

## SERVICES CONTRACT

THIS CONTRACT is made and entered into by and between YAMHILL COUNTY, a political subdivision of the State of Oregon, acting by and through its Sheriff's Office, hereinafter referred to as the "County", and SAR ENTERPRISES, INC dba Communications Northwest an Oregon company, located at 624 McLoughlin Blvd, Oregon City, Oregon 97045, hereinafter referred to as the "Contractor".

### RECITALS

WHEREAS, The County requires the services of a contractor to provide radio system maintenance and related radio communication support services for the Yamhill County Sheriff's Office; and

WHEREAS, The Contractor was selected via a "Joint Procurement" done by the State of Oregon pursuant to the relevant provisions of ORS 279A and YCC 3.20.046; and

WHEREAS, The Joint Procurement resulted in a cooperative contract with the Contractor, NASPO Contract No. 00318, and an Oregon Participating Addendum, both attached hereto as Exhibit A and incorporated herein; and

WHEREAS, The Contractor was selected because they possess the particular training, abilities, knowledge, qualifications, and experience the County requires as set forth herein; and

NOW, THEREFORE, in consideration of the promises and the mutual covenants and conditions set forth herein, and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, it is hereby agreed by the parties as follows:

### AGREEMENT

1. TERM. This Contract shall become effective, and services required hereunder shall commence, on the date the Contract is executed by both parties, or on May 1, 2025, whichever is sooner, and shall terminate on April 30, 2027, unless otherwise terminated or extended as provided herein. Upon mutual agreement of the parties, the Contract term may be renewed and extended in accordance with Section 6.
2. CONSIDERATION. As consideration for the performance of all terms and conditions set forth in this Contract, the County shall pay the Contractor a sum not to exceed \$400,000. The County shall make payment upon receipt and acceptance of the services as invoiced by the Contractor. The County shall pay invoices within thirty (30) days after an invoice has been received and approved by the authorized a County representative.
  - a. The County shall pay the Contract a monthly service fee of:
    - i. \$11,100.00/month for Field Service
    - ii. \$1,850.00/month for Onsite Support
  - b. Additionally, the County shall pay the Contractor a one-time payment of \$80,970.00 for the purchase of specific items identified in Section 4 below.
  - c. The compensation provided herein shall be exclusive, and the County shall neither pay nor provide Contractor with any fringe benefits, including, but not limited to,

retirement, health insurance, workers' compensation insurance, unemployment insurance, or sick leave. No additional compensation or alternate form thereof shall be payable by the County to the Contractor for any purpose whatsoever unless otherwise agreed in writing. The Contractor shall be responsible for paying all income taxes, Social Security or self-employment taxes and any other taxes or assessments imposed by any governmental body incurred by reason of the County's payment of compensation hereunder to Contractor.

### 3. SERVICES.

- a. The Contractor shall provide to the County with the following ongoing radio maintenance and support services for the Yamhill County Sheriff's Office:
  - i. Scheduled Infrastructure Preventive Maintenance (PM) during normal business hours based on the specific needs of the Communications System on an annual basis (requires agreement to be in place for at least 12 consecutive months);
  - ii. Preventive maintenance shall include performance validation to maintain the Radio System in accordance with specifications. This shall include but not be limited to equipment calibration, lubrication, cleaning, replacement of defective parts, correction, retrofitting for engineering changes. The PM will include, but is not limited to:
    1. Physically inspect cabinet, general circuitry and connections;
    2. Measure transmitter power output and adjusts to rated output; and
    3. Check and adjust all combiners and multi-couplers;
  - iii. Measure reflected power of the transmitter antenna system and transmitters;
  - iv. Measure and adjust frequency and modulation, as required by the Federal Communications Commission's (FCC) Rules and Regulations;
  - v. Measure and adjust receiver sensitivity and frequency;
  - vi. Check Radio System audio levels and quality;
  - vii. Measure digital system BER (Bit Error Rate) and adjust as necessary;
  - viii. Remove any oil, dust, and/or foreign substances from equipment;
  - ix. Calibration of simulcast systems to applicable performance standards; and
  - x. Record all work performed. This information must be descriptive about the work that was completed and any critical measurements or deviation from calibrated norms. All parts or assemblies replaced must be listed.
- b. Additionally, the Contractor shall:
  - i. Take any corrective actions necessary to maintain equipment in full compliance with the Federal Communications Commission's (FCC) Rules and Regulations, and within Radio System's specific tolerances;
  - ii. Verify standards;
  - iii. Provide documentation as to the results of the annual PM. This information will contain a minimum of the following data: Model and serial number; power output and VSWR of station and combiner; frequency check; modulation levels; receiver sensitivity; line levels; location of equipment; and site information;
  - iv. Provide quarterly written summaries of preventative maintenance, routine, and or emergency repairs that have been completed during the prior 90 days. Should further reporting or more detail be required, reports may be generated on a more frequent basis; and

- v. Provide unscheduled, on call maintenance as required for intermittently failing or inoperative equipment. Maintenance includes determining the cause of the failure and/or intermittent service, removing, repairing or replacing parts or elements as necessary in order to conform with the manufacturer's factory specification along with Radio System specific specifications, delivering and installing the parts, and placing the equipment or software back into service.

4. **GOODS.** The Contractor shall provide to the County, as a one-time transaction, the following items:

<u>Item</u>	<u>Description</u>	<u>Quantity</u>	<u>Price</u>	<u>Total</u>
NOTES: MTW				
W65532/7DC(CS)	COMBINER FF WB UHF 3CH DL 125W	1	\$11,500.00	\$11,500.00
W65542/7DC(CS)	COMBINER FF UHF 4CH DL 125W WITH 75W LOADS	1	\$15,075.00	\$15,075.00
25110- 0/CUST25123	MULTICOUPLER UHF DL PASS 2+8/N	1	\$9,975.00	\$9,975.00
EMR450DP2	UHF Dual Bay Dipole Antenna	3	\$1,320.00	\$3,960.00
NOTES: Sheridan				
W65532/7DC(CS)	COMBINER FF WB UHF 3CH DL 125W	1	\$11,500.00	\$11,500.00
W65542/7DC(CS)	COMBINER FF UHF 4CH DL 125W WITH 75W LOADS	1	\$15,075.00	\$15,075.00
25108- 0/CUST25123	MULTICOUPLER UHF DL PASS 4+4/N	1	\$9,925.00	\$9,925.00
EMR450DP2	UHF Dual Bay Dipole Antenna	3	\$1,320.00	\$3,960.00
			<b>TOTAL</b>	<b>\$80,970.00</b>

5. **WARRANTIES.**

- a. Warranty of Services. The County has relied upon the professional ability, qualifications, and training of the Contractor as a material inducement to enter into this Contract. Accordingly, the Contractor represents and warrants that: (i) the Contractor shall perform all services set forth herein in a good and workmanlike manner, in conformance with the terms, conditions, and requirements of this Contract, and in accordance with the highest applicable professional and/or industry standards; (ii) the Contractor warrants that each of the Contractor's employees assigned to perform services under this Contract has the proper skill, training, and background to be able to perform the services in a competent, timely, and professional manner and that all services shall be so performed; and (iii) the Contractor shall at all times maintain and keep current all professional licenses, certifications, and professional liability insurance required to perform the work set forth in this Contract.
- b. Warranty of Goods. Unless otherwise stated, all goods provided under this Contract shall be new and the current model and shall carry full manufacturer warranties. The Contractor warrants all goods delivered to be free from defects in labor, material,

and manufacture and to be in compliance with the specifications described herein. All implied and express warranty provisions of the Uniform Commercial Code (ORS Chapter 72) are hereby incorporated into the Contract.

- c. Survival. All warranties shall run to the County and, where applicable, shall survive termination, cancellation, or expiration of the Contract.
6. **INDEPENDENT CONTRACTOR.** This agreement is not a contract of employment. The County does not seek to hire Contractor as an employee(s) of the County nor does the Contractor desire to be an employee(s) of the County for performance of the services described herein. The parties intend that the Contractor, in performing the services specified herein, shall be and act as an independent contractor and shall have professional control of the work and the manner in which it is performed. The Contractor shall have the sole authority to determine the manner and means of performing the services described herein, and the County shall not interfere with, control, or direct the manner or method in which such services are performed; provided, the County shall direct Contractor as to the work to be assigned and shall have the right to direct the required results to the extent such direction may be consistent with the nature of the Contractor's services. The Contractor shall not be considered an agent of the County, and the County shall not be responsible for any claims, demands, or causes of action of any kind or character arising in favor of any person, on account of personal injuries, or death, or damage to property occurring, growing out of, incident to, or resulting directly or indirectly from the operations or activities of the Contractor.
7. **AMENDMENT.** This Contract may be amended to the extent permitted by applicable statutes, administrative rules, ordinances, and local ordinances. No amendment shall bind either party unless in writing and signed by both parties.
8. **COMPLIANCE WITH ORS 279B.220.** For all services provided under this Contract, the Contractor shall: (i) pay promptly, as due, all persons supplying labor or material; (ii) pay all contributions or amounts due the Industrial Accident Fund from the Contractor or any subcontractor; (iii) not permit any lien or claim to be filed or prosecuted against the County or any subdivision thereof; and (iv) pay to the State of Oregon Department of Revenue all sums withheld from employees pursuant to ORS 316.167. If the Contractor does not pay promptly any claim that is due for the services furnished to the Contractor by any subcontractor in connection with this Contract, the County may pay such claim and charge that payment against any payment due to the Contractor under this Contract. The County's payment of a claim does not relieve the Contractor or its surety, if any, from their obligations for any unpaid claims.
9. **HOURS OF LABOR; COMPLIANCE WITH PAY EQUITY PROVISIONS.**
  - a. Pursuant to ORS 279B.235(3), the Contractor shall pay the Contractor's employees who perform work under this Contract at least time and a half for all overtime in excess of 40 hours a week, and for work performed on any legal holiday as specified in ORS 279B.020, except for employees who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201 to 209 from receiving overtime.
  - b. Pursuant to ORS 279B.235(1)(b), the Contractor shall comply with the prohibition set forth in ORS 652.220. Such compliance is a material element of this Contract and failure to comply is a breach that entitles the County to terminate the Contract for cause.

