herein.

1. The DES's Solicitation document #06913 with all attachments and exhibits, and all amendments thereto
2. Contractor's response to the Solicitation #06913;
3. A Participating Entity's Participating Addendum ("PA");
4. The terms and conditions contained on Purchaser's Order Documents, if used; and
5. All Contractor or manufacturer publications, written materials and schedules, charts, diagrams, tables, descriptions, other written representations and any other supporting materials Contractor made available to Purchaser and used to affect the sale of the Product and /or Service to the Purchaser.

Order of Precedence:

In the event of a conflict in such terms, or between the terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal statutes and regulations.

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2. A Participating Entity's Participating Addendum ("PA"), including amendments.
3. Mutually agreed written amendments to this Contract.
4. This Contract Number 06913, including WSCA-NASPO Master Agreement Terms and Conditions.
5. The Purchaser's Statement of Work, Work Order, or Order Documents.
6. The DES's Solicitation document with all attachments and exhibits, and all amendments thereto.
7. Contractor's response to the Solicitation, as revised (if applicable) by mutual agreement.
8. Any other provision, term, or materials incorporated into the Contract by reference.

Conflict: To the extent possible, the terms of this Contract shall be read consistently.

Conformity: If any provision of this Contract violates any Federal or State of Washington statute or rule of law, it is considered modified to conform to that statute or rule of law. The Participating Entity's Participating Addendum shall be considered modified to conform to that state's statute or rule of law.

12.4 LEGAL NOTICES

Any notice or demand or other communication required or permitted to be given under this Contract or applicable law (except notice of malfunctioning Equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, (postage prepaid), via facsimile or by electronic mail, to the parties at the addresses, fax numbers, or e-mail addresses provided in this section. For purposes of complying with any provision in this Contract or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Contractor at:
Ceragon Networks, Inc

Attn:
Chuck Meyo

To DES at:
State of Washington
Department of Enterprise Services
Master Contracts & Consulting
Attn:
DES Contract Administrator



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150 Clove Road
Little Falls, NJ 07424
Paramus, NJ 07652

Phone: 201 853 0234
Fax: 201 845 5445
E-mail: chuckm@ceragon.com

Mail: Post Office Box 41011
Olympia, Washington 98504-1011

Street: 1500 Jefferson Street, SE
Olympia, WA 98501
Phone: (360) 407-9411
Fax: (360) 586-2426
E-mail: neva.peckham@des.wa.gov

Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this Contract is served upon Contractor or DES, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and DES further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

12.5 LIENS, CLAIMS AND ENCUMBRANCES

All materials, equipment, supplies and/or services shall be free of all liens, claims, or encumbrances of any kind, and if the DES or the Purchaser requests, a formal release of same shall be delivered to the respective requestor.

12.6 AUTHORITY TO BIND

The signatories to this Contract represent that they have the authority to bind their respective organizations to this Contract.

12.7 COUNTERPARTS

This Contract may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this Contract signed by each party, for all purposes.



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SIGNATURES

In Witness Whereof, the parties hereto, having read this Contract in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

This Contract is effective this 30 day of September, 2015.

This is a Partial award for: Contract 06913

Approved (Lead State)

State of Washington
Department of Enterprise Services
Master Contracts & Consulting
1500 Jefferson Street, SE
Olympia, WA 98501

Approved

Ceragon Networks, Inc
10 Forest Avenue, Suite 120
Paramus, NJ 07652

C. F. Presnell 10/30/2015

Signature

Date

Chuck Mayo

Signature

Date

Farrell Presnell

Print or Type Name

Assistant Director

Title

Chuck Mayo

Print or Type Name

President

Title

HK

Signature _____ Date _____

Print or Type Name _____

Title _____

Signature _____ Date _____

Print or Type Name _____

Title _____

Steph Chyn
DIRECTOR FINANCE

AK

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WSCA-NASPO MASTER AGREEMENT TERMS AND CONDITIONS

1. Master Agreement Order of Precedence

a. Any Order placed under this Master Agreement shall consist of the following documents:

