

**PARTICIPATING ADDENDUM # 9417**  
**NASPO ValuePoint**  
**Police Radar/Lidar Speed Enforcement**  
**Administered by the State of Washington (hereinafter "Lead State")**

**MASTER AGREEMENT No: 00218**

Kustom Signals Inc., a Kansas Corporation  
(hereinafter "Contractor")

And

State of Oregon ("Participating State"), by and through the Department of Administrative  
Services, Enterprise Goods and Services, Procurement Services  
("DAS PS")

1. **Scope:** This Addendum covers the purchase of Police Radar/Lidar Speed Enforcement & Speed Advisory Systems, Parts, and Accessories under Master Agreement No. 00218, as amended from time to time ("Master Agreement") led by the State of Washington for use by state agencies and other entities located in the Participating State as authorized by the Participating State's statutes to utilize state contracts with the prior approval of the state's chief procurement official.

This Addendum establishes an agreement to agree between Contractor and DAS PS pursuant to ORS 279B.140. All Goods, Products and Services offered under the Master Agreement that are available under this Addendum. This Addendum consists of the following documents, which are incorporated herein as part of this Addendum:

- a) Exhibit A - State Specific Terms and Conditions
  - b) Exhibit B - Insurance
  - c) Exhibit C - Contractor Tax Certification
  - d) Exhibit D - Form of Purchase Order
  - f) Master Agreement Number 00218, all s attachments between the State of Washington and Contractor, and all amendments, as the Master Agreement may be amended from time to time.
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. **Primary Contacts:** The primary contact individuals for this Addendum are as follows (or their named successors):

**Contractor**

Name	Robin Jess
Address	9652 Loiret Blvd Lenexa, KS 66219
Telephone	(800) 458-7866
E-mail	<a href="mailto:rjess@kustomsignals.com">rjess@kustomsignals.com</a>

**Participating State**

Name	Brent Lutz
Address	1255 SE Ferry Street, Salem, OR 97301
Telephone	(503) 378-4137
E-mail	<a href="mailto:brent.l.lutz@oregon.gov">brent.l.lutz@oregon.gov</a>

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

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

Participating State to check one box.

☐ No changes to the terms and conditions of the Master Agreement are required

☒ The following changes are modifying or supplementing the Master Agreement terms and conditions: Exhibits A (State Specific Terms and Conditions), B (Insurance), C (Contractor Tax Certification), and D (Form Purchase Order).

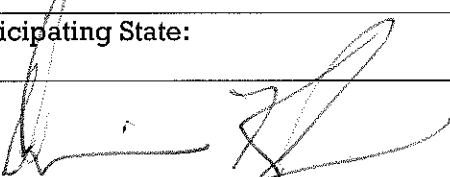
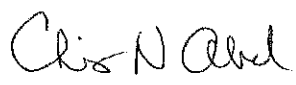
5. **Order of Precedence:** This Addendum contains additional terms and conditions specifically applicable to individual Contracts between Contractor and Authorized Purchasers. In the event of a conflict between the terms and conditions of this Addendum, the Master Agreement and Purchase Orders, the following descending order of precedence applies:

- a) Applicable Federal Terms and Conditions attached to Purchase Order;
- b) This Addendum, less its exhibits;
- c) Exhibit A of this Addendum (State Specific Terms and Conditions);
- d) Exhibit B of this Addendum (Insurance) and Exhibit C of this Addendum (Contractor Tax Certification);
- e) Master Agreement Number 00218 and all attachments between the State of Washington and Contractor, and all amendments, as the Master Agreement may be amended from time to time; and
- f) Exhibit D of this Addendum (Purchase Order).

Nothing in this Addendum limits the Contractor's obligations under the Master Agreement unless otherwise noted herein. If a Contractor obligation in this Addendum conflicts with a Contractor obligation of the Master Agreement, the order of precedence in this Section applies.

6. **Subcontractors:** All Contactor dealers and resellers authorized in the State of Oregon, as shown on the dedicated Contactor (cooperative contract) website, are approved to provide sales and service support to participants under this Addendum. The Contactor dealer's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.
7. **Orders:** All Purchase Orders issued by Authorized Purchasers must include a reference to the Master Agreement, 00218, and this Addendum, # 9417. All valid Purchase Orders issued by Authorized Purchasers are subject to the terms and conditions of this Addendum. All Authorized Purchasers issuing valid purchase orders shall be obligated to pay Contractor for Goods, Products and Services when the terms of the Purchase Order have been completed and payment has been approved by the Authorized Purchaser.
8. **Participating Addendum Integration:** This Addendum and the Master Agreement set forth the entire agreement between Contractor and Participating State with respect to the subject matter. There are no understandings, agreements, or representations, oral or written, not specified herein. Any attempt to modify or add or incorporate terms and conditions inconsistent with, and contrary to, the terms and conditions of this Addendum and the Master Agreement through a Purchase Order or other document is null and void and hereby rejected. The terms and conditions of this Addendum and the Master Agreement shall prevail and govern in case of any attempted modifications or inconsistent terms.
9. **Reporting:** This Addendum will be reported to the Oregon Department of Revenue. The Department of Revenue may take any and all actions permitted by law relative to the collection of taxes due to the State of Oregon or a political subdivision, including (i) garnishing the Contractor's compensation under this Addendum or any Purchase Order or (ii) exercising a right of setoff against Contractor's compensation under this Addendum or any Purchase Order for any amounts that may be due and unpaid to the State of Oregon or its political subdivisions for which the Department of Revenue collects debts.