- c. Pursuant to ORS 279B.235(1)(c), the Contractor shall not prohibit any of the Contractor's employees from discussing the employee's rate of wage, salary, benefits or other compensation with another employee or another person and 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.
        - d. Pursuant to ORS 279B.235(5)(b), the Contractor shall notify, in writing, any person employed by the Contractor under this Contract, either at the time of hire or before work begins on the Contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the Contractor may require the employees to work.
10. **WORKERS' COMPENSATION.** If the Contractor is a subject employer for workers' compensation or unemployment insurance purposes, Contractor shall provide such workers' compensation and unemployment coverage benefits at its sole cost and expense and shall provide proof of such insurance and benefits at the County's request. The parties hereto specifically agree that this Contract will render the Contractor and the Contractor's employees, if any, ineligible for benefits under ORS 656.029 and that the County shall not be liable for, responsible for, or in any way or manner be required to provide, workers' compensation benefits for the Contractor or the Contractor's employees.
11. **COMPLIANCE WITH LAWS.** The Contractor shall comply with all federal, state, and local laws, codes, regulations and ordinances applicable to the provision of services under this Contract, including, without limitation, the provisions of: (i) Title VI of the Civil Rights Act of 1964; (ii) Section V of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 (Pub L No 101- 336), ORS 659.425, and all amendments of and regulations and administrative rules established pursuant to those laws; and (iv) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Any violation by Contractor of any applicable law required in the provision of services hereunder shall constitute breach of this Contract, and Contractor shall be solely liable for any and all claims arising out of, connected with, or as a result of the violation.
12. **INDEMNIFICATION.** The Contractor shall defend, indemnify, and hold harmless the County, its officers, agents, and employees from any claims, liabilities, demands, damages, actions, or proceedings arising from or relating to the acts or omissions of the Contractor in connection with the performance of any services required hereunder. The Contractor shall be responsible for any damage to property, injury to persons, and any loss, expense, inconvenience, and/or delay that may be caused by, or result from, the carrying out of services under this Contract.
13. **INSURANCE.** The Contractor shall, at its expense, obtain the following insurance coverage and keep them in effect during the entire term of this Contract:
  - a. Comprehensive General Liability Insurance (including contractual liability and completed operations coverage) with a per occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000, covering all activities and operations of the Contractor;
  - b. Commercial Automobile Liability Insurance, with a per occurrence limit of not less than \$1,000,000 and an aggregate limit of not less than \$2,000,000, for all owned, non-owned, and hired vehicles used in the performance of the services required hereunder; and

c. Additional Insurance Requirements:

- i. All insurance policies shall be written on an occurrence basis and be in effect for the term of this Contract. Written authorization from the County is required for any insurance policy written on a claims-made basis. Any insurance policy authorized to be written on a claims-made basis shall be in effect for the term of this Contract plus for three (3) years after the termination of this Contract.
- ii. Insurance coverage shall apply on a primary and non-contributory basis.
- iii. Prior to commencing services, the Contractor shall furnish current Certificate(s) of Insurance for all required insurance to the County. The insurance must be provided by an insurance company or entity that is authorized to transact the business of insurance and issue coverage in the State of Oregon, with an AM best rating of at least A-. The Certificate shall provide, by policy endorsement, if necessary, that the County, its officers, employees, agents, and volunteers are additional insureds with respect to the Contractor's services provided under this Contract and that there shall be no cancellation, termination, non-renewal, material change to, potential exhaustion of aggregate limits, or reduction of limits of the required insurance without at least 30 days written notice from the Contractor or its insurer to the County. If requested, the Contractor shall provide complete copies of insurance policies to the County.

14. **TERMINATION.**

- a. County's Termination for Convenience. The County may terminate this Contract in whole or in part whenever the County determines that termination of the Contract is in the best interest of the County. The County will provide the Contractor with written notice of a termination for convenience at least thirty (30) calendar days before the intended termination date. By the termination date, the Contractor shall provide the County with immediate and peaceful possession of the Project site. Such termination shall be without liability or penalty, and in no circumstance shall Contractor be entitled to lost profits for work not performed due to termination. No termination for convenience shall prejudice any obligations or liabilities of either party already accrued prior to the effective date of termination.
- b. County's Termination for Cause. The County may immediately terminate this Contract without liability or penalty for either of the following causes by the mailing of written notice to the Contractor at the Contractor's address provided herein, specifying the cause:
  - i. The Contractor breaches any of the provisions of this Contract;
  - ii. The Contractor no longer holds all licenses or certificates that are required to perform the services required under this Contract;
  - iii. The County lacks lawful funding, appropriations, limitations, or other expenditure authority at levels sufficient to allow the County, in the exercise of its reasonable discretion, to pay for the Contractor's services; or
  - iv. Federal, state, or local laws, regulations, or guidelines are modified or interpreted in such a way that either the services under this Contract are prohibited, or the County is prohibited from paying for such services from the planned funding source.
- c. Contractor's Termination for Cause. The Contractor may terminate this Contract for cause if the County fails to pay the Contractor pursuant to this Contract. The

Contractor may also terminate this Contract for cause if the County commits any material breach or default of any covenant, warranty, obligation, or agreement under this Contract and such breach or failure is not cured within thirty (30) calendar days after delivery of the Contractor's notice, or such longer period as the Contractor may specify in such notice.

15. **FORCE MAJEURE.** Neither the County nor the Contractor shall be held responsible for delay or default caused by fire, riot, civil disobedience, acts of God, or war where such cause was beyond the reasonable control of the County or the Contractor. The Contractor shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract. The risk of loss or damage to the subject matter of this agreement shall be upon the Contractor until such time as the County has accepted the services required hereunder.
16. **ASSIGNMENT; DELEGATION; SUCCESSOR.** The Contractor shall not assign, delegate, nor transfer any of its rights or obligations under this Contract without the County's prior written consent. The County's written consent does not relieve the Contractor of any obligations under this Contract, and any assignee, transferee, or delegate is considered the Contractor's agent. The provisions of this Contract shall be binding upon and shall inure to the benefit of the parties to the Contract and their respective successors and assigns.
17. **GOVERNING LAW, JURISDICTION, VENUE, & ATTORNEY FEES.** This Contract shall be governed and construed in accordance with the laws of the State of Oregon, without resort to any jurisdiction's conflict of laws rules or doctrines. Any claim, action, suit, or proceeding (collectively, "the claim") between the County (and/or any other agency or department of Yamhill County) and the Contractor that arises from or relates to this Contract shall be brought and conducted solely and exclusively within the Circuit Court of Yamhill County for the State of Oregon. Provided, however, if the claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. The Contractor hereby consents to the *in personam* jurisdiction of said courts. Each party shall be responsible for the party's attorney fees, costs and disbursements at all times including appeals.
18. **RECORDS.** The Contractor shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, the Contractor shall maintain any other records pertinent to this Contract in such a manner as to clearly document the Contractor's performance hereunder. The Contractor acknowledges and agrees that the County, the Oregon Secretary of State's Office, the Federal Government, and their duly authorized representatives shall have access to such fiscal records and all other documents that are pertinent to this Contract for the purpose of performing audits and examinations and making transcripts and excerpts. All such fiscal records and pertinent documents shall be retained by the Contractor for a minimum of six (6) years (except as required longer by law) following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later.

19. NOTICES. All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail should be addressed as follows:

County: Yamhill County Sheriff's Office  
ATTN: Sam Elliott, Yamhill County Sheriff  
535 NE 5<sup>th</sup> Street  
McMinnville, Oregon 97128  
elliotts@yamhillcounty.gov

Contractor: Communications Northwest  
ATTN: Scott A. Reilly, President/CEO  
624 McLoughlin Blvd  
Oregon City, OR 97045  
scott.reilly@commnw.com

20. FOREIGN CONTRACTOR. If the Contractor is not domiciled in or registered to do business in the State of Oregon, the Contractor shall promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Contract. The County shall withhold final payment under this Contract until the Contractor has met this requirement.
21. TAX CERTIFICATION. The Contractor hereby certifies that it is not in violation of any Oregon Tax Laws and that it shall continue to comply with Oregon Tax Laws during the term of this Contract. Pursuant to ORS 279B.045, the Contractor's failure to comply with the Oregon Tax Laws is considered a default for which the County may terminate the Contract and seek damages and other relief as available. For purposes of this certification, "Oregon Tax Laws" means those programs listed in ORS 305.380(4).
22. WAIVER. The failure of either party to enforce any provision of this Contract shall not constitute a waiver by that party of that or any other provision of this Contract, or the waiver by that party of the ability to enforce that or any other provision in the event of any subsequent breach.
23. ENTIRE AGREEMENT. This Contract constitutes the entire agreement between the parties on the subject matter hereof. No waiver, consent, modification or change of terms or provisions of this agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification, or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this agreement.
24. COUNTERPARTS. This Contract and any subsequent amendments may be executed in any number of counterparts (including by facsimile, PDF, or other electronic transmission), each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one agreement binding on all parties.
25. SEVERABILITY. If any provision of this Contract shall be held invalid or unenforceable by any court or tribunal of competent jurisdiction, such holding shall not invalidate or render

unenforceable any other provision, and the obligations of the parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

26. SURVIVAL. All rights and obligations shall cease upon termination of this Contract, except for those rights and obligations that by their nature or express terms survive termination of this agreement. Termination shall not prejudice any rights or obligations accrued to the parties prior to termination.

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. NO WAIVER, CONSENT, MODIFICATION OR CHANGE IN TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY FOR THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS OR REPRESENTATIONS, ORAL OR WRITTEN NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE CONTRACTOR, BY SIGNATURE OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT HE/SHE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

[remainder of page intentionally blank; signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed, or caused to be executed, this Contract on the date indicated by their duly authorized officials.

**CONTRACTOR**

Signed by:  
  
33FAF9AABFD14F0...  
 Signature  
 \_\_\_\_\_  
 Scott A. Reilly  
 Name (printed)  
 \_\_\_\_\_  
 President  
 Title  
 \_\_\_\_\_  
 5/27/2025  
 Date

**YAMHILL COUNTY BOARD OF COMMISSIONERS**

DocuSigned by:  
  
8E58DDAC84AB478...  
 Kit Johnston, Chair  
 DocuSigned by:  
  
8E58DDAC84AB478...  
 Mary Starrett, Commissioner  
 Signed by:  
  
8E58DDAC84AB478...  
 David "Bubba" King, Commissioner  
 \_\_\_\_\_  
 4/18/2025  
 Date

APPROVED AS TO CONTENT

By:   
 \_\_\_\_\_  
 Sam Elliott, Yamhill County Sheriff

APPROVED AS TO FORM

DocuSigned by:  
  
 By: \_\_\_\_\_  
42D9EF9444634DC...  
 Christian Boenisch, Yamhill County Counsel

Approved by the BOC on: 04/17/2025  
via Board Order No.: 25-107



**COOPERATIVE PURCHASING MASTER AGREEMENT**

**No. 00318**

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

*For Use by Eligible Purchasing Entities*

By and Between

**STATE OF WASHINGTON  
DEPARTMENT OF ENTERPRISE SERVICES**

and

**TAIT NORTH AMERICA, INC.**

Dated January 1, 2022

**Board Order No.: 25-107**

**COOPERATIVE PURCHASING MASTER AGREEMENT**

**No. 00318**

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

FOR

- 1.1 RADIO: SINGLE-BAND PORTABLE RADIO (P25)**
- 1.2 RADIO: SINGLE-BAND MOBILE RADIO (P25)**
- 1.7 RADIO: BASE STATION/REPEATER (P25)**
- 2.1 RADIO: CONVENTIONAL ANALOG PORTABLE (NON-P25)**
- 2.2 RADIO: CONVENTIONAL ANALOG MOBILE (NON-P25)**
- 2.4 RADIO: CONVENTIONAL ANALOG BASE STATION/REPEATER (NON-P25)**

This Cooperative Purchasing Master Agreement (“Cooperative Purchasing Master Agreement”) is made and entered into by and between Enterprise Services acting by and through the State of Washington (“Enterprise Services”) and Tait North America, Inc., a Texas corporation (“Contractor”) and is dated and effective as of January 1, 2022.

**RECITALS**

- A. Pursuant to Legislative authorization, Enterprise Services, on behalf of the State of Washington, is authorized to develop, solicit, and establish Cooperative Purchasing Master Agreements for goods and services to support Washington state agencies. See RCW 39.26.050(1). The Washington State Legislature has authorized Enterprise Services to make these Cooperative Purchasing Master Agreements available, pursuant to agreement in which Enterprise Services ensures full cost recovery, to other local or federal government agency or entity, public benefit nonprofit organizations, or any tribes located in the State of Washington. See RCW 39.26.050(1) & (2).
- B. The Washington State Legislature also has authorized Enterprise Services to participate in, sponsor, conduct, or administer certain cooperative purchasing agreements for the procurement of goods or services. See RCW 39.26.060(1). One of the approaches that Enterprise Services utilizes to participate in cooperative purchasing agreements with other states is NASPO ValuePoint.
- C. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO). The NASPO ValuePoint purchasing cooperative program is led by state procurement officers from member states. NASPO ValuePoint does not award contracts; rather, it assists states, for an administrative fee, in their collaboration pertaining to solicitations and the resulting master agreements.
- D. Pursuant to the NASPO ValuePoint cooperative purchasing model, a state serves as the ‘lead state’ to conduct a competitive procurement in compliance with that state’s procurement laws and award a cooperative purchasing master agreement with a contractor for the specified goods or services. States (including the District of Columbia and the organized territories of the United States), including the lead state, then may participate in that cooperative purchasing master agreement by executing a Participating Addendum. Until a Participating Addendum is executed by the applicable state (a ‘participating entity’), no agency or other eligible organization (a ‘purchasing entity’)

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may purchase pursuant to the cooperative purchasing master agreement. Under Washington law, at the time of solicitation, states may provide supplemental substantive terms and conditions to inform the competitive procurement. In addition, pursuant to their Participating Addendum, states may require certain administrative terms and conditions (e.g., a vendor management fee for sales within the state, state registration and reporting). Contractor, however, has no obligation to condition execution of a Participating Addendum on substantive terms and conditions that were not competitively procured.