- (1) Applicable Federal statutes and regulations.
- (2) A Participating Entity's Participating Addendum ("PA"), including amendments.
- (3) Mutually agreed written amendments to this Contract.
- (4) This Contract Number 06913, including WSCA-NASPO Master Agreement Terms and Conditions.
- (5) The Purchaser's Statement of Work, Work Order, or Order Documents.
- (6) The DES's Solicitation document with all attachments and exhibits, and all amendments thereto.
- (7) Contractor's response to the Solicitation, as revised (if applicable) by mutual agreement.
- (8) Any other provision, term, or materials incorporated into the Contract by reference.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

2. Definitions

Acceptance means a written notice from a Purchasing Entity to Contractor advising Contractor that the Product has passed its Acceptance Testing. Acceptance of a Product for which acceptance testing is not required shall occur following the completion of delivery, installation, if required, and a reasonable time for inspection of the Product, unless the Purchasing Entity provides a written notice of rejection to Contractor.

Acceptance Testing means the process for ascertaining that the Product meets the standards set forth in the section titled Standard of Performance and Acceptance, prior to Acceptance by the Purchasing Entity.

Contractor means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

Embedded Software means one or more software applications which permanently reside on a computing device.

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Intellectual Property means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

Lead State Contract Administrator means the State centrally administering the Master Agreement after execution with the permission of the WSCA-NASPO States. The Lead State Administrator normally is the same as the Lead State conducting the cooperative procurement, evaluation, and award.

Master Agreement means the underlying agreement executed by and between the WSCA-NASPO contract administrator, normally the Lead State, acting on behalf of WSCA-NASPO, and the Contractor, as now or hereafter amended.

Order or Purchase Order means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

Participating Addendum means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

Participating Entity means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

Participating State means a state, the District of Columbia, or one of the territories of the United States that is listed in this Request for Proposal as intending to participate. A Participating State is not required to participate through execution of a Participating Addendum. Upon execution of a Participating Addendum, a Participating State becomes a Participating Entity.

Product means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

Purchasing Entity means a state, city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, who issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

WSCA-NASPO is the WSCA-NASPO Cooperative Purchasing Program, facilitated by the WSCA-NASPO Cooperative Purchasing Organization LLC, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of WSCA-NASPO. The WSCA-NASPO Cooperative Purchasing Organization facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions,

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agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia. The WSCA-NASPO Cooperative Development Team is identified in the Master Agreement as the recipient of reports and may be performing contract administration functions as assigned by the Lead State Contract Administrator.

3. Term of the Master Agreement

The initial term of this Master Agreement is from the effective date of the Contract through June 30, 2016. This Master Agreement may be extended beyond the original contract period for six (6) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

4. Amendments

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Lead State Contract Administrator.

5. Assignment/Subcontracts

a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State Contract Administrator.

b. The Lead State Contract Administrator reserves the right to assign any rights or duties, including written assignment of contract administration duties to the WSCA-NASPO Cooperative Purchasing Organization LLC.

6. Price and Rate Guarantee Period

Reference Section 3.5 Price Adjustments of the Model Contract.

7. Cancellation

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

8. Confidentiality, Non-Disclosure, and Injunctive Relief

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity's or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed

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confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

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

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

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d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

9. Right to Publish

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State Contract Administrator prior approval for the release of any information that pertains to the potential work or activities covered by the Master Agreement. The Contractor shall not make any representations of WSCA-NASPO's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

10. Defaults and Remedies

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

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

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

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

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid/proposal solicitations; and

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- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

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

11. Shipping and Delivery

a. The prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Buyer except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

b. All deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Offeror. If damage does occur, it is the responsibility of the Offeror to immediately notify the Purchasing Entity placing the Order.

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 Ordering Entity's Purchase Order number.

12. Changes in Contractor Representation

The Contractor must notify the Lead State Contract Administrator of changes in the Contractor's key administrative personnel, in writing within 10 calendar days of the change. The Lead State Contract Administrator reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

13. Force Majeure

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Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Lead State Contract Administrator may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

14. Indemnification

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

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless WSCA-NASPO, the Lead State Contract Administrator, Participating Entities, Purchasing Entities, along with their officers, agents, and employees as well as any person or entity for which they may be liable ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim").

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

- (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
- (b) specified by the Contractor to work with the Product; or
- (c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
- (d) It would be reasonably expected to use the Product in combination with such product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this

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Master Agreement or in any other document executed in conjunction with this Master Agreement.