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

Participating State:	Contractor: Kustom Signals, Inc.
By: 	By: 
Name: <u>DARVIN KUMPUA</u>	Name: Chris Abel
Title: <u>MANAGER</u>	Title: President
Date: <u>2 OCT 24 19</u>	Date: October 2, 2019

**LEGAL APPROVAL:**

Pursuant to ORS 291.047, this Addendum was reviewed and approved by Oregon Department of Justice Assistant Attorney General, Karen Johnson by email dated 7/22/19.

## EXHIBIT A

### State Specific Terms and Conditions

- 1. Definitions.** The following terms have the meanings set forth below. Capitalized terms not defined in this Addendum have the meaning ascribed to them in the Master Agreement and its exhibits.

“Authorized Purchaser” means an agency of the State of Oregon or any ORCPP member that submits a Purchase Order to Contractor.

“ORCPP” means the Oregon Cooperative Purchasing Program Members, which recognizes certain agencies and organizations within the State of Oregon as authorized to purchase the goods and services available under a price agreement entered into by the State.

“Master Agreement” means the State of Washington Master Agreement No: 00218 between Contractor and the State of Washington, on behalf of the member states of the National Association of State Procurement Officials and the NASPO ValuePoint, and its attachments, which together with this Addendum sets forth terms, conditions and requirements for purchase by Authorized Purchasers of the goods and services described therein.

“Purchase Order” means the purchase order or other order document submitted to Contractor by an Authorized Purchaser that incorporates this Addendum by reference and specifies the quantity and type of goods or services that Contractor will provide to the Authorized Purchaser under the terms of the Master Agreement and this Addendum.

“State”, for the purposes of this Participating Addendum, means the State of Oregon.

- 2. Selection Process.** This is not an exclusive agreement. DAS PS intends to award multiple Participating Addenda for the Goods and Services offered under this solicitation. Authorized Purchasers who are State of Oregon Agencies must follow the selection process outlined below. Authorized Purchasers who are **not** State of Oregon Agencies may select the Contractor of Authorized Purchaser's choice in compliance with applicable statute and rules.

2.1. For purchases under \$10,000, an Authorized Purchaser who is a State Agency may select the Contractor of its choice in compliance with applicable statute and rule.

2.2. For purchases over \$10,000, Authorized Purchasers (or Purchasing Entities), who are State Agencies, may purchase Goods, Products or Services from Contractor or other contractors and shall use one of the following selection processes:

2.2.1. **Brand Name Justification** - A documented brand name justification in compliance with applicable statute and rule.

2.2.2. **Best Value Analysis** - Authorized Purchaser may conduct a comparison of the offers based upon a best value analysis. Authorized Purchaser shall:

- a) Determine need, contact at least 3 Master Agreement Contractors and request a quote for the anticipated Goods, Products or Services. If 3 or less Contractors offer Goods, Products or Services, contact all Master Agreement

Contractors that provide Goods, Products or Services needed and request a quote for anticipated Goods, Products or Services. Quoted rates must not exceed the most competitive rates and discounts set forth in the Master Agreement. However, a Contractor may agree to extend specialized, discounted pricing based on the requirements by providing a specific quote to the Authorized Purchaser.

b) Determine which Contractor provides the best value for Authorized Purchaser. Some or all of the following factors may be used in the Authorized Purchaser's determination of best value (additional factors not listed may also be used) :

- Applicable discounts and incremental pricing options;
- Shipping costs;
- Delivery process and service levels;
- Installation, maintenance and repair service levels;
- Applicable warranties;
- Contractor's past performance record through reference checks;
- Contractor's service area;
- Price comparison of the current market value of Goods, Products and Services similar to the Goods, Products or Services under the Addendum;
- Price comparison to past purchases and the goods similar to the Goods, Products or Services under the Addendum, taking the inflation rate into account;
- Cost analysis through an element-by-element examination of the estimated or actual cost of proposed Goods, Products or Services to determine whether the Contractor's costs are in line with what reasonably economical and efficient performance should cost. Some of the cost elements examined for necessity and reasonableness are materials' costs, labor costs, equipment and overhead;
- Comparison of pricing to MSRP;
- Market conditions and competition levels;
- General economic conditions;
- Life cycle costing including expected life, salvage value and discounted total cost of ownership.

c) Document its procurement files describing the process, considerations, findings, and decisions used for determining the Contractor selected through the Best Value Analysis.