- E. Enterprise Services, as part of a cooperative purchasing competitive governmental procurement, with administrative support from NASPO ValuePoint, issued Competitive Solicitation No. 00318 dated November 16, 2020 regarding Public Safety Communications Products, Services and Solutions (“Public Safety Radio”). Sixteen (16) states indicated an intent to utilize the resulting Cooperative Purchasing Master Agreement.
- F. Enterprise Services and a stakeholder team consisting of representatives from Washington, California, Alaska, Oregon, Montana, Tennessee, Colorado and Nevada evaluated all responsive bids to the Competitive Solicitation and identified Contractor as an Apparent Successful Bidder for the Category(ies) identified above.
- G. Enterprise Services determined that entering into this Cooperative Purchasing Master Agreement will meet the cooperative purchasing needs and be in the best interest of the State of Washington.
- H. The purpose of this Cooperative Purchasing Master Agreement is to enable Participating or Purchasing Entities to purchase Public Safety Radio products and services, in the awarded Category(ies) as set forth herein.

## **AGREEMENT**

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

1. **TERM.** The term of this Master Agreement begins January 1, 2022 and ends on December 31, 2026; provided, however that, the contract term shall be extended for twenty-four (24) months if, in Enterprise Services’ sole, reasonable judgement, which shall occur no later than June 30, 2025, Contractor meets the following performance metrics:
  - Reports: Contractor provides timely and accurate reports as detailed in this Master Agreement and Participating Addendums; and
  - Administrative Fee Payments: Contractor provides timely and accurate Administrative Fee payments as detailed in this Master Agreement and Participating Addendums.

Notwithstanding any provision to the contrary, to effectuate a smooth transition for Participating States and Purchasing Entities for Public Safety Communications Products, Services and Solutions to begin on January 1, 2022, Contractor shall provide implementation and transition support to Participating States who wish to utilize the Master Agreement, beginning upon the date such

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Participating State and Contractor executes a Participating Addendum. For the avoidance of doubt, no orders for products or services shall be made under this Agreement prior to January 1, 2022.

**2. PARTICIPANTS AND SCOPE.** This Cooperative Purchasing Master Agreement may be utilized under the following conditions:

- 2.1 **PARTICIPATING ENTITIES.** Contractor may not sell Public Safety Radio products and services under this Cooperative Purchasing Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The terms and conditions set forth in the Cooperative Purchasing Master Agreement 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; *Provided*, however, that no Participating Addendum shall operate to alter or modify any substantive terms of this Cooperative Purchasing Master Agreement which were solicited and procured pursuant to a competitive procurement. By way of illustration and not limitation, Participating Entities may include unique administrative, delivery, and invoicing requirements, as well as entity-specific confidentiality requirements and similar entity-specific administrative requirements in purchase Orders utilizing this Cooperative Purchasing Master Agreement.
- 2.2 **PURCHASING ENTITIES.** Purchasing Entity means a state (as well as the District of Columbia and U.S territories), 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, that issues a Purchase Order or other commitment document against the Cooperative Purchasing Master Agreement and becomes financially committed to the purchase.
- 2.3 **PARTICIPATING ADDENDUM.** Obligations under this Cooperative Purchasing Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive or other process to determine which Cooperative Purchasing Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum as instructed by the Lead State to support documentation of participation and posting in appropriate databases.
- 2.4 **PURCHASING ENTITY RIGHTS.** Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Cooperative Purchasing Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Cooperative Purchasing Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Cooperative Purchasing Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. Contractor will apply the charges and invoice each Participating Entity individually.
- 2.5 **PARTICIPATING ADDENDUM APPROVAL.** Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the approval of

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participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

### 3. SCOPE – INCLUDED GOODS/SERVICES AND PRICE.

- 3.1 **CONTRACT SCOPE.** Pursuant to this Cooperative Purchasing Master Agreement, Contractor is authorized to sell only those Public Safety Radio Products and set forth in *Exhibit A – Included Products/Services* for the prices set forth in *Exhibit B –Prices for Products/Services*. Contractor shall not represent to any Participating or Purchasing Entity under this Cooperative Purchasing Master Agreement that Contractor has contractual authority to sell any Public Safety Radio Products beyond those set forth in *Exhibit A – Included Products/Services*.
- 3.2 **MINIMUM WARRANTY FOR INCLUDED GOODS/SERVICES.** Notwithstanding any provision to the contrary, Contractor agrees to and is providing a minimum warranty of no less than one (1) year for any goods/services included in this Cooperative Purchasing Master Agreement. Such minimum warranty begins when the goods/services are accepted by Purchasing Entity or as agreed by Purchasing Entity in its ordering documentation. Such minimum warranty includes all firmware and software updates within warranty period. Parts and related software will be free from defects in material and workmanship for one year. If a product fails because of a defect in workmanship or materials within one year from the date of acceptance by Purchasing Entity, manufacture shall repair or replace the product or part with a new product or part without charge to Purchasing Entity.
- 3.3 **ADDITIONAL WARRANTY OPTIONS –** See Tait North America Products/Services Pricing Document on the NASPO ValuePoint website for descriptions and pricing for all warranty options.
- 3.4 **AVAILABLE SERVICES –** See Tait North America Products/Services Pricing document on the NASPO ValuePoint website for descriptions and pricing for all available services:
- 3.5 **ABILITY TO MODIFY SCOPE OF COOPERATIVE PURCHASING MASTER AGREEMENT.** Subject to mutual agreement between the parties, Enterprise Services, acting as the lead state, reserves the right to modify the Public Safety Radio Products included in this Cooperative Purchasing Master Agreement; *Provided*, however, that any such modification shall be effective only upon thirty (30) days advance written notice; and *Provided further*, that any such modification must be within the scope of this competitively procured Cooperative Purchasing Master Agreement. In no event shall such modification, if authorized by Enterprise Services, limit the requirement for cooperative purchasing agreements to be subject to competitive procurement.
- 3.6 **PRODUCT UPDATES.** Upon approval, Contractor may update their products/pricelist on a semi-annual basis. Contractor must submit to the Lead Contract Administrator a revised product/pricelist highlighting changes and include an effective date of the change. At no time during the contract term shall products be deleted from the products/pricelist. Discontinued products/services must be struck-through and highlighted for ease of review process. Product/pricelist updates must be submitted for review and approval to the Lead

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Contract Administrator thirty (30) days prior to the effective date of the change. All products/pricelist will be posted on the NASPO ValuePoint website.

Product updates for January 1st through June 30<sup>th</sup> must be submitted to Lead State Contract Administrator by June 1<sup>st</sup> to be eligible for product updates effective July 1<sup>st</sup>. Product updates for July 1<sup>st</sup> through December 31<sup>st</sup> must be submitted to the Lead State Contract Administrator by December 1<sup>st</sup> to be eligible for product updates effective January 1<sup>st</sup>. Additional product updates may be considered for approval with proper 30 days' notice at the discretion of the Lead State.

Semi-Annual	Submitted By	Effective Date
January 1-June 30	June 1 <sup>st</sup>	July 1 <sup>st</sup>
July 1-December 31	December 1 <sup>st</sup>	January 1 <sup>st</sup>

- 3.7 **ECONOMIC ADJUSTMENTS.** All pricing must be guaranteed for the first year of the Cooperative Purchasing Master Agreement. Following the guarantee period, any request for price increases must be for an equal guarantee period (1 year) and must be submitted to the Lead State at least thirty (30) calendar days prior to the effective date. The Lead State will review a documented request for an MSRP price list increase only after the Price Guarantee Period.

Requests for price increases must include sufficient documentation supporting the request and demonstrating the reasonableness of the adjustment when comparing the current price list to the proposed price list. Documentation may include: the manufacturer's national price increase announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, index data and other information to support and justify the increase. The price increase must not produce a higher profit margin than the original contract, and must be accompanied by sufficient documentation and nationwide notice of price adjustment to the published manufacturer's price list. No retroactive price increases will be allowed.

Price Reductions. In the event of a price decrease in any category of product at any time during the contract in an OEM's published manufacturer's price list, including renewal options, the Lead State shall be notified immediately. All published manufacturer's price list price reductions shall be effective upon the notification provided to the Lead State.

Enterprise Services reserves the right to request clarification and justification for requested Economic Adjustments.

Economic Price Adjustment requests for January 1st through June 30<sup>th</sup> must be submitted to Lead State Contract Administrator by June 1<sup>st</sup> to be eligible for product updates effective July 1<sup>st</sup>. Product updates for July 1<sup>st</sup> through December 31<sup>st</sup> must be submitted to the Lead State Contract Administrator by December 1<sup>st</sup> to be eligible for product updates effective January 1<sup>st</sup>.

Semi-Annual	Submitted By	Effective Date
January 1-June 30	June 1 <sup>st</sup>	July 1 <sup>st</sup>
July 1-December 31	December 1 <sup>st</sup>	January 1 <sup>st</sup>

- 3.8 PRICE CEILING. Although Contractor may offer lower prices, including volume discounts, to Purchasing Entity, during the term of this Cooperative Purchasing Master Agreement, Contractor guarantees to provide the Goods/Services at no greater than the prices set forth in Exhibit B – Prices for Goods/Services (subject to economic adjustment as set forth herein).
- 3.9 COOPERATIVE PURCHASING MASTER AGREEMENT INFORMATION. Enterprise Services shall maintain and provide information regarding this Cooperative Purchasing Master Agreement, including scope and pricing, to eligible Purchasing Entity.
- 3.10 CONTRACTOR RESPONSIBILITIES. Contractor shall be responsible for successful performance of the Cooperative Purchasing Master Agreement and also for the successful performance of any and all of their partners. Contractor is to be the sole point of contact as applicable by Cooperative Purchasing Master Agreement with regard to contractual matters, payment of any and all charges resulting from the purchase of the products and maintenance of the product for the term of the Cooperative Purchasing Master Agreement unless otherwise specified by a Participating State in a Participating Addendum and/or the Cooperative Purchasing Master Agreement. Contractor must be able to receive, process, and invoice orders unless the Participating State has agreed to assign these functions to a partner. Contractor will be responsible for compliance with requirements under the Cooperative Purchasing Master Agreement, even if requirements are delegated to partners. Contractor and partners must not in any way represent themselves in the name of the Lead State, NASPO ValuePoint or Participating States.

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

- 4.1 QUALIFIED TO DO BUSINESS. Contractor represents and warrants that it is in good standing and qualified to do business in the State of Washington, that it is registered with the Washington State Department of Revenue and the Washington Secretary of State, that it possesses and shall keep current all required licenses and/or approvals, and that it is current, in full compliance, and has paid all applicable taxes owed to the State of Washington. Contractor further represents and warrants that, within fifteen (15) days of executing any Participating Addendum and prior to making any sales pursuant to such Participating Addendum, Contractor shall be in good standing and qualified to do business in such state and that Contractor properly shall have registered to do business in such state, shall possess and shall keep current all required licenses and/or approvals, and that it shall be current, in full compliance, and have paid all applicable taxes owed to such state.
- 4.2 SUSPENSION & DEBARMENT. Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.
- 4.3 QUALITY OF GOODS OR SERVICES. Contractor represents and warrants that any goods and/or services sold pursuant to this Cooperative Purchasing Master Agreement shall be merchantable, shall conform to this Cooperative Purchasing Master Agreement and

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Purchasing Entity's Purchase Order, shall be fit and safe for the intended purposes, shall be free from defects in materials and workmanship, and shall be produced and delivered in full compliance with applicable law. Contractor further represents and warrants it has clear title to the goods and that the same shall be delivered and the services provided free of liens and encumbrances and that the same do not infringe any third-party patent. Upon breach of warranty, Contractor will repair or replace (at no charge to Purchasing Entity) any goods and/or services whose nonconformance is discovered and made known to the Contractor. If, in Purchasing Entity's judgment, repair or replacement is inadequate, or fails of its essential purpose, 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.

