

PARTICIPATING ADDENDUM



**PUBLIC SAFETY COMMUNICATIONS
PRODUCTS, SERVICE AND SOLUTIONS**

Lead by the State of Washington

Master Agreement #: 00318

Contractor: **BK Technologies, Inc**

Participating Entity: **STATE OF NORTH DAKOTA**

This PA is limited to the following products:

- 1.1 Radio: Single-Band Portable Radio (P25) Models:
BKR 9000 Portable Radio

Master Agreement Terms and Conditions:

1. Scope: This addendum covers the *Public Safety Communications Products, Services and Solutions* led by the State of Washington for use by state agencies and other entities located in the Participating State *[or State Entity]* authorized by that State's statutes to utilize State contracts with the prior approval of the State's Chief Procurement Official.
2. Participation: This NASPO ValuePoint Master Agreement may be used by all state agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of North Dakota. 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 Participating Addendum are as follows (or their named successors):

Contractor

Name:	Carolyn French
Address:	7100 Technology Drive West Melbourne, FL 32904
Telephone:	321-237-1306
Fax:	
Email:	cfrench@bktechnologies.com



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Participating Entity

Name:	State of North Dakota, Office of Management & Budget
Address:	600 East Boulevard Avenue, Bismarck, ND 58505
Telephone:	701-328-0819
Fax:	
Email:	sbilden@nd.gov

**4. PARTICIPATING ENTITY MODIFICATIONS OR ADDITIONS TO THE MASTER
AGREEMENT**

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

Participating Entity must check one of the boxes below.

☐ 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.

- A. Cooperative Purchase: This Contract is a cooperative purchasing contract established pursuant to North Dakota Century Code (N.D.C.C.) § 54-44.4-13. This contract is made available to state entities, institutions under the jurisdiction of the State Board of Higher Education, other government entities (including counties, cities, townships, public primary and secondary educational entities, governmental boards and commissions), nonprofit entities established on behalf of public entities, tribal agencies, transportation providers under N.D.C.C. ch. 39-04.2, and the International Peace Garden. Participation in this open-ended contract is not mandated; therefore, the estimated volume of this Contract is not known.
- B. Term: The term of this Participating Addendum will be coterminous with the NASPO ValuePoint Master Agreement.
- C. Prepayment: Participating State will not make any advance payments before performance by CONTRACTOR under this Contract
- D. Payment of Taxes by Participating State: Participating State is not responsible for and will not pay local, state, or federal taxes. Participating State sales tax exemption number is

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E2001. Participating State will furnish certificates of exemption upon request by the CONTRACTOR.

E. Termination:

- a. Termination by mutual agreement: This Contract may be terminated by mutual consent of both parties executed in writing.
- b. Termination without cause: Participating State may terminate this Contract in whole or in part when it has determined that continuing the Contract is no longer necessary or would not produce beneficial results commensurate with the further expenditure of public funds.
- c. Termination for lack of funding or authority: Participating State by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:
 - i. If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.
 - ii. If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
 - iii. If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either party already accrued prior to termination.
- d. Termination for cause: Participating State may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice
 - i. If CONTRACTOR fails to provide services required by this Contract within the time specified or any extension agreed to by Participating State; or
 - ii. If CONTRACTOR fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of Participating State provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

- F. Injunctive Relief: In addition to CONTRACTOR's Injunctive Relief obligations in the Master Agreement, CONTRACTOR shall immediately report to Participating State any and all unauthorized disclosures or uses of Participating State's Confidential Information or Proprietary Information of which CONTRACTOR or its staff is aware or has knowledge. CONTRACTOR acknowledges that any unauthorized publication or disclosure of Participating State's Confidential Information or Proprietary Information to others may cause immediate and irreparable harm to Participating State. If CONTRACTOR should publish or disclose such Confidential Information or Proprietary Information without authorization, Participating

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State shall immediately be entitled to injunctive relief or any other remedies to which it is entitled under law or equity without requiring a cure period. CONTRACTOR shall indemnify, defend, and hold harmless Participating State from all damages, costs, liabilities, and expenses (including without limitation reasonable attorneys' fees) caused by or arising from CONTRACTOR's unauthorized notification or disclosure of Participating State's Confidential Information or Proprietary Information. As a condition to these indemnity obligations, Participating State will provide CONTRACTOR with prompt notice of any claim of which Participating State is aware and for which indemnification shall be sought under this Contract and shall cooperate in all reasonable respects with CONTRACTOR in connection with any such claim.