### **3. Purchase Orders.**

**3.1 Purchase Orders.** Authorized Purchasers may use their own forms for Purchase Orders. State agencies may also use the general State-approved Purchase Order referencing the Master Agreement Number, substantially in the form attached hereto as Exhibit D. To the extent that the terms of any form differ from the terms of this Addendum, the terms of this Addendum supersede such contrary terms. Each Purchase Order from an Authorized Purchaser that is not a State agency must contain, on the front page, the following language:

**THIS PURCHASE IS PLACED AGAINST THE STATE OF WASHINGTON MASTER AGREEMENT NO. 00218 THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT AND THE ASSOCIATED PARTICIPATING ADDENDUM NO. 9417 ENTERED INTO BY THE STATE OF OREGON. THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT AND THE ADDENDUM APPLY TO THIS PURCHASE AND SUPERSEDE ALL CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.**

**3.2 State Agency Purchase Order Limitation.** Authorized Purchaser(s), who are State of Oregon Agencies, are hereby authorized to issue Purchase Orders for any value under this Addendum without further delegation from DAS PS.

**3.3 Effect of Purchase Orders.** The State is only liable for purchases made by State of Oregon agencies that issue Purchase Orders. Other Authorized Purchasers are responsible for any purchases under Purchase Orders they issue. The State expressly disclaims any liability for purchases made by non-State agency Authorized Purchasers or any other entity.

**3.4 Verification of Authorized Purchasers.** Contractor shall verify that it provides Goods, Products, and Services under this Addendum only to Authorized Purchasers. Contractor may verify that a particular entity is an ORCPP member on-line at <http://www.oregon.gov/das/Procurement/Pages/Orcppmember.aspx> or by using the Oregon Procurement Information Network (ORPIN) at <http://orpin.oregon.gov/open.dll/welcome>.

**4. Payment Provisions.** All payments are subject to ORS 293.462.

**5. Funds available and authorized/non-appropriation.** The State of Oregon's and its agencies' payment obligations under this Addendum are conditioned upon Authorized Purchaser receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Authorized Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Purchase Order issued under this Addendum. Contractor is not entitled to receive payment under this Addendum or any Purchase Order from any part of Oregon state government other than Authorized Purchaser. Nothing in this Addendum or Purchase Order is to be construed as permitting any violation of Article XI, section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Authorized Purchaser represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Purchase Order issued under this Addendum.

**6. Volume Sales Reports (VSRs) / Vendor Collected Administrative Fee (VCAF)**

**6.1 Volume Sales Reports (VSRs):**

6.1.1 Pursuant to the process defined by DAS PS found at: <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>, Contractor shall submit a Volume Sales Report (VSR) to DAS PS on a quarterly basis; the quarterly report is due no later than thirty (30) calendar days from the end of the quarter. (For purposes of this Addendum, quarters end March 31, June 30, September 30 and December 31.) Upon written notice from DAS PS, **Contractor shall submit the VSR on a monthly basis no later than five (5) business days from the end of the preceding month, as directed by DAS PS.** The VSR will contain:

- Complete and accurate details of all receipts (sales and refunds) for the reported period; and
- Such other information as DAS PS may reasonably request.

Contractor is responsible for timely reporting and shall submit a VSR whether or not there are sales. When no sales have been recorded for the reporting period, a report must be submitted stating **"No Sales for the Reporting Period"**.

**6.2 Vendor Collected Administrative Fee (VCAF):**

6.2.1. Pursuant to the process defined by DAS PS and published at <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx>, Contractor shall submit a Vendor Collected Administrative Fee (VCAF), as directed by DAS PS. The VCAF is a charge equal to two percent (2%) of Contractor's Gross total sales, less any credits, made to Authorized Purchasers during the reporting period.

**7. Limitation of Liability:** Contractor acknowledges and agrees that the State shall bear no liability on Purchase Orders entered into for purchases by non-State Agencies, which liability the State expressly disclaims. With regard to non-State Agencies, Contractor agrees to look solely to the respective contracting party for any rights and remedies Contractor may have at law or in equity arising out of the sale and purchase of Contractor's Goods or Services and the resulting contractual relationship, if any, with each such contracting party.