- 4.4 **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Cooperative Purchasing Master Agreement and the three (3) year period immediately preceding the award of the Cooperative Purchasing Master Agreement, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- 4.5 **PAY EQUALITY.** Contractor represents and warrants that, among its workers, similarly employed individuals are compensated as equals. For purposes of this provision, employees are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Cooperative Purchasing Master Agreement and any Purchasing Entity hereunder similarly may suspend or terminate its use of the Cooperative Purchasing Master Agreement and/or any agreement entered into pursuant to this Cooperative Purchasing Master Agreement.
- 4.6 **EXECUTIVE ORDER 18-03 – WORKERS' RIGHTS.** Contractor represents and warrants, as previously certified in Contractor's Bidder's Certification, that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that, during the term of this Cooperative Purchasing Master Agreement, Contractor

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shall not, as a condition of employment, require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

- 4.7 **PROCUREMENT ETHICS & PROHIBITION ON GIFTS.** Contractor represents and warrants that it complies fully with all applicable procurement ethics restrictions including, but not limited to, restrictions against Contractor providing gifts or anything of economic value, directly or indirectly, to Purchasing Entity's employees.
- 4.8 **WASHINGTON'S ELECTRONIC BUSINESS SOLUTION (WEBS).** Contractor represents and warrants that it is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of its information therein is current and accurate and that throughout the term of this Cooperative Purchasing Master Agreement, Contractor shall maintain an accurate profile in WEBS.
- 4.9 **STATEWIDE PAYEE DESK.** Contractor represents and warrants that it is registered with the Statewide Payee Desk, which registration is a condition to payment.
- 4.10 **COOPERATIVE PURCHASING MASTER AGREEMENT PROMOTION; ADVERTISING AND ENDORSEMENT.** Contractor represents and warrants that it shall use commercially reasonable efforts both to promote and market the use of this Cooperative Purchasing Master Agreement with eligible Purchasing Entity and to ensure that those entities that utilize this Cooperative Purchasing Master Agreement are eligible Purchasing Entity. Contractor understands and acknowledges that neither Enterprise Services nor Purchasing Entity are endorsing Contractor's goods and/or services or suggesting that such goods and/or services are the best or only solution to their needs. Accordingly, Contractor represents and warrants that it shall make no reference to Enterprise Services, any Purchasing Entity, or the State of Washington in any promotional material without the prior written consent of Enterprise Services.
- 4.11 **COOPERATIVE PURCHASING MASTER AGREEMENT TRANSITION.** Contractor represents and warrants that, in the event this Cooperative Purchasing Master Agreement or a similar contract, is transitioned to another contractor (e.g., Cooperative Purchasing Master Agreement expiration or termination), Contractor shall use commercially reasonable efforts to assist Enterprise Services for a period of sixty (60) days to effectuate a smooth transition to another contractor to minimize disruption of service and/or costs to the State of Washington.
- 4.12 **SUB-CONTRACTORS, AUTHORIZED RESELLERS/DEALERS. MANUFACTURER'S REPRESENTATIVE (PARTNERS).** If utilizing partners, Contractor is responsible for such partners providing products and services, as well as warranty and maintenance services for any product or solution such partners provide pursuant to this Cooperative Purchasing Master Agreement. Pursuant to their applicable Participating Addendum, each Participating Entity may allow or disallow Contractor to utilize Partners. Only partners approved by the Participating Entity may be utilized. The Participating Entity will define the process to add and remove partners in their Participating Addendum.

**5. USING THE COOPERATIVE PURCHASING MASTER AGREEMENT – PURCHASES.**

- 5.1 **ORDERING REQUIREMENTS.** Eligible Purchasing Entity shall order goods and/or services from this Cooperative Purchasing Master Agreement, consistent with the terms hereof and by using any ordering mechanism agreeable both to Contractor and Purchasing Entity but, at a minimum, including the use of a purchase order. When practicable, Contractor and Purchasing Entity also shall use telephone orders, email orders, web-based orders, and

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similar procurement methods (collectively “Purchasing Entity Order”). All order documents must reference the Cooperative Purchasing Master Agreement number. The terms of this Cooperative Purchasing Master Agreement shall apply to any Purchase Order and, in the event of any conflict, the terms of this Cooperative Purchasing Master Agreement shall prevail. Notwithstanding any provision to the contrary, in no event shall any ‘click-agreement,’ software or web-based application terms and conditions, or other agreement modify the terms and conditions of this Cooperative Purchasing Master Agreement.

- (a) All order documents must, at a minimum, reference
  - the Cooperative Purchasing Master Agreement number;
  - The place and requested time of delivery;
  - A billing address;
  - The name, phone number, and address of the Participating Entity representative;
- (b) All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Participating Entity’s purchasing office, or to such other individual identified in writing in the Order.
- (c) Orders must be placed pursuant to this Cooperative Purchasing Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days thereafter.
- (d) Notwithstanding the expiration, cancellation or termination of this Cooperative Purchasing 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, cancellation, or termination of this Cooperative Purchasing 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 Cooperative Purchasing Master Agreement may not be placed after the expiration or termination of this Cooperative Purchasing Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

5.2 DELIVERY REQUIREMENTS. Contractor must ensure that delivery of goods and/or services will be made as required by this Cooperative Purchasing Master Agreement, the Purchase Order used by Purchasing Entity, or as otherwise mutually agreed in writing between the Purchasing Entity and Contractor. The following apply to all deliveries:

- (a) Contractor shall make all deliveries to the applicable delivery location specified in the Purchase Order. Such deliveries shall occur during Purchasing Entity’s normal work hours and within the time period mutually agreed in writing between Purchasing Entity and Contractor at the time of order placement. Deliveries to be off-loaded at Purchasing Entity’s receiving dock or designated job site by Contractor.

- (b) Contractor shall ship all goods purchased pursuant to this Master Agreement Purchasing Entity's specified destination. Shipping charges must be mutually agreed to between Purchasing Entity and Contractor, and shall be added as a separate line item on the Contractor's invoice. Contractor shall bear all risk of loss, damage, or destruction of the goods ordered hereunder that occurs prior to delivery, except loss or damage attributable to Purchasing Entity's fault or negligence.
- (c) All deliveries will be "Inside Deliveries," or as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a specific delivery location 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 Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.
- (d) All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.
- (e) All packing lists, packages, instruction manuals, correspondence, shipping notices, shipping containers, and other written materials associated with this Cooperative Purchasing Master Agreement shall be identified by the Cooperative Purchasing Master Agreement number set forth on the cover of this Cooperative Purchasing Master Agreement and the applicable Purchase Order number. Packing lists shall be enclosed with each shipment and clearly identify all contents and any backorders.
- (f) Purchasing Entities may return unopened or unused (non-specialty) Public Safety Radio products within ten (10) business days of receipt for full credit, minus any freight or restocking fee. In such event, Contractor is responsible for shipping costs pertaining to any defective Public Safety Radio Products that are returned.

5.3 RECEIPT AND INSPECTION OF GOODS AND/OR SERVICES. Goods and/or services purchased under this Cooperative Purchasing Master Agreement are subject to Purchasing Entity's reasonable inspection, testing, and approval at Purchasing Entity's destination. Purchasing Entity reserves the right to reject and refuse acceptance of goods and/or services that are not in accordance with this Cooperative Purchasing Master Agreement and Purchasing Entity's Purchase Order. Purchasing Entity may charge Contractor for the cost of inspecting rejected goods. If there are any apparent defects in the goods and/or services at the time of delivery, Purchasing Entity will notify Contractor within 5 business days. At Purchasing Entity's option, and without limiting any other rights, Purchasing Entity may require Contractor to repair or replace, at Contractor's expense, any or all of the damaged goods and/or services or, at Purchasing Entity's option, Purchasing Entity may note any damage to the goods and/or services on the receiving report, decline acceptance, and deduct the cost of rejected goods

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and/or services from final payment. Payment for any goods under such Purchase Order shall not be deemed acceptance of the goods.

- (a) All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Cooperative Purchasing Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve Contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when the Public Safety Radio Products are put to use. Acceptance of such Public Safety Radio Products may be revoked in accordance with the provisions of the applicable commercial code, and Contractor shall be liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of any Public Safety Radio Products rejected and returned, or for which Acceptance is revoked.
- (b) If any Public Safety Radio Products do not conform to the specifications, the Purchasing Entity may require the Contractor to repair or replace the Public Safety Radio Product in conformity with the specifications.

- 5.4 ON SITE REQUIREMENTS. While on Purchasing Entity's premises, Contractor, its agents, employees, or subcontractors shall comply, in all respects, with Purchasing Entity's physical, fire, access, safety, and other security requirements.
- 5.5 INSTALLATION. Installation shall be performed by Contractor in a professional manner in accordance with industry standard best practices. The premises shall be left in a neat, clean, and undamaged condition. Purchasing Entity reserves the right to require Contractor to repair any damage caused during installation or provide full compensation as determined by Purchasing Entity.
- 5.6 CONFIDENTIALITY; SAFEGUARDING OF INFORMATION. Contractor shall not use or disclose any information concerning Enterprise Services/the State of Washington or Purchasing Entity's information which may be classified as confidential, for any purpose not directly connected with the administration of this Cooperative Purchasing Master Agreement, except with prior written consent of Enterprise Services (or the applicable Purchasing Entity), or as may be required by law.
- 5.7 TREATMENT OF ASSETS. Title to all property furnished by any Participating State and/or Purchasing Entity shall remain with such Participating State and/or Purchasing Entity, as applicable. Any property of any Participating State and/or Purchasing Entity furnished to Contractor shall, unless otherwise provided herein or approved by such Participating State and/or Purchasing Entity, be used only for the performance of this Cooperative Purchasing Master Agreement. Contractor shall be responsible for direct damages as a result of any loss or damage to property of any Participating State and/or Purchasing Entity which results from the negligence of Contractor or which results from the failure on the part of Contractor to maintain, administer and protect that property in a reasonable manner and to the extent practicable in all instances. If any such Participating State and/or Purchasing Entity property is lost, destroyed, or damaged, Contractor immediately shall notify such Participating State

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and/or Purchasing Entity and shall take all reasonable steps to protect the property from further damage. Contractor shall surrender to such Participating State and/or Purchasing Entity all property of such Participating State and/or Purchasing Entity prior to settlement upon completion, termination, or cancellation of this Cooperative Purchasing Master Agreement. Title to all property furnished by Contractor, the cost for which the Contractor is entitled to be reimbursed as a direct item of cost under this Contract, shall pass to and vest in the Purchasing Entity upon delivery of such property by Contractor and acceptance by the Purchasing Entity. Title to other property, the cost of which is reimbursable to Contractor under this Contract, shall pass to and vest in the Purchasing Entity 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 Purchasing Entity in whole or in part, whichever first occurs. All reference to Contractor under this clause shall also include Contractor's employees, agents or subcontractors.

- 5.8 SOFTWARE LICENSE AGREEMENT. If the public safety communications equipment ordered and delivered under the term and conditions of this Cooperative Purchasing Master Agreement requires software or firmware to operate, Purchasing Entity and Contractor mutually agree that Contractor's Software license shall apply to such transaction. Contractor's software license agreement shall not conflict with the terms and conditions of this Cooperative Purchasing Master Agreement or specific security requirements of Participating Entity.
- 5.9 SUBSCRIPTION SERVICES AGREEMENT. If the public safety communications equipment ordered and delivered under the term and conditions of this Contract requires subscription services to operate, Purchasing Entity and Contractor will mutually agree to Contractor's Subscription Services Agreement which shall apply to such transaction. Contractor's Subscription Services Agreement shall not conflict with the terms and conditions of this Master Agreement or the specific security requirements of Participating Entity.