15. Independent Contractor

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

16. Individual Customers

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State Contract Administrator has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

17. Insurance

a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.

b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Purchasing Entity and Participating Entity by the Contractor.

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d. Prior to commencement of performance, Contractor shall provide to the Lead State Contract Administrator a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State Contract Administrator that (1) names the Participating Entities identified in the Request for Proposal as additional insureds, (2) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating Entity has been given at least thirty (30) days prior written notice, and (3) 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, the Participating Entities rights and Contractor's obligations are the same as those specified in the first sentence of this subsection. Before performance of any Purchase Order issued after execution of a Participating Addendum authorizing it, the Contractor shall provide to a Purchasing Entity or Participating Entity who requests it the same information described in this subsection.

e. Contractor shall furnish to the Lead State Contract Administrator, Participating Entity, and, on request, the Purchasing Entity copies of certificates of all required insurance within thirty (30) calendar days of the execution of this Master Agreement, the execution of a Participating Addendum, or the Purchase Order's effective date and prior to performing any work. The insurance certificate shall provide the following information: the name and address of the insured; name, address, telephone number and signature of the authorized agent; name of the insurance company (authorized to operate in all states); a description of coverage in detailed standard terminology (including policy period, policy number, limits of liability, exclusions and endorsements); and an acknowledgment of the requirement for notice of cancellation. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at sole option of the Lead State Contract Administrator, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

18. Laws and Regulations

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

19. License of Pre-Existing Intellectual Property

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, unlimited license to publish, translate, reproduce, modify, deliver, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The license shall be subject to any third party rights in the Pre-existing Intellectual Property. Contractor shall obtain, at its own expense, on behalf of the Purchasing Entity, written consent of the owner for the licensed Pre-existing Intellectual Property.

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20. No Waiver of Sovereign Immunity

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of a Lead State or a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating State only to the extent Congress has appropriately abrogated the Participating State's sovereign immunity and is not consent by the Participating State to be sued in federal court. This section is also not a waiver by the Participating State of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

21. Ordering

a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

b. The resulting Master Agreements permit Purchasing Entities to define project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to Purchasing Entity rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Agency may select the quote that it considers most advantageous, cost and other factors considered.

c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document compliance with the law of the Purchasing Entity.

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

- (1) The services or supplies being delivered;
- (2) The place and requested time of delivery;
- (3) A billing address;
- (4) The name, phone number, and address of the Purchasing Entity representative;
- (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;

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- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

22. Participants

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

b. Use of specific WSCA-NASPO cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating

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Addenda. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation or a Participating Addenda, the resulting award(s) are permissive.

d. WSCA-NASPO Cooperative Purchasing Organization LLC is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the WSCA/NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. State Participating Addenda or other Participating Addenda shall not be construed to amend the terms of this Master Agreement between the Lead State Contract Administrator and Contractor. Participating Entities who execute a Participating Addendum may alter, modify, supplement or amend the WSCA-NASPO Master Agreement Terms and Conditions as necessary to comply with Participating Entity law or policy with respect to their Orders (or Orders of Purchasing Entities encompassed by their Participating Addendum) under the Master Agreement.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of the Chief Procurement Official of the state where the Participating Entity is located. Contractors may upon request obtain a copy of the written authorization from the Lead State Contract Administrator.

23. Payment

Payment for completion of a contract order is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

24. Public Information

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

25. Records Administration and Audit

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State Contract Administrator, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive

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for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or orders or underpayment of fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein right exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State Contract Administrator to review compliance with those obligations.

26. Administrative Fees

a. The Contractor shall pay to the WSCA-NASPO Cooperative Purchasing Organization, or its assignee, a WSCA-NASPO Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than 60 days following the end of each calendar quarter. The WSCA-NASPO Administrative Fee shall be submitted quarterly and is based on sales of products and services (less any charges for taxes or shipping). The WSCA-NASPO Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states may require an additional fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the WSCA-NASPO Administrative Fee or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

27. WSCA-NASPO Summary and Detailed Usage Reports

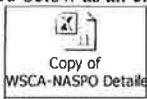
In addition to other reports that may be required by this solicitation, the Contractor shall provide the following WSCA-NASPO reports.

a. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to WSCA-NASPO using the WSCA-NASPO Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under the contract shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than 30 day following the end of the calendar quarter (as specified in the reporting tool).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship

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Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and WSCA-NASPO Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the WSCA-NASPO Cooperative Development Team electronically through a designated portal, email, CD-Rom, flash drive or other method as determined by the Lead State. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is provided below as an embedded Excel document:



Field Code Changed

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.

d. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and WSCA-NASPO 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.