**8. Warranties.** Authorized Purchasers are entitled to the warranties, rights, remedies, and benefits under the Master Agreement and this Addendum for any purchases made by such Authorized Purchasers Pursuant to Purchase Orders. Without limiting the generality of the warranty provisions of the Master Agreement, Contractor represents and warrants to Authorized Purchaser that:

**8.1** Contractor has the power and authority to enter into and perform this Addendum and that this Addendum, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms;

**8.2** Goods or Products will be new, unused, current production models, where applicable, and will be free from defects in materials, design and manufacture for manufacturer's standard

warranty period. Where specifications have been made a part of the Master Agreement, Contractor further warrants that all Goods or Products conform to the specifications and meet or exceed all quality and safety standards set in the Master Agreement;

**8.3** All Services to be performed under this Addendum will be performed in accordance with the highest applicable professional or industry standards, and that only workmanship of the first quality shall be employed in the performance of this Addendum;

**8.4** Contractor shall transfer to Authorized Purchaser all manufacturer warranties covering Goods or Products, if any at time of delivery at no charge, and

**8.5** All Goods or Products, if any, are free and clear of any liens or encumbrances, and that Contractor has full legal title to such Goods or Products, and that no other person has any right, title or interest in the Goods or Products which is superior to or infringe upon the rights granted to Authorized Purchaser hereunder.

The warranties set forth in this section are in addition to, and not in lieu of, any other warranties provided in the Master Agreement. All warranties provided in this Addendum are cumulative and will be interpreted expansively so as to afford Authorized Purchaser the broadest warranty protection available.

## **9. Indemnities.**

**9.1 General Indemnity.** Contractor will defend, save, hold harmless and indemnify the Authorized Purchaser and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of or relating to the activities of Contractor or its officers, employees, subcontractors or agents under the Addendum.

**9.2 Infringement Indemnity.** Contractor will, at Contractor's sole expense, defend, save, hold harmless and indemnify Authorized Purchasers and the State of Oregon and their agencies, subdivisions, officers, employees and agents from and against any and all costs, damages, attorneys' fees, and any and all costs incurred in any settlement negotiation or final settlement agreement resulting from, relating to, or arising out of a claim that any aspect of the goods or services furnished under a Purchase Order infringes a patent, utility model, industrial design, copyright, mask work, trademark, trade dress, or any other legally cognizable intellectual property right of any third party (an "Infringement Claim").

**9.3 Participation. Control of Defense and Settlement.** Contractor's obligation to indemnify Authorized Purchaser as set forth in Sections 9.1 and 9.2 is conditioned on Authorized Purchaser providing to Contractor prompt notification of any claim or potential claim of which Authorized Purchaser becomes aware that may be the subject of those Sections. Contractor shall have control of the defense and settlement of any claim that is subject to Section 9.1 or Section 9.2; however, neither Contractor nor any attorney engaged by Contractor shall defend the claim in the name of the State of Oregon or any Authorized Purchaser of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General, nor shall Contractor settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and



expense, assume its own defense and settlement in the event that the State of Oregon determines that Contractor is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.

**9.4 Remedies.** If any Goods, Products or Services furnished by Contractor are, in Contractor's opinion, likely to become the subject of an Infringement Claim, or if an Authorized Purchaser is prevented from exercising its rights under this Addendum based on any Infringement Claim or court order arising from any Infringement Claim, then Contractor may, at its option and expense, procure for the Authorized Purchaser the right to continue using the allegedly infringing Goods, Products or Services, or replace or modify the Goods, Products or Services so that they become non-infringing; provided that the replacement or modified Good, Product or Service meets the specifications set forth in the applicable Purchase Order to the satisfaction of the Authorized Purchaser. If the foregoing remedies are not available, then Authorized Purchaser will return the allegedly infringing Goods, Products or terminate the allegedly infringing Services, and Contractor will refund Authorized Purchaser's payments, in full, for the allegedly infringing Goods, Products or Services.

**9.5 Dispute Resolution.** Notwithstanding anything to the contrary in the Master Agreement, Authorized Purchasers who are State Agencies may resolve disputes through mediation or other types of dispute resolution, provided, however, Authorized Purchasers who are State Agencies shall not participate in arbitration of disputes nor shall Authorized Purchaser who are State Agencies waive trial by jury.

## **10. Term and Termination of Participating Addendum.**

**10.1 Term.** This Addendum remains in effect until the earlier of (a) the expiration or termination of the Master Agreement, or (b) termination of this Addendum in accordance with its terms.

**10.2 Termination.** DAS PS may terminate this Addendum, in whole or in part, at any time upon thirty (30) days prior notice to Contractor. In addition, DAS PS may terminate this Addendum, in whole or in part, immediately upon notice to Contractor, or at such later date as DAS PS may establish in such notice, for any reason, or upon the occurrence of any of the following events:

10.2.1. State fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the goods to be purchased under the Addendum; or

10.2.2 Federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of Goods, Products or Services under this Addendum is prohibited or the State is prohibited from paying for such Goods, Products or Services from the planned funding source.