**6. INVOICING & PAYMENT.**

- 6.1 CONTRACTOR INVOICE. Contractor shall submit to Purchasing Entity's designated invoicing contact properly itemized invoices. Such invoices shall itemize the following:
  - (a) Cooperative Purchasing Master Agreement No. 00318;
  - (b) Contractor name, address, telephone number, and email address for billing issues (i.e., Contractor Customer Service Representative);
  - (c) Contractor's Federal Tax Identification Number;
  - (d) Date(s) of delivery;
  - (e) Applicable goods/services;
  - (f) Invoice amount; and
  - (g) Payment terms, including any available prompt payment discounts.

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

- 6.2 PAYMENT. Payment is the sole responsibility of, and will be made by, the Purchasing Entity. Payment is due within thirty (30) days of invoice. If Purchasing Entity fails to make timely

payment(s), Contractor may invoice Purchasing Entity in the amount of one percent (1%) per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check or warrant is mailed within the time specified.

- 6.3 **OVERPAYMENTS.** Contractor promptly shall refund to Purchasing Entity the full amount of any erroneous payment or overpayment. Such refunds shall occur within thirty (30) days of written notice to Contractor; *Provided*, however, that Purchasing Entity shall have the right to elect to have either direct payments or written credit memos issued. If Contractor fails to make timely payment(s) or issuance of such credit memos, Purchasing Entity may impose a one percent (1%) per month on the amount overdue thirty (30) days after notice to the Contractor.
- 6.4 **NO ADVANCE PAYMENT.** No advance payment shall be made for the products and services furnished by Contractor pursuant to this Cooperative Purchasing Master Agreement; *Provided*, however, that the parties agree that maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter.
- 6.5 **NO ADDITIONAL CHARGES.** Unless otherwise specified herein, Contractor shall not include or impose any additional charges including, but not limited to, charges for shipping, handling, or payment processing.
- 6.6 **TAXES/FEES.** Contractor promptly shall pay all applicable taxes on its operations and activities pertaining to this Cooperative Purchasing Master Agreement. Failure to do so shall constitute breach of this Cooperative Purchasing Master Agreement. Unless otherwise agreed, Purchasing Entity shall pay applicable sales tax imposed by the State of Washington on purchased goods and/or services. In regard to federal excise taxes, Contractor shall include federal excise taxes only if, after thirty (30) calendar days written notice to Purchasing Entity, Purchase has not provided Contractor with a valid exemption certificate from such federal excise taxes.

## 7. CONTRACT MANAGEMENT.

- 7.1 **CONTRACT ADMINISTRATION & NOTICES.** Except for legal notices, the parties hereby designate the following contract administrators as the respective single points of contact for purposes of this Cooperative Purchasing Master Agreement. Enterprise Services' contract administrator shall provide Cooperative Purchasing Master Agreement oversight. Contractor's contract administrator shall be Contractor's principal contact for business activities under this Cooperative Purchasing Master Agreement. The parties may change contractor administrators by written notice as set forth below.

Any notices required or desired shall be in writing and sent by U.S. mail, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

**Enterprise Services**

**Tait North America, Inc.**

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Attn: Contract Administrator 00318

Washington Dept. of Enterprise Services

PO Box 41411

Olympia, WA 98504-1411

Tel: (360) 407-2218

Email: [DESContractsTeamCypress@des.wa.gov](mailto:DESContractsTeamCypress@des.wa.gov)

Attn: Walter Bolil

15354 Park Row Drive

Houston, TX 77084

Tel: (281) 703-0480

Email: [orders.us@tairadio.com](mailto:orders.us@tairadio.com)

Notices shall be deemed effective upon the earlier of receipt, if mailed, or, if emailed, upon transmission to the designated email address of said addressee.

- 7.2 CONTRACTOR CUSTOMER SERVICE REPRESENTATIVE. Contractor shall designate a customer service representative (and inform Enterprise Services of the same) who shall be responsible for addressing Purchasing Entity issues pertaining to this Cooperative Purchasing Master Agreement.

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- 7.3 LEGAL NOTICES. Any legal notices required or desired shall be in writing and delivered by courier or U.S. certified mail, return receipt requested, postage prepaid, or sent via email, and shall be sent to the respective addressee at the respective address or email address set forth below or to such other address or email address as the parties may specify in writing:

**Enterprise Services**

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

**Tait North America, Inc.**

Attn: Legal Department  
15354 Park Row Drive  
Houston, TX 77084  
Email: [commercial.tam@tairadio.com](mailto:commercial.tam@tairadio.com)

Notices shall be deemed effective upon the earlier of receipt when delivered, or, if mailed, upon return receipt, or, if emailed, upon transmission to the designated email address of said addressee.

**8. NASPO VALUEPOINT SUMMARY AND DETAILED USAGE REPORTS.**

- 8.1 SUMMARY SALES DATA. Contractor shall submit quarterly sales reports directly to NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under this Cooperative Purchasing Master Agreement 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 thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).
- 8.2 DETAILED SALES DATA. Contractor also shall report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Participating Entity name; (4) Participating Entity bill-to and ship-to locations; (4) Participating 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 Date; and (8) line item description, including product number if used. Reports are due on a quarterly basis and must be received by the Enterprise Services and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to Enterprise Services and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by Enterprise Services and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Cooperative Purchasing Master Agreement.
- 8.3 NASPO VALUEPOINT EXECUTIVE SUMMARY. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

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- 8.4** REPORT OWNERSHIP. Timely submission of these reports is a material requirement of the Cooperative Purchasing Master Agreement. Enterprise Services and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.
- 8.5** CONFIDENTIALITY OF DETAILED SALES DATA AND PARTICIPATING ADDENDA. Participating Addenda, as well as Orders or transaction data relating to Orders under this Cooperative Purchasing Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates, shall be Confidential Information. Contractor shall hold Confidential Information in confidence and shall not transfer or otherwise 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 Cooperative Purchasing Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to this Cooperative Purchasing Master Agreement. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

**9. NASPO VALUEPOINT COOPERATIVE PROGRAM MARKETING AND PERFORMANCE REVIEW**

- 9.1** NASPO VALUEPOINT COOPERATIVE PROGRAM. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor’s contract administrator(s) and sales/marketing workforce regarding the Cooperative Purchasing Master Agreement, including the competitive nature of NASPO ValuePoint procurements, the Cooperative Purchasing Master Agreement and Participating Addendum process, and the manner in which qualifying entities can participate in the Cooperative Purchasing Master Agreement.
- 9.2** LOGOS. NASPO VALUEPOINT logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- 9.3** ANNUAL SUPPLIER REVIEW. Contractor agrees to participate in an annual supplier performance review at a location (virtual or in-person) selected by Enterprise Services and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees. The 2022 Annual Supplier Business Review requires in-person attendance. Any subsequent Annual Supplier Business Review meetings may be attended virtually or in-person.

**10. ADMINISTRATIVE FEES.**

- 10.1** CONTRACTOR shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25%) of the quarterly sales by participating state. The NASPO ValuePoint administrative fee is not negotiable. This fee may not be adjusted in any Participating Addendum. This fee is to be included as part of the pricing submitted with the bid.
- 10.2** Some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. 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 Cooperative Purchasing Master Agreement. The Contractor may adjust the Cooperative Purchasing Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee set forth above shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

## 11. RECORDS RETENTION & AUDITS.

- 11.1 RECORDS RETENTION. Contractor shall maintain books, records, documents, and other evidence pertaining to this Cooperative Purchasing Master Agreement and orders placed by Purchasing Entity under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall retain such records for a period of six (6) years following expiration or termination of this Cooperative Purchasing Master Agreement or final payment for any order placed by a Purchasing Entity against this Cooperative Purchasing Master Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 11.2 AUDIT. Upon reasonable advance written notice, Enterprise Services reserves the right to audit, or have a designated third-party audit, applicable records to ensure that Contractor has properly invoiced Purchasing Entity and that Contractor has paid all applicable vendor management fees. Accordingly, Contractor shall permit Enterprise Services, any Purchasing Entity, and any other duly authorized agent of a governmental agency, to audit, inspect examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Cooperative Purchasing 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 for a period of six (6) years following expiration or termination of this Cooperative Purchasing Master Agreement or final payment for any order placed by a Purchasing Entity against this Cooperative Purchasing Master Agreement, whichever is later; *Provided*, however, that if any litigation, claim, or audit is commenced prior to the expiration of this period, such period shall extend until all such litigation, claims, or audits have been resolved.
- 11.3 OVERPAYMENT OF PURCHASES OR UNDERPAYMENT OF FEES. Without limiting any other remedy available to any Purchasing Entity, Contractor shall reimburse Purchasing Entity for any overpayments inconsistent with the terms of this Cooperative Purchasing Master Agreement or orders, at a rate of 100% of such overpayments, found as a result of the examination of the Contractor's records.

## 12. INSURANCE.

- 12.1 REQUIRED INSURANCE. During the Term of this Cooperative Purchasing Master Agreement, Contractor, at its expense, shall maintain in full force and effect the insurance coverages set forth in *Exhibit A – Insurance Requirements*. All costs for insurance, including any payments of deductible amounts, shall be considered incidental to and included in the prices for goods/services and no additional payment shall be made.

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12.2 **WORKERS COMPENSATION.** Contractor shall comply with applicable workers compensation statutes and regulations (e.g., RCW Title 51, Industrial Insurance). If Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees as may be required by law, Enterprise Services may terminate this Cooperative Purchasing Master Agreement. This provision does not waive any of the Washington State Department of Labor and Industries (L&I) rights to collect from Contractor. In addition, Contractor waives its immunity under RCW Title 51 to the extent it is required to indemnify, defend, and hold harmless the State of Washington and its agencies, officials, agents, or employees.

12.3 **INSURANCE CERTIFICATE.** Prior to commencement of performance, Contractor shall provide to Enterprise Services a written endorsement to the Contractor’s general liability insurance policy or other documentary evidence acceptable to Enterprise Services that (1) names the State of Washington and Enterprise Services as additional insureds, (2) provides for written notice of cancellation delivered in accordance with the policy provisions, and (3) provides that the Contractor’s liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities’ rights and Contractor’s obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

**13. PUBLIC INFORMATION.** This Cooperative Purchasing Master Agreement, all related documents, and all records created as a result of the Cooperative Purchasing Master Agreement are subject to public disclosure as required by Washington’s Public Records Act, RCW chapter 42.56. In addition, Participating Addendums and related records shall be subject to public disclosure as required by applicable law pertaining to such Purchasing Entity. Consistent with the Public Records Act, to the extent that any such Contractor document or record – in whole or in part – includes information exempted or protected from disclosure by the Public Records Act, Contractor may mark such document or record – the exempted or protected portions only – with the specific basis for protection under the Public Records Act. In the event that Enterprise Services receives a public records disclosure request that pertains to such properly marked documents or records, Enterprise Services shall notify Contractor of such disclosure request and of the date that the records will be released to the requester unless Contractor, at Contractor’s sole expense, timely obtains a court order enjoining such disclosure. In the event Contractor fails to file a motion for a court order enjoining such disclosure, Enterprise Services shall release the requested documents on the date specified. Contractor’s failure properly to identify exempted or protected information or timely respond after notice of request for public disclosure has been given shall be deemed a waiver by Contractor of any claim that such materials are protected or exempt from disclosure.