28. Standard of Performance and Acceptance

Any standard of performance under this Master Agreement applies to all Products purchased under this Master Agreement, including any additional, replacement, or substitute Product(s) and any Product(s) which are modified by or with the written approval of Contractor after Acceptance by the Purchasing Entity. The Acceptance Testing period shall be thirty (30) calendar days or other time period identified in the solicitation or the Participating Addendum, starting from the day after the Product is delivered or, if installed, the day after the Product is installed and Contractor certifies that the Product is ready for Acceptance Testing. If the Product does not meet the standard of performance during the initial period of Acceptance Testing, Purchasing Entity may, at its discretion, continue Acceptance Testing on a day-to-day basis until the standard of performance is met. Upon rejection, the Contractor will have fifteen (15) calendar days to cure the standard of performance issue(s). If after the cure period, the Product still has not met the standard of performance, the Purchasing Entity may, at its option: (a) declare Contractor to be in breach and terminate the Order; (b) demand replacement Product from Contractor at no additional cost to Purchasing Entity; or, (c) continue the cure period for an additional time period agreed upon by the Purchasing Entity and the Contractor. Contractor shall pay all costs related to the preparation and shipping of Product returned pursuant to the section. No Product shall be accepted and no charges shall be paid until the standard of performance is met. The warranty period will begin upon Acceptance.

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29. Warranty

The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

30. System Failure or Damage

In the event of system failure or damage caused by the Contractor or its Product, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

31. Title of Product

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional cost or charge to either Purchasing Entity or Purchasing Entity's transferee.



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32. Waiver of Breach

Failure of the Lead State Contract Administrator, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State Contract Administrator, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State Contract Administrator or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

33. Assignment of Antitrust Rights

Contractor irrevocably assigns to a Participating Entity any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the Contractor for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

34. Debarment

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State Contract Administrator.

35. Governing Law and Venue

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State Contract Administrator (in most cases also the Lead State). The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State Contract Administrator. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.



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c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, and award if named as a party or an intervenor; the state serving as the WSCA-NASPO Lead State Contract Administrator if a named party or intervenor (for other claims); the Participating State if a named party or intervenor; the Participating Entity state if a named party or intervenor; or the Purchasing Entity state if a named party or intervenor.

36. WSCA-NASPO eMarket Center

a. In July 2011, WSCA-NASPO entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible WSCA-NASPO entity's customers to access a central online website to view and/or shop the goods and services available from existing WSCA-NASPO Cooperative Contracts. The central online website is referred to as the WSCA-NASPO eMarket Center. Contractor shall either upload a hosted catalog into the eMarket Center or integrate a punchout site with the eMarket Center.

b. Supplier's Interface with the eMarket Center. There is no cost charged by SciQuest to the Contractor for loading a hosted catalog or integrating a punchout site.

c. At a minimum, the Contractor agrees to the following:

(1) Implementation Timeline: WSCA-NASPO eMarket Center Site Admin shall provide a written request to the Contractor to begin enablement process. The Contractor shall have fifteen (15) days from receipt of written request to work with WSCA-NASPO and SciQuest to set up an enablement schedule, at which time SciQuest's technical documentation shall be provided to the Contractor. The schedule will include future calls and milestone dates related to test and go live dates. The Contractor shall have a total of Ninety (90) days to deliver either a (1) hosted catalog or (2) punch-out catalog, from date of receipt of written request.

(2) WSCA-NASPO and SciQuest will work with the Contractor, to decide which of the catalog structures (either hosted or punch-out as further described below) shall be provided by the Contractor. **Whether hosted or punch-out, the catalog must be strictly limited to the Contractor's awarded contract offering (e.g. products and/or services not authorized through the resulting cooperative contract should not be viewable by WSCA-NASPO Participating Entity users).**

(a) Hosted Catalog. By providing a hosted catalog, the Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to SciQuest, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data to the eMarket Center for the Lead State Contract Administrator's approval to maintain the most up-to-date version of its product/service offering under the cooperative contract in the eMarket Center.