Upon receipt of written notice of termination, Contractor will stop performance under all Purchase Orders as directed by State.

**10.3 Termination under any provision of this Addendum does not extinguish or prejudice State's or an Authorized Purchaser's right to enforce this Addendum or a Purchase Order with respect to**

Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of the State or an Authorized Purchaser to indemnification by Contractor. If this Addendum or a Purchase Order is so terminated, the State or an Authorized Purchaser will pay Contractor in accordance with the terms of this Addendum for goods delivered and accepted by the Authorized Purchaser.

## **11. Termination of Individual Purchase Orders.**

**11.1** Individual Purchase Orders may be terminated at any time by written consent of Authorized Purchaser and Contractor or Authorized Purchaser may, at its sole discretion, terminate individual Purchase Orders, in whole or in part, upon 30 days written notice to Contractor.

**11.2** Authorized Purchaser may terminate individual Purchase Orders, in whole or in part, immediately upon notice to Contractor, or at such later date as Authorized Purchaser may establish in such notice, upon the occurrence of any of the following events:

11.2.1 Authorized Purchaser fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the Goods, Products or Services to be purchased under the Purchase Order;

11.2.2 Federal or State laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of Goods, Products or Services under the Purchase Order is prohibited or Authorized Purchaser is prohibited from paying for such Goods, Products or Services from the planned funding source; or

11.2.3 Contractor commits any material breach of this Addendum or a Purchase Order.

**11.3** Upon receipt of written notice of termination, Contractor will stop performance under the Purchase Order as directed by Authorized Purchaser.

**11.4** Termination of a Purchase Order does not extinguish or prejudice Authorized Purchaser's right to enforce the Purchase Order with respect to Contractor's breach of any warranty or any defect in or default of Contractor's performance that has not been cured, including any right of Authorized Purchaser to indemnification by Contractor. In addition, termination of a Purchase Order does not extinguish or prejudice Authorized Purchaser's right to enforce the warranty, indemnification, governing law, venue and consent to jurisdiction provisions of this Addendum. If a Purchase Order is so terminated, Authorized Purchaser will pay Contractor in accordance with the terms of this Addendum for goods delivered and accepted by Authorized Purchaser.

**12. Compliance Law.** Contractor will comply with all federal, state and local laws, rules, regulations, executive orders and ordinances applicable to the Work under this Addendum or any Purchase Order, and an Authorized Purchaser's performance under a Purchase Order is conditioned on Contractor's compliance with the provisions of ORS 279B.220, 279B.235, 279B.230. and 279B.270. In addition, Contractor warrants the Good, Products and Services provided under this Addendum will comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the State Workers' Compensation Division. Contractor also agrees to comply with (a) Title VI of the Civil Rights Act of 1964, (b) Section v of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990 and ORS 659.425, (d) all regulations and

administrative rules established pursuant to the foregoing laws and (e) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

### **13. Tax Compliance.**

13.1 As set forth on Exhibit C, Contractor has complied with the tax laws of this State and the applicable tax laws of any political subdivision of this State. Contractor shall, throughout the duration of this Addendum and any extensions, comply with all tax laws of this State and all applicable tax laws of any political subdivision of this State. For the purposes of this Section, "tax laws" includes:

- a) All tax laws of this State, including but not limited to ORS 305.620 and ORS chapters 316, 317, 318 and 319;
- b) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
- c) Any tax provisions imposed by a political subdivision of this State that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
- d) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

13.2 Any violation of this Section 13 constitutes a material breach of this addendum and any Purchase Order issued under this Addendum. Further, any violation of Contractor's warranty set forth in Exhibit C also shall constitute a material breach of this Addendum and any Purchase Order issued under this Addendum. Any violation shall entitle DAS PS or Authorized Purchaser to terminate this Addendum or the applicable Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Addendum or the applicable Contract, and to pursue any or all of the remedies available under this Addendum, a Contract, at law, or in equity, including but not limited to:

- a) Termination of this Addendum or the applicable Contract, in whole or in part;
- b) Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Contractor, in an amount equal to Authorized Purchaser's setoff right, without penalty; and
- c) Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. DAS PS or Authorized Purchaser may recover any and all damages suffered as the result of Contractor's breach of this Addendum or the applicable Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing replacement Goods, Products or Services or both.

These remedies are cumulative to the extent the remedies are not inconsistent, and DAS PS or Authorized Purchaser may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

### **14. Non-Discrimination:** Contractor certifies that Contractor has a written policy and practice that meets the requirements, described in ORS 279A.112, of preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class.

Contractor agrees, as a material term of this Addendum, to maintain the policy and practice in forced during the entire Addendum term.