**14. DEFAULTS AND REMEDIES**

14.1 **SUSPENSION & TERMINATION FOR DEFAULT.** Enterprise Services may suspend Contractor’s operations under this Cooperative Purchasing Master Agreement immediately by written cure notice of any default. Contractor may be required to submit a written cure plan within five (5) business days of Suspension notification. Suspension shall continue until the default is remedied to Enterprise Services’ reasonable satisfaction; *Provided*, however, that, if after thirty (30) days from such a suspension notice, Contractor remains in default (namely (i) has not provided a plan to cure to Enterprise Service’s satisfaction; or (ii) has not complied with

the plan to cure for causes not attributable to Enterprise Services or constituting a Force Majeure event), then Enterprise Services may terminate Contractor’s rights under this Cooperative Purchasing Master Agreement. All of Contractor’s obligations to Enterprise Services and Purchasing Entity survive termination of Contractor’s rights under this Cooperative Purchasing Master Agreement, until such obligations have been fulfilled.

14.2 DEFAULT. Each of the following events shall constitute default of this Cooperative Purchasing Master Agreement by Contractor:

- (a) Contractor fails to perform or comply with any of the terms or conditions of this Cooperative Purchasing Master Agreement;
- (b) Contractor breaches any representation or warranty provided herein; or
- (c) Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary.

14.3 REMEDIES FOR DEFAULT.

- (a) Enterprise Services’ rights to suspend and terminate Contractor’s rights under this Cooperative Purchasing Master Agreement are in addition to all other available remedies.
- (b) In the event of termination for default, Enterprise Services may exercise any remedy provided by law including, without limitation, the right to procure for all Purchasing Entity replacement goods and/or services. In such event, Contractor shall be liable to Enterprise Services for damages as authorized by law including, but not limited to, any price difference between the Cooperative Purchasing Master Agreement price and the replacement or cover price as well as any administrative and/or transaction costs directly related to such replacement procurement – e.g., the cost of the competitive procurement.
- (c) Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Cooperative Purchasing 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 this Cooperative Purchasing Master Agreement shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

14.4 LIMITATION ON DAMAGES. Notwithstanding any provision to the contrary, the parties agree that in no event shall any party or Participating Entity be liable to the other for exemplary or punitive damages. Contractor's total liability, whether for breach of contract, strict liability in tort, or otherwise, will be limited to the direct damages recoverable under law, but not to exceed the greater amount of \$2,000,000 per occurrence or two times the price of the equipment, software, or implementation and other services with respect to which losses or damages are claimed, *provided*, however, that nothing contained in this Section will in any way exclude or limit: (a) Contractor’s liability for all damages arising out of negligence; or

(b) damages subject to the Intellectual Property Indemnity section of this Cooperative Purchasing Master Agreement, (c) personal injury or death.

ALTHOUGH THE PARTIES ACKNOWLEDGE THE POSSIBILITY OF SUCH LOSSES OR DAMAGES, THEY AGREE THAT CONTRACTOR WILL NOT BE LIABLE FOR ANY COMMERCIAL LOSS, INCONVENIENCE, LOSS OF USE, LOSS TIME, DATA, GOODWILL, REVENUES, PROFITS OR SAVINGS; OR OTHER SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES IN ANY WAY RELATED TO OR ARISING FROM THIS AGREEMENT, THE SALE OR USE OF THE EQUIPMENT OR SOFTWARE, OR THE PERFORMANCE OF SERVICES BY CONTRACTOR PURSUANT TO THIS COOPERATIVE PURCHASING MASTER AGREEMENT.

This limitation of liability provision survives the expiration or termination of the Cooperative Purchasing Master Agreement and applies notwithstanding any contrary provision. No action for contract breach or otherwise relating to the transactions contemplated by this Cooperative Purchasing Master Agreement may be brought more than three (3) years after the accrual of the cause of action, except for money due upon an open account.

#### 14.5 GOVERNMENTAL TERMINATION.

- (a) Termination for Withdrawal of Authority. Enterprise Services may suspend or terminate this Cooperative Purchasing Master Agreement if, during the term hereof, Enterprise Services' procurement authority is withdrawn, reduced, or limited such that Enterprise Services, in its judgment, would lack authority to enter into this Cooperative Purchasing Master Agreement; *Provided*, however, that such suspension or termination for withdrawal of authority shall only be effective upon twenty (20) days prior written notice; and *Provided further*, that such suspension or termination for withdrawal of authority shall not relieve any Participating Entity or Purchasing Entity from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such suspension or termination for withdrawal of authority, neither Enterprise Services nor any Participating Entity or Purchasing Entity shall have any obligation or liability to Contractor.
- (b) Termination for Convenience. Enterprise Services, for convenience, may terminate this Cooperative Purchasing Master Agreement; *Provided*, however, that such termination for convenience must, in Enterprise Services' judgment, be in the best interest of the State of Washington; and *Provided further*, that such termination for convenience shall only be effective upon sixty (60) days prior written notice; and *Provided further*, that such termination for convenience shall not relieve any Participating Entity or Purchasing Entity from payment for goods and/or services already ordered as of the effective date of such notice. Except as stated in this provision, in the event of such termination for convenience, neither Enterprise Services nor any Participating Entity or Purchasing Entity shall have any obligation or liability to Contractor.

#### 15. CLAIMS.

- 15.1 ASSUMPTION OF RISKS; CLAIMS BETWEEN THE PARTIES. Contractor assumes sole responsibility and all risks of personal injury or property damage to itself and its employees and agents in connection with its operations under this Cooperative Purchasing Master Agreement.

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Enterprise Services has made no representations regarding any factor affecting Contractor’s risks. Contractor shall pay for all damage to any Purchasing Entity’s property resulting directly or indirectly from its acts or omissions under this Cooperative Purchasing Master Agreement, even if not attributable to negligence by Contractor or its agents.

15.2 THIRD-PARTY CLAIMS; INDEMNITY. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless Enterprise Services, any Purchasing Entity, and NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint) (NASPO) and their respective employees and agents from and against all claims, demands, judgments, assessments, direct damages, penalties, fines, direct costs, liabilities or direct losses including, without limitation, sums paid in settlement of claims, reasonable attorneys’ fees, consultant fees, and expert fees (collectively “claims”) arising exclusively from any act or omission of Contractor or its successors, agents, and subcontractors under this Cooperative Purchasing Master Agreement, except to the extent such claims are caused by Enterprise Services, any Purchasing Entity, or NASPO’s’ negligence. Contractor shall take all steps needed to keep Purchasing Entity’s property free of liens arising from Contractor’s activities, and promptly obtain or bond the release of any such liens that may be filed. This section is subject to the Contractor’s limitation of liability established in Section 14.4 of this Cooperative Purchasing Master Agreement.

15.3 INDEMNIFICATION – Intellectual Property. 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 Master Agreement or in any other document executed in conjunction with this Master Agreement.

(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.

**16. DISPUTE RESOLUTION.** The parties shall cooperate to resolve any dispute pertaining to this Cooperative Purchasing Master Agreement efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

**17. GENERAL PROVISIONS.**

- 17.1 **TIME IS OF THE ESSENCE.** Time is of the essence for each and every provision of this Cooperative Purchasing Master Agreement.
- 17.2 **COMPLIANCE WITH LAW.** Contractor shall comply with all applicable law.
- 17.3 **INTEGRATED AGREEMENT.** This Cooperative Purchasing Master Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations, representations, and understandings between them. There are no representations or understandings of any kind not set forth herein.
- 17.4 **AMENDMENT OR MODIFICATION.** Except as set forth herein, this Cooperative Purchasing Master Agreement may not be amended or modified except in writing and signed by a duly authorized representative of each party.
- 17.5 **AUTHORITY.** Each party to this Cooperative Purchasing Master Agreement, and each individual signing on behalf of each party, hereby represents and warrants to the other that it has full power and authority to enter into this Cooperative Purchasing Master Agreement and that its execution, delivery, and performance of this Cooperative Purchasing Master Agreement has been fully authorized and approved, and that no further approvals or consents are required to bind such party.
- 17.6 **NO AGENCY.** The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Cooperative Purchasing Master Agreement. Neither party is an agent of the other party nor authorized to obligate it.
- 17.7 **ASSIGNMENT.** Contractor may not assign its rights under this Cooperative Purchasing Master Agreement without Enterprise Services' prior written consent and Enterprise Services may consider any attempted assignment without such consent to be void; *Provided*, however, that, if Contractor provides written notice to Enterprise Services within thirty (30) days, Contractor may assign its rights under this Cooperative Purchasing Master Agreement in full to any parent, subsidiary, or affiliate of Contractor that controls or is controlled by or under common control with Contractor, is merged or consolidated with Contractor, or purchases a majority or controlling interest in the ownership or assets of Contractor. Unless otherwise agreed, Contractor guarantees prompt performance of all obligations under this Cooperative Purchasing Master Agreement notwithstanding any prior assignment of its rights.

- 17.8 **BINDING EFFECT; SUCCESSORS & ASSIGNS.** This Cooperative Purchasing Master Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
- 17.9 **ASSIGNMENT OF ANTITRUST RIGHTS REGARDING PURCHASED GOODS/SERVICES.** Contractor irrevocably assigns to Enterprise Services, on behalf of the State of Washington, any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws in connection with any goods and/or services provided in Washington for the purpose of carrying out the Contractor's obligations under this Cooperative Purchasing Master Agreement, including, at Enterprise Services' option, the right to control any such litigation on such claim for relief or cause of action.
- 17.10 **FEDERAL FUNDS.** To the extent that any Purchasing Entity uses federal funds to purchase goods and/or services pursuant to this Cooperative Purchasing Master Agreement, such Purchasing Entity shall specify, with its order, any applicable requirement or certification that must be satisfied by Contractor at the time the order is placed or upon delivery.
- 17.11 **SEVERABILITY.** If any provision of this Cooperative Purchasing Master Agreement is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Cooperative Purchasing Master Agreement, and to this end the provisions of this Cooperative Purchasing Master Agreement are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Cooperative Purchasing Master Agreement.
- 17.12 **WAIVER.** Failure of either party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the other party in the event of breach, shall not release the other party of any of its obligations under this Cooperative Purchasing Master Agreement, nor shall any purported oral modification or rescission of this Cooperative Purchasing Master Agreement by either party operate as a waiver of any of the terms hereof. No waiver by either party of any breach, default, or violation of any term, warranty, representation, contract, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, contract, covenant, right, condition, or provision.
- 17.13 **SURVIVAL.** All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Cooperative Purchasing Master Agreement shall survive and remain in effect following the expiration or termination of this Cooperative Purchasing Master Agreement, *Provided*, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.
- 17.14 **GOVERNING LAW.** The validity, construction, performance, and enforcement of this Cooperative Purchasing Master Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its choice of law rules. The validity, construction, and effect of any Participating Addendum pertaining to the Cooperative Purchasing Master Agreement or Order placed pursuant to such Participating Addendum shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

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- 17.15 JURISDICTION & VENUE. In the event that any action is brought to enforce any provision of this Cooperative Purchasing Master Agreement, the parties agree to exclusive jurisdiction in Thurston County Superior Court for the State of Washington and agree that in any such action venue shall lie exclusively at Olympia, Washington; *Provided*, however, that venue for any claim, dispute, or action concerning any Order placed against the Cooperative Purchasing Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.
- 17.16 SOVEREIGN IMMUNITY. In no event shall this Cooperative Purchasing Master Agreement, any Participating Addendum or any Purchase Order issued thereunder, or any act of the Lead State, 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 Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court.
- 17.17 ATTORNEYS' FEES. Should any legal action or proceeding be commenced by either party in order to enforce this Cooperative Purchasing Master Agreement or any provision hereof, or in connection with any alleged dispute, breach, default, or misrepresentation in connection with any provision herein contained, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs incurred in connection with such action or proceeding, including costs of pursuing or defending any legal action, including, without limitation, any appeal, discovery, or negotiation and preparation of settlement arrangements, in addition to such other relief as may be granted.
- 17.18 FAIR CONSTRUCTION & INTERPRETATION. The provisions of this Cooperative Purchasing Master Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this Cooperative Purchasing Master Agreement. Each party hereto and its counsel has reviewed and revised this Cooperative Purchasing Master Agreement and agrees that the normal rules of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be construed in the interpretation of this Cooperative Purchasing Master Agreement. Each term and provision of this Cooperative Purchasing Master Agreement to be performed by either party shall be construed to be both a covenant and a condition.
- 17.19 FURTHER ASSURANCES. In addition to the actions specifically mentioned in this Cooperative Purchasing Master Agreement, the parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Cooperative Purchasing Master Agreement including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Cooperative Purchasing Master Agreement.
- 17.20 EXHIBITS. All exhibits referred to herein are deemed to be incorporated in this Cooperative Purchasing Master Agreement in their entirety.
- 17.21 CAPTIONS & HEADINGS. The captions and headings in this Cooperative Purchasing Master Agreement are for convenience only and are not intended to, and shall not be construed to,

limit, enlarge, or affect the scope or intent of this Cooperative Purchasing Master Agreement nor the meaning of any provisions hereof.