(b) Punch-Out Catalog. By providing a punch-out catalog, the Contractor is providing its

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own online catalog, which must be capable of being integrated with the eMarket Center as a Standard punch-in via Commerce eXtensible Markup Language (cXML). The site must also return detailed UNSPSC codes (as outlined in line 3) for each line item.

Contractor also agrees to provide e-Quote functionality to facilitate volume discounts.

d. Revising Pricing and Product Offerings: Any revisions (whether an increase or decrease) to pricing or product/service offerings (new products, altered SKUs, etc.) must be pre-approved by the Lead State Contract Administrator and shall be subject to any other applicable restrictions with respect to the frequency or amount of such revisions. The following conditions apply with respect to hosted catalogs:

(1) Lead State Contract Administrator-approved price changes are not effective until implemented within the eMarket Center. Errors in the Contractor's submitted pricing files will delay the implementation of the price changes in eMarket Center.

e. Supplier Network Requirements: Contractor shall join the SciQuest Supplier Network (SQSN) and shall use the SciQuest's Supplier Portal to import the Contractor's catalog and pricing, into the SciQuest system, and view reports on catalog spend and product/pricing freshness. The Contractor can receive orders through electronic delivery (cXML) or through low-tech options such as fax. More information about the SQSN can be found at: www.sciquest.com or call the SciQuest Supplier Network Services team at 800-233-1121.

f. Minimum Requirements: Whether the Contractor is providing a hosted catalog or a punch-out catalog, the Contractor agrees to meet the following requirements:

(1) Catalog must contain the most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the cooperative contract; and

(2) The accuracy of the catalog must be maintained by Contractor throughout the duration of the cooperative contract between the Contractor and the Lead State Contract Administrator; and

(3) The Catalog must include a Lead State contract identification number; and

(4) The Catalog must include detailed product line item descriptions; and

(5) The Catalog must include pictures when possible; and

(6) The Catalog must include any additional WSCA-NASPO and Participating Addendum requirements. Although suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple contracts applicable to different WSCA-NASPO Participating Entities. For example, a supplier may have different pricing for state government agencies and Board of Regents institutions. Suppliers have the ability and responsibility to submit separate contract pricing for the same catalog if applicable. The system will deliver the appropriate contract pricing to the user viewing the catalog.

g. Order Acceptance Requirements: Contractor must be able to accept Purchase Orders via fax or cXML. The Contractor shall provide positive confirmation via phone or email within 24 hours

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of the Contractor's receipt of the Purchase Order. If the Purchasing Order is received after 3pm EST on the day before a weekend or holiday, the Contractor must provide positive confirmation via phone or email on the next business day.

h. UNSPSC Requirements: Contractor shall support use of the United Nations Standard Product and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by SciQuest for the suppliers and are upgraded every year. WSCA-NASPO reserves the right to migrate to future versions of the UNSPSC and the Contractor shall be required to support the migration effort. All line items, goods or services provided under the resulting statewide contract must be associated to a UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity. More information about the UNSPSC is available at: <http://www.unspsc.com> and <http://www.unspsc.com/FAQs.asp#howdoesunspsework>.

i. Applicability: Contractor agrees that WSCA-NASPO controls which contracts appear in the eMarket Center and that WSCA-NASPO may elect at any time to remove any supplier's offering from the eMarket Center.

j. The Lead State Contract Administrator reserves the right to approve the pricing on the eMarket Center. This catalog review right is solely for the benefit of the Lead State Contract Administrator and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices (and approved fees) required by the Master Agreement.

k. Several WSCA-NASPO Participating Entities currently maintain separate SciQuest eMarketplaces, these Participating Entities do enable certain WSCA-NASPO Cooperative Contracts. In the event one of these entities elects to use this WSCA-NASPO Cooperative Contract (available through the eMarket Center) but publish to their own eMarketplace, the Contractor agrees to work in good faith with the entity and WSCA-NASPO to implement the catalog. WSCA-NASPO does not anticipate that this will require substantial additional efforts by the Contractor; however, the supplier agrees to take commercially reasonable efforts to enable such separate SciQuest catalogs.

(Revised November 12, 2013)

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