- 15. Pay Equity.** As required by ORS 279B.235, Contractor shall comply with ORS 652.220 and shall not unlawfully discriminate against any of Contractor's employees in the payment of wages or other compensation for work of comparable character on the basis of an employee's membership in a protected class. "Protected class" means a group of persons distinguished by race, color, religion, sex, sexual orientation, national origin, marital status, veteran status, disability or age. Contractor's compliance with this section constitutes a material element of this Addendum and a failure to comply constitutes a breach that entitles DAS PS or Authorized Purchaser to terminate this Addendum or a Purchase Order for cause.

Contractor may not prohibit any of Contractor's employees from discussing the employee's rate of wage, salary, benefits, or other compensation with another employee or another person. Contractor may not retaliate against an employee who discusses the employee's rate of wage, salary, benefits, or other compensation with another employee or another person.

- 16. Application of Public Records Law.** Contractor acknowledges that any disclosures Contractor makes to Authorized Purchaser under this Addendum are subject to application of the Oregon Public Records Law, including but not limited to ORS 192.311 – 192.478, the provisions for the Custody and Maintenance of Public Records, ORS 192.005 – 192.710, and of ORS 646.461 - 646.475. The non-disclosure of documents or of any portion of a document submitted by Contractor to Authorized Purchaser may depend upon official or judicial determinations made pursuant to the foregoing laws. Contractor will be notified prior to Authorized Purchaser's release of documents to Entities other than participating agencies or other State agencies. Contractor shall be exclusively responsible for defending Contractor's position concerning the confidentiality of the requested documents, at its own expense.

- 17. Recycled Products.** Contractor will use, to the maximum extent economically feasible in the performance of this Addendum or any Purchase Order, recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

- 18. Notices.** Except as otherwise provided in a Purchase Order, any formal communications between the parties to or notices to be given under a Purchase Order will be given in writing by personal delivery, a facsimile transmission or electronic mail (Email), or mailing the notice, postage prepaid, at the address or number set forth on the Purchase Order. Any communication so addressed and mailed will be deemed to have been received five (5) calendar days after mailing. Any communication delivered by facsimile or Email will be deemed to be given when a confirming report for the transmission is generated by the transmitting machine. To be effective against the receiving party, such facsimile transmission must be confirmed by telephone notice to the receiving party's authorized representative, as set forth in the Purchase Order. Any communication or notice by personal delivery will be deemed to be given when actually received by the appropriate authorized representative.

As between Contractor and State with respect to this Addendum, the Primary Contacts of Contractor and State are set forth above.

**19. Governing Law.** The laws of the State of Oregon (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Addendum and resulting Purchase Orders, including, without limitation, their validity, interpretation, construction, performance, and enforcement.

**20. Jurisdiction and Venue.** Any claim, action, suit or proceeding (collectively, "Claim") between State or any other agency or department of the State of Oregon, and Contractor, that arises from or relates to this Addendum or a Purchase Order under this Addendum, will be brought and conducted solely and exclusively in the Circuit Court of Marion County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively in the United States District Court of the District of Oregon. CONTRACTOR, BY EXECUTION OF THIS ADDENDUM ACCEPTANCE OF A PURCHASE ORDER SUBMITTED PURSUANT TO THIS ADDENDUM HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Nothing in this section will be construed as a waiver of the State of Oregon's sovereign immunity with respect to any Claim, whether brought under State or Federal law, or consent to jurisdiction in State or Federal Court.

Any Claims between Contractor and an Authorized Purchaser other than the State of Oregon or State agency that arise from or are related to individual Purchase Orders or this Addendum will be brought and conducted solely and exclusively within the Circuit Court of the county in the State of Oregon in which such Authorized Purchaser resides or has its principal office, or at Authorized Purchaser's option, within such other county as Authorized Purchaser will be entitled to proceed under the venue laws of Oregon to bring or defend Claims. If any such Claim must be brought in a federal forum, then it will be brought and conducted solely and exclusively within the United States District Court for the District of Oregon.

**21. Foreign Contractor.** If Contractor is not domiciled in or registered to do business in the State of Oregon as of the effective date of this Addendum, Contractor will promptly provide to the Oregon Department of Revenue all information required by that Department relative to the Addendum or any Purchase Order. An Authorized Purchaser may withhold final payment under a Purchase Order until Contractor has provided the Oregon Department of Revenue with the required information.

**22. Merger Clause; Waiver.** This Addendum, including the Master Agreement and the exhibits attached to this Addendum, constitutes the entire agreement between the parties on the subject matter hereof, and supersede all prior agreements, oral or written. There are no understandings, agreements, or representations, oral or written, between these parties that are not specified in this Addendum. No waiver, consent, modification or change of terms of this Addendum binds either party unless in writing and signed by both parties and all necessary State approvals have been obtained. Such waiver, consent, modification or change, if made is effective only in the specific instance and for the specific purpose given. The failure of State to enforce any provision of this Addendum does not constitute a waiver by the State of that or any other provision.