17.22 ELECTRONIC SIGNATURES. An electronic signature of this Cooperative Purchasing Master Agreement or any other ancillary agreement shall be deemed to have the same legal effect as delivery of an original executed copy of this Cooperative Purchasing Master Agreement or such other ancillary agreement for all purposes. COUNTERPARTS. This Cooperative Purchasing Master Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Cooperative Purchasing Master Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Cooperative Purchasing Master Agreement.

EXECUTED as of the date and year first above written.

<p><b>STATE OF WASHINGTON</b> <b>DEPARTMENT OF ENTERPRISE SERVICES</b></p>	<p><b>TAIT NORTH AMERICA, INC.</b> <b>A TEXAS CORPORATION</b></p>
<p>By: <u><i>Elena McGrew</i></u> Elena McGrew</p>	<p>By: <u><i>[Signature]</i></u> Kevin W. Sumrell</p>
<p>Its: Acting Statewide Enterprise Procurement Manager</p>	<p>Its: President, Tait Americas</p>

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**INSURANCE REQUIREMENTS**

1. **INSURANCE OBLIGATION.** During the Term of this Cooperative Purchasing Master Agreement, Contractor shall possess and maintain in full force and effect, at Contractor's sole expense, the following insurance coverages:
  - a. **COMMERCIAL GENERAL LIABILITY INSURANCE.** Commercial general liability insurance (and, if necessary, commercial umbrella liability insurance) covering bodily injury, property damage, products/completed operations, personal injury, and advertising injury liability on an 'occurrence form' that shall be no less comprehensive and no more restrictive than the coverage provided by Insurance Services Office (ISO) under the most recent version of form CG 00 01 in the amount of not less than \$2,000,000 per occurrence and \$4,000,000 general aggregate. This coverage shall include blanket contractual liability coverage. This coverage shall include a cross-liability clause or separation of insured condition.
  - b. **WORKERS' COMPENSATION INSURANCE.** Contractor shall comply with applicable Workers' Compensation or Industrial Accident insurance providing benefits as required by law.
  - c. **EMPLOYERS' LIABILITY (STOP GAP) INSURANCE.** Employers' liability insurance (and, if necessary, commercial umbrella liability insurance) with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 bodily injury by disease policy limit.

The insurance coverage limits set forth herein are the minimum. Contractor's insurance coverage shall be no less than the minimum amounts specified. Coverage in the amounts of these minimum limits, however, shall not be construed to relieve Contractor from liability in excess of such limits. Contractor waives all rights against the State of Washington for the recovery of damages to the extent such damages are covered by any insurance required herein.

2. **INSURANCE CARRIER RATING.** Coverages provided by the Contractor must be underwritten by an insurance company deemed acceptable to the State of Washington's Office of Risk Management. Insurance coverage shall be provided by companies authorized to do business within the State of Washington and rated A- Class VII or better in the most recently published edition of Best's Insurance Rating. Enterprise Services reserves the right to reject all or any insurance carrier(s) with an unacceptable financial rating.
3. **ADDITIONAL INSURED.** Commercial General Liability, Commercial Automobile Liability, and Pollution Liability Insurance shall include the State of Washington and all authorized Purchasing Entity (and their agents, officers, and employees) as Additional Insureds evidenced by copy of the Additional Insured Endorsement attached to the Certificate of Insurance on such insurance policies.
4. **CERTIFICATE OF INSURANCE.** Prior to execution of the Cooperative Purchasing Master Agreement, Contractor shall furnish to Enterprise Services, as evidence of the insurance coverage required by this Cooperative Purchasing Master Agreement, a certificate of insurance satisfactory to Enterprise Services that insurance, in the above-stated kinds and minimum amounts, has been

**Board Order No.: 25-107**

secured. In addition, no less than ten (10) days prior to coverage expiration, Contractor shall furnish to Enterprise Services an updated or renewed certificate of insurance, satisfactory to Enterprise Services, that insurance, in the above-stated kinds and minimum amounts, has been secured. Failure to maintain or provide proof of insurance, as required, will result in contract cancellation. **All policies and certificates of insurance shall include the Cooperative Purchasing Master Agreement number stated on the cover of this Cooperative Purchasing Master Agreement.** All certificates of Insurance and any related insurance documents shall be delivered to Enterprise Services by U.S. mail, postage prepaid, or sent via email, and shall be sent to the address or email address set forth below or to such other address or email address as Enterprise Services may specify in writing:

US Mail: Contracts & Procurement – Cooperative Purchasing Master Agreement Insurance Certificate  
**Cooperative Purchasing Master Agreement No. 00318 – Public Safety Communications Products, Services and Solutions**  
Attn: Team Cypress  
Washington Dept. of Enterprise Services  
PO Box 41411  
Olympia, WA 98504-1411

Email: [DESContractsTeamCypress@des.wa.gov](mailto:DESContractsTeamCypress@des.wa.gov)

*Note:* For Email notice, the Email Subject line must state:  
**Cooperative Purchasing Master Agreement Insurance Certificate – No. 00318 – Public Safety Communications Products, Services and Solutions**

5. **PRIMARY COVERAGE.** Contractor’s insurance shall apply as primary and shall not seek contribution from any insurance or self-insurance maintained by, or provided to, the additional insureds listed above including, at a minimum, the State of Washington and/or any Purchasing Entity. All insurance or self-insurance of the State of Washington and/or Purchasing Entity shall be excess of any insurance provided by Contractor or subcontractors.
6. **SUBCONTRACTORS.** Contractor shall include all subcontractors as insureds under all required insurance policies. Alternatively, prior to utilizing any subcontractor, Contractor shall cause any such subcontractor to provide insurance that complies with all applicable requirements of the insurance set forth herein and shall furnish separate Certificates of Insurance and endorsements for each subcontractor. Each subcontractor must comply fully with all insurance requirements stated herein. Failure of any subcontractor to comply with insurance requirements does not limit Contractor’s liability or responsibility.
7. **WAIVER OF SUBROGATION.** Contractor waives all rights of subrogation against the State of Washington and any Purchasing Entity for the recovery of damages to the extent such damages are or would be covered by the insurance specified herein.
8. **NOTICE OF CHANGE OR CANCELLATION.** There shall be no cancellation, material change, exhaustion of aggregate limits, or intent not to renew insurance coverage, either in whole or in part, without at least sixty (60) days prior written Legal Notice by Contractor to Enterprise Services. Failure to provide such notice, as required, shall constitute default by Contractor. Any such written notice

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shall include the Cooperative Purchasing Master Agreement number stated on the cover of this Cooperative Purchasing Master Agreement.

9. **EXTENDED REPORTING PERIOD.** If any required insurance coverage is on a claims-made basis (rather than occurrence), Contractor shall maintain such coverage for a period of no less than three (3) years following expiration or termination of the Cooperative Purchasing Master Agreement.

**Board Order No.: 25-107**

# 00318 NVP-MA-Tait-Final-Clean-20211013 (002) - (NASPO FINAL 10.21.2021) (1)\_signed

Final Audit Report

2021-10-27

Created:	2021-10-22
By:	Neva Peckham (neva.peckham@des.wa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAA-YcC2Cy14YKzZslu2451eglx0Ms_vJv

## "00318 NVP-MA-Tait-Final-Clean-20211013 (002) - (NASPO FINAL 10.21.2021) (1)\_signed" History

-  Document created by Neva Peckham (neva.peckham@des.wa.gov)  
2021-10-22 - 5:12:24 PM GMT- IP address: 198.238.242.30
-  Document emailed to Elena McGrew (elena.mcgrew@des.wa.gov) for signature  
2021-10-22 - 5:13:03 PM GMT
-  Email viewed by Elena McGrew (elena.mcgrew@des.wa.gov)  
2021-10-27 - 4:14:21 AM GMT- IP address: 104.47.64.254
-  Document e-signed by Elena McGrew (elena.mcgrew@des.wa.gov)  
Signature Date: 2021-10-27 - 4:19:59 AM GMT - Time Source: server- IP address: 198.238.242.30
-  Agreement completed.  
2021-10-27 - 4:19:59 AM GMT

## OREGON PARTICIPATING ADDENDUM

MASTER AGREEMENT # 00318

NASPO ValuePoint  
OREGONBUYS MASTER BLANKET PURCHASE  
ORDER (MBPO) #PO-10700-00005451  
("Addendum") for  
Public Safety Communications Equipment, Services and Solutions



Lead by the State of Washington ("Lead State")

Contractor: **Tait North America, Inc. (Contractor)**

Participating State: **State of Oregon**

The State of Washington ("Lead State") issued Competitive Solicitation, #00318 on behalf of the member states of the NASPO ValuePoint Cooperative Purchasing Program ("NASPO ValuePoint"), and other purchasing entities seeking offers from qualified and responsible proposers to provide public safety communications equipment, services and solutions. Lead State executed Master Agreement No. 00318 ("Master Agreement"), which consists of contract terms and conditions and other attachments.

The State of Oregon ("State" or "Oregon") is a member of NASPO ValuePoint. The State, by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services ("DAS PS"), on behalf of the State of Oregon and its agencies and the Oregon Cooperative Procurement Program ("ORCPP") members (collectively "Purchasing Entities" as defined in Exhibit No. 1), has elected to participate in the Master Agreement, subject to the terms and conditions of this Participating Addendum ("Addendum") as a Participating State, also and in the alternative referred to in the Master Agreement as a Participating Entity. This Addendum is effective when all necessary approvals have been obtained and signed by the parties ("Effective Date"), inclusive of Contractor and Lead State executing the Master Agreement.

### **DAS PS and Contractor agree:**

**1. Scope:** This Addendum covers the public safety communications equipment, services and solutions led by the State of Washington for use by State of Oregon executive department agencies (State Agencies, and each a State Agency) with substantive statutory authority 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.

**1.1. Goods and Services Available under Addendum.** The following are available under this Addendum, as provided in the Master Agreement: All equipment, products, services and solutions in the following subcategories ("Goods and Services"): SUB-CATEGORY 1.1

RADIO: SINGLE-BAND PORTABLE (P25), SUB-CATEGORY 1.2 RADIO: SINGLE-BAND MOBILE (P25), SUB-CATEGORY 1.7 RADIO: BASE STATION/REPEATER (P25), SUB-CATEGORY 2.1 RADIO: CONVENTIONAL ANALOG PORTABLE (NON-P25), SUB-CATEGORY 2.2 RADIO: CONVENTIONAL ANALOG MOBILE (NON-P25), SUB-CATEGORY 2.4 RADIO: CONVENTIONAL ANALOG BASE STATION/REPEATER (NON-P25).

1.2. **Terms and Conditions; Order of Precedence.** This Addendum contains additional terms and conditions applicable to individual Contracts between Contractor and Purchasing Entities. In the event of a conflict between the terms and conditions of this Addendum, the Master Agreement, and a Contract, the following descending order of precedence applies:

- 1) This Addendum, less its exhibits;
- 2) Exhibit No. 1 of this Addendum (Oregon Terms and Conditions);
- 3) Special Terms and Conditions of a Contract;
- 4) Statement of Work of a Contract;
- 5) Additional insurance requirements of a Contract;
- 6) Exhibit No. 2 of this Addendum (Insurance);
- 7) Exhibit No. 3 of this Addendum (Contractor Data);
- 8) Exhibit No. 5 (Vendor Collected Administrative Fee (VCAF)/Volume Sales Report (VSR);
- 9) Exhibit No. 4 of this Addendum (Purchase Order form);
- 10) Terms and conditions of the Master Agreement and its exhibits and attachments and then
- 11) Any license or subscription terms or terms presented to an end user in a 'click wrap' or similar end user agreement or any terms and conditions published by Contractor on or after the Effective Date of this Addendum.