- G. Right of Setoff Damages: Amounts due Participating State by CONTRACTOR, including liquidated or other damages, or claims for damages, may be deducted or set-off by Participating State from any money payable to CONTRACTOR pursuant to this Contract.
- H. Right to Withhold Amounts Otherwise Due if the CONTRACTOR is in Breach: If CONTRACTOR fails to deliver Deliverables or to provide Services which satisfy CONTRACTOR's obligations under this Contract, Participating State shall have the right to withhold any and all payments due under this Contract. Participating State may withhold any and all such payments due under this Contract to CONTRACTOR without penalty or work stoppage by CONTRACTOR, until such failure to perform is cured.
- I. Rights to Remedies and Cumulation of Rights: No remedy conferred by any of the specific provisions of the Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Contract, now or in the future existing at law or in equity or by statute or otherwise.
- J. Indemnity: In addition to CONTRACTOR's Indemnification obligations in the Master Contract, CONTRACTOR agrees that any attorney who represents the STATE must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08.
- K. Representations and Warranties: CONTRACTOR represents and warrants to Participating State that neither CONTRACTOR, in connection with performing the services in performance of this Contract, nor the completed product delivered by CONTRACTOR, will infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. CONTRACTOR further represents and warrants to Participating State that it will not use any trade secrets or confidential or proprietary information owned by any third party in performing the services related to this Contract or in delivery of the completed product unless CONTRACTOR has the authority to license, use or provide those trade secrets or confidential or proprietary information to Participating State. CONTRACTOR further represents and warrants to Participating State that neither CONTRACTOR nor any other

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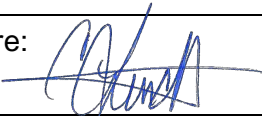
company or individual performing services pursuant to this Contract is under any obligation to assign or give any work done under this Contract to any third party.

- L. Insurance: In addition to CONTRACTOR's Insurance obligations in the Master Contract, CONTRACTOR's insurance coverages must meet the following additional requirements:
Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR.
- M. Spoliation – Notice of Potential Claims: CONTRACTOR shall promptly notify Participating State of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to Participating State the opportunity to review and inspect the evidence, including the scene of an accident.
- N. Severability: If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Contract did not contain that term.
- O. Applicable Law and Venue: This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be brought and solely litigated in the District Court of Burleigh County, North Dakota. Each party consents to the exclusive jurisdiction of such court and waives any claim of lack of jurisdiction or *forum non conveniens*.
- P. Alternative Dispute Resolution – Jury Trial: Participating State does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. Participating State does not waive any right to a jury trial.
- Q. Attorney Fees and Costs: In the event a lawsuit is instituted by Participating State to obtain performance under this Contract, and Participating State is the prevailing party, CONTRACTOR shall, except when prohibited by [N.D.C.C. § 28-26-04](#), pay Participating State's reasonable attorney fees and costs in connection with the lawsuit.

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

Participating Entity: State of North Dakota, Office of Management & Budget	Contractor: BK Technologies, Inc.
Signature: 	Signature: 
Name: Sara Bilden	Name: Carolyn French
Title: State Procurement Officer	Title: Contract Administrator
Date: 12/18/2023	Date: 12/19/2023

[Additional signatures may be added if required by the Participating Entity]

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Ted Fosket
Telephone:	(907) 723-3360
Email:	tfosket@naspovaluepoint.org

Please email fully executed PDF copy of this document to PA@naspovaluepoint.org.