**23. Independent Contractor.** Contractor shall act at all times as an independent contractor and not as an agent or employee of Authorized Purchaser. Contractor has no right or authority to incur or create any obligation for or legally bind Authorized Purchaser in any way. Contractor is not an "officer", "employee", or "agent" of Authorized Purchaser (or any other agency, office, or department of the State of Oregon), as those terms are used in ORS 30.265, and shall not make representations to third parties to the contrary. Neither party shall make any statements,

representations, nor commitments of any kind or to take any action binding on the other except as provided for herein or authorized in writing by the party to be bound.

- 24. Access to Records.** Contractor will maintain all fiscal records relating to Purchase Orders in accordance with generally accepted accounting principles and will maintain any other records relating to Purchase Orders in such a manner as to clearly document Contractor's performance thereunder. The Authorized Purchaser, the State and its agencies, the Oregon Secretary of State Audits Division and their duly authorized representatives will have access to such fiscal records and to all other books, documents, papers, plans and writings of Contractor which relate to this Addendum to perform examination and audits and make excerpts and transcripts. To the extent provided by law, the federal government will be entitled to the same access as the State of Oregon and Authorized Purchasers. Contractor will retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of seven years, or such longer period as may be required by applicable law following final payment and termination of this Addendum, or until the conclusion of any audit, controversy or litigation arising out of or related to this Addendum, whichever date is later.
- 25. Severability.** If any term or provision of this Addendum is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Addendum did not contain the particular term or provision held to be invalid.
- 26. Survival.** Any terms of this Addendum, which by their nature are intended to survive termination or expiration including but not limited to warranty, indemnification, access to records, governing law, venue, consent to jurisdiction, termination and remedies provisions survive the termination or expiration of this Addendum.
- 27. Insurance.** Within ten (10) days of the Effective Date, Contractor must provide insurance as set forth on Exhibit B. No Purchase Orders may be placed or accepted until proof is provided that these requirements have been met.
- 28. Amendments.** This Addendum may be modified in writing once agreed to and signed by all parties.

## **Exhibit B**

### **INSURANCE REQUIREMENTS**

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit B prior to performing under this Addendum and shall maintain it in full force and at its own expense throughout the duration of this Addendum and all Purchase Orders, as required by any extended reporting period or tail coverage requirements, and all warranty periods that apply. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in State and that are acceptable to DAS PS. Coverage shall be primary and non-contributory with any other insurance and self-insurance, with the exception of Professional Liability and Workers' Compensation. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

**WORKERS' COMPENSATION & EMPLOYERS' LIABILITY:** All employers, including Contractor, that employ subject workers, as defined in ORS 656.027, shall comply with ORS 656.017 and provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2). Contractor shall require and ensure that each of its subcontractors complies with these requirements. If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall also obtain employers' liability insurance coverage with limits not less than \$500,000 each accident. If contractor is an employer subject to any other state's workers' compensation law, Contractor shall provide workers' compensation insurance coverage for its employees as required by applicable workers' compensation laws including employers' liability insurance coverage with limits not less than \$500,000 and shall require and ensure that each of its out-of-state subcontractors complies with these requirements.

**COMMERCIAL GENERAL LIABILITY:** Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that are satisfactory to the State. This insurance shall include personal and advertising injury liability, products and completed operations, contractual liability coverage for the indemnity provided under this contract, and have no limitation of coverage to designated premises, project or operation. Coverage shall be written on an occurrence basis in an amount of not less than \$2,000,000 per occurrence. Annual aggregate limit shall not be less than \$4,000,000.

**AUTOMOBILE LIABILITY INSURANCE:** Automobile Liability Insurance covering Contractor's business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than \$1,000,000 for bodily injury and property damage. This coverage may be written in combination with the Commercial General Liability Insurance (with separate limits for Commercial General Liability and Automobile Liability). Use of personal automobile liability insurance coverage may be acceptable if evidence that the policy includes a business use endorsement is provided.

**EXCESS/UMBRELLA INSURANCE:** A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

**ADDITIONAL INSURED:** All liability insurance, except for Workers' Compensation, Professional Liability, and Network Security and Privacy Liability (if applicable), required under this Addendum must include an additional insured endorsement specifying the State of Oregon, its officers, employees and agents as Additional Insureds, including additional insured status with respect to liability arising out of ongoing operations and completed operations, but only

with respect to Contractor's activities to be performed under this Addendum or any Purchase Order. Coverage shall be primary and non-contributory with any other insurance and self-insurance. The Additional Insured endorsement with respect to liability arising out of your ongoing operations must be on ISO Form CG 20 10 07 04 or equivalent and the Additional Insured endorsement with respect to completed operations must be on ISO form CG 20 37 04 13 or equivalent.