1.3. The above referenced exhibits to this Addendum are hereby incorporated by this reference. Nothing in this Addendum limits 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 1 applies.

2. **Purchasing Entity Authority:** This Addendum and Master Agreement may be used by State of Oregon executive department agencies with authority to access the Services (see Section 2.1), institutions of higher institution, and political subdivisions and other entities authorized to use statewide contracts in the State of Oregon. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

2.1. **State Executive Department Agency Authority.** State Agencies (as defined in ORS 174.112) must have statutory authority over the substance of the Service Category in order to request, authorize, or, to the extent the agency also holds procurement authority, act as a Purchasing Entity under this Addendum.

2.2. A State Agency with statutory authority over the substance of a Service Category may provide advance written authorization to a State Agency without such authority for that State Agency to act as a Purchasing Entity under this Addendum.

2.3. State Agencies under DAS procurement authority may issue ordering instruments under this Addendum for any dollar amount without further delegation of procurement authority from DAS. Notwithstanding the foregoing DAS delegation, State Agencies must obtain all other necessary approvals, including but not limited to legal sufficiency approval, as may be required.

**3. Primary Contacts:** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name:	Walter Bolil
Address:	15354 Park Row Drive Houston, TX 77084
Telephone:	281-829-3300
Email:	Walter.bolil@taitcommunications.com
Email for Notices:	Commercial.tam@taitcommunications.com

Participating State

Name:	Melissa Esser
Address:	1225 Ferry St. SE, Salem OR 97301
Telephone:	971-283-4439
Email:	melissa.j.esser@das.oregon.gov

**4. Participating State Modifications and Additions to the Master Agreement:**

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

The following changes, in addition to Exhibits No. 1 – 5 of this Addendum, are modifying or supplementing the Master Agreement terms and conditions:

**5. Selection of Contractor.** This Addendum is not exclusive. Purchasing Entities with appropriate authority may acquire the Goods and Services from other contractors and through other State of Oregon procurement processes. Purchasing Entities that are not State Agencies may select the contractor of the Purchasing Entity’s choice in compliance with applicable statute and rules.

If a State Agency Purchasing Entity with authority or authorization (see Section 2) elects to utilize the Master Agreement(s) for the Services, and more than one Contractor holds a Master

Agreement for the Services under an Addendum with Participating State, such Purchasing Entity shall follow the selection process below.

**5.1. Contractor Selection Process, Large Purchases.** From time to time, Purchasing Entities that are State Agencies may purchase Services from Contractor or other contractors, and shall use one of the following selection processes for all purchases over the small procurement threshold (currently \$10,000):

5.1.1. Sole Source or Brand Name Justification - A documented sole source or brand name justification in compliance with applicable statute and rule; or

5.1.2. Best Value Analysis - Purchasing Entity may request and conduct a comparison of the offers based upon a best value analysis. Purchasing Entity shall:

5.1.2.1. Contact at least 3 different Contractors holding a Master Agreement for the Services via phone, e-mail or facsimile and request a written, responsive quote for the anticipated Services. Quoted rates must not exceed the most competitive rates and discounts set forth in Contractor's Master Agreement. However, Contractor may agree to extend specialized, discounted pricing based on the Purchasing Entity's requirements by providing a specific quote to the Purchasing Entity.

5.1.2.2. Determine which Contractor provides the best value for Purchasing Entity based on Purchasing Entity's application of some or all of the following factors:

- a. Applicable preferences;
- b. Applicable discounts and incremental pricing options;
- c. Shipping costs;
- d. Delivery process and service levels;
- e. Applicable warranties;
- f. Contractor's past performance record through reference checks;
- g. Contractor's service area;
- h. Price comparison of the current market value of Services similar to the Services;
- i. Price comparison to past purchases, taking the inflation rate into account;
- j. Cost analysis through an element-by-element examination of the estimated or actual cost of proposed Services to determine whether 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, labor costs, equipment, and overhead;
- k. Comparison of pricing to MSRP;
- l. Market conditions and competition levels;
- m. General economic conditions;

n. Life cycle costing including expected life, salvage value and discounted total cost of ownership.

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

**5.2 Contractor Selection Process, Small Purchases.** For purchases under the small procurement threshold (currently \$10,000), a Purchasing Entity that is a State Agency with appropriate authority may select the Contractor of its choice in compliance with applicable statute and rule.

6. **Orders:** Any order placed by a Purchasing Entity for Equipment or a Product or Service available from this Master Agreement, and accepted in writing by the Contractor, will be deemed to be a sale under (and governed by the prices and other terms and conditions) of this Addendum and the Master Agreement unless the parties to the order specify in writing in the order that another contract or agreement applies to such order.
7. **Tax Compliance:** As set forth on Exhibit No. 3, Contractor has complied with the tax laws of the State of Oregon 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: (i) all tax laws of this State, including but not limited to ORS 305.380(4), 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.
  - 7.1. Any violation of this Section 7 constitutes a material breach of this Addendum and any Contract issued under this Addendum. Further, any violation of Contractor's warranty set forth in Exhibit No. 1 also constitutes a material breach of this Addendum and any Contract issued under this Addendum. Any violation entitles DAS PS or Purchasing Entity 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:
  - 7.2. Termination of this Addendum or the applicable Contract, in whole or in part.
  - 7.3. Exercise of the right of setoff and withholding of amounts otherwise due and owing to Contractor, in an amount equal to Purchasing Entity's setoff right, without penalty; and Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief.

7.4. DAS PS or Purchasing Entity may recover any and all damages suffered as the result of Contractor's breach of this Addendum or the applicable Contract.

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

**8. Participating Addendum Integration:** This Addendum, including its exhibits, 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. This Addendum may only be amended or modified by a mutually agreed document signed by a duly authorized representative of each party in accordance with Section 25 of Exhibit No. 1 below. In this sense, 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 any other document is null and void and hereby rejected.

**9. Subcontractors:** All Contractor's dealers and resellers authorized for the State of Oregon, as shown on the NASPO ValuePoint website, are approved to provide sales and services support to authorized Purchasing Entities. Subcontractor participation will be in accordance with the terms and conditions set forth in the Master Agreement and this Participating Addendum.

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

Participating State: The State of Oregon, acting by and through the Department of Administrative Services, Procurement Services	Contractor: Tait North America, Inc.
Signature:	Signature: 
Name: Sandy Clavet Connolly	Name: KEVIN W. SUMRELL
Title: Interim Procurement Services Manager	Title: PRESIDENT, AMERICAS
Date: May 20, 2022	Date: 19May2022

**Enterprise Information Services (EIS) Review:**

Cyber Security Services (CSS) Review: Uma Vijaiamernath, via email dated 4/29/22.

Project Portfolio Performance (P3) Review: Matt Ausec, via email dated 4/29/22.

**LEGAL APPROVAL:**

Pursuant to ORS 291.047, this Addendum was reviewed and approved by Oregon Department of Justice Sr. Assistant Attorney General, Karen Johnson via email dated 4/29/22.

For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator:	Ted Fosket
Telephone:	(907) 723-3360
Email:	<a href="mailto:tfosket@naspovaluepoint.org">tfosket@naspovaluepoint.org</a>

***Please email fully executed PDF copy of this document to  
[PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org)  
to support documentation of participation and posting in  
appropriate data bases.***

Exhibit No. 1  
Oregon Specific Terms and Conditions

**1. Applicability.** This Addendum pertains to the public safety communications equipment, services and solutions (Goods and Services), including related intellectual property (such as documentation) to be provided by Contractor to Purchasing Entities under Contracts entered into under this Addendum.

**2. Definitions.**

2.1. 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. A Contract entered into between Purchasing Entity and Contractor may also include additional defined terms.

“Contract” means the fully executed written agreement formed between Contractor and a Purchasing Entity with authority to enter into an agreement under this Addendum, including a Purchase Order, the terms and conditions of this Addendum, terms required by the Master Agreement, additional terms required by the Purchasing Entity, and all its exhibits and attachments.

“DAS PS” means the State of Oregon acting by and through the Department of Administrative Services, Enterprise Goods and Services, Procurement Services.

“Goods and Services” means the equipment, products services and solutions described in the Master Agreement and authorized for acquisition under this Addendum.

“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 Master Agreement # 00318 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, as may be amended from time to time. The Master Agreement together with this Addendum sets forth terms, conditions and requirements for purchase by Purchasing Entities of the goods and services described in the Master Agreement.

“Purchase Order” means a purchase document submitted to Contractor by a Purchasing Entity (and accepted in writing by Contractor) that is part of the Contract, and specifies the quantity and type of Goods and/or Services that Contractor will provide to the Purchasing Entity under the Contract.

“Purchasing Entity” means an executive department agency of the State of Oregon with authority, or with advance written authorization from a State Agency with authority, that enters into a Contract with Contractor, or an ORCPP member that enters into a Contract with Contractor.

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

### 3. Contracts.

3.1 Contract Formation. A Contract entered into between a Purchasing Entity and Contractor is formed by:

3.1.1. A Purchase Order, which describes the Goods to be purchased and contains the following language:

**THIS PURCHASE IS PLACED AGAINST THE STATE OF WASHINGTON MASTER AGREEMENT NO. 00318. THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT AND THE ASSOCIATED PARTICIPATING ADDENDUM ENTERED INTO BY THE STATE OF OREGON, OREGONBUYS MASTER BLANKET PURCHASE ORDER NO. PO-10700-00005451 APPLY TO THIS PURCHASE AND SUPERSEDE ALL CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.**

3.1.2. A Statement of Work, if applicable, that describes the particulars of the Services to be provided by Contractor, such as tasks, deliverables and milestones, the attributes (including requirements) of each deliverable, acceptance criteria, a delivery schedule, and a payment schedule.

3.1.3 Additional insurance requirements, at the option of the Purchasing Entity.

3.1.4 Special terms and conditions applicable to the Goods and/or Services, information, or funding. Special terms and conditions may include specifications, terms and conditions for hosting, security, privacy and data protections, and terms required by state or federal law or regulations (such as a business associate agreement).

3.2 Form of Purchase Order. Purchasing Entities may use their own forms for Purchase Orders. State Agencies may use the general State-approved Purchase Order, substantially in the form attached to this Addendum as Exhibit No. 4. 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.

3.3 License, Subscription or other Agreements. In the event a Good or Service is governed by additional terms and conditions, Contractor shall submit a copy of such additional terms and conditions to Purchasing Entity for review and acceptance. Purchasing Entity shall have 30 Calendar Days to review and negotiate the terms and conditions with the provider. If Purchasing Entity is unable to accept the additional terms and conditions, Purchasing Entity may terminate the order and receive a full refund of all amounts paid.

3.4 No Third-Party Beneficiaries. DAS PS and Contractor are the only parties to this Addendum and are the only parties entitled to enforce its terms. Purchasing Entities are intended beneficiaries of this Addendum. The Purchasing Entity and Contractor are the only parties to a Contract, unless the Contract specifically states otherwise, and are the only parties entitled to enforce a Contract's terms. Contractor shall 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 Goods and/or Services and the resulting contractual relationship, if any, with each such contracting party. The State bears no liability for and expressly disclaims any liability for purchases made by State Agencies without the authority or authorization described in this Addendum, non-State Agency Purchasing Entities, or any other entity.

3.5 Verification of Purchasing Entities that are ORCPP members. Contractor shall verify that it provides Services under this Addendum only to Purchasing Entities that are