**WAIVER OF SUBROGATION:** Contractor shall waive rights of subrogation which Contractor or any insurer of Contractor may acquire against DAS PS, Authorized Purchaser, or State of Oregon by virtue of the payment of any loss. Contractor will obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not DAS PS or Authorized Purchaser has received a waiver of subrogation endorsement from the Contractor or the Contractor's insurer(s).

**TAIL COVERAGE:** If any of the required insurance is on a claims made basis and does not include an extended reporting period of at least 24 months, Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Addendum, for a minimum of 24 months following the later of (i) Contractor's completion and Authorized Purchaser's acceptance of all Goods, Products, and Services required under this Addendum or any Purchase Order, or, (ii) DAS PS, Authorized Purchaser or Contractor termination of this Addendum or Purchase Order, or, (iii) The expiration of all warranty periods provided under this Addendum or any Purchase Order.

**CERTIFICATE(S) AND PROOF OF INSURANCE:** Contractor shall provide to DAS PS Certificate(s) of Insurance for all required insurance before delivering any Goods or Products and performing any Services required under this Contract. The Certificate(s) shall list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured. The Certificate(s) shall also include all required endorsements or copies of the applicable policy language effecting coverage required by this contract. If excess/umbrella insurance is used to meet the minimum insurance requirement, the Certificate of Insurance must include a list of all policies that fall under the excess/umbrella insurance. As proof of insurance DAS PS may request and obtain copies of insurance policies and endorsements relating to the insurance requirements in this Addendum.

**NOTICE OF CHANGE OR CANCELLATION:** The Contractor or its insurer must provide at least 30 days' written notice to DAS PS before cancellation of, material change to, potential exhaustion of aggregate limits of, or non-renewal of the required insurance coverage(s).

**INSURANCE REQUIREMENT REVIEW:** Contractor agrees to periodic review of insurance requirements by DAS PS under this Addendum and to provide updated requirements as mutually agreed upon by Contractor and DAS PS.

**STATE ACCEPTANCE:** All insurance providers are subject to DAS PS acceptance. If requested by DAS PS, Contractor shall provide complete copies of insurance policies, endorsements, self-insurance documents and related insurance documents to DAS PS' representatives responsible for verification of the insurance coverages required under this Exhibit B.



## EXHIBIT C

### CONTRACTOR TAX CERTIFICATION

The individual signing on behalf of Contractor hereby certifies and swears under penalty of perjury to the best of the individual's knowledge that:

1. The number shown on this form is Contractor's correct taxpayer identification;

Federal Tax Number 43-1757730

Oregon Tax Number Oregon Registry #70875696

2. Contractor is not subject to backup withholding because:

- (i) Contractor is exempt from backup withholding,
- (ii) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or
- (iii) the IRS has notified Contractor that Contractor is no longer subject to backup withholding.

3. S/he is authorized to act on behalf of Contractor, s/he has authority and knowledge regarding Contractor's payment of taxes,

4. For a period of no fewer than six calendar years preceding the Effective Date of this Addendum and any Purchase Order, Contractor faithfully has complied with:


- (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
- (iii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by Contractor; and
- (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Contractor: Kustom Signals, Inc.

Signature Chris N. Abdul

Date October 2, 2019

**EXHIBIT D**  
**SAMPLE PURCHASE ORDER**

		<h1 align="center">STATE OF OREGON</h1>		<b>PURCHASE ORDER (PO) NO.</b>		<b>PAGE #</b>	
<b>Authorized Purchaser's Authorized Representative</b>			<b>Purchase Order Date</b>		<b>Requisition No.</b>		
<b>Contractor Name and Address</b>				<b>Authorized Purchaser's Invoicing Address</b>			
<b>Contractor FEIN</b>		<b>Price Agreement number</b>		<b>Authorized Purchaser's Authorized Representative Email Address</b>			
<b>Deliver to Address</b>				<b>Authorized Purchaser's Authorized Representative Phone and Fax Number</b>			
				<b>Delivery Schedule or Delivery Date</b>			
<b>Item</b>	<b>Description</b>	<b>Quantity</b>	<b>U/M</b>	<b>Unit Price</b>	<b>Net Price</b>		
				<b>Sub Total</b>			
				<b>Freight</b>			
				<b>Total</b>			
<p>This Purchase Order is subject to Master Agreement # 00218, and Participating Addendum # 9417. The terms and conditions contained in the Participating Addendum apply to this purchase and take precedence over all other conflicting terms and conditions, express or implied. There are no understandings, agreements or representations, oral or written, not specified herein.</p>							
<b>Authorized Purchaser's Authorized Representative to Make Purchase</b>					<b>Date</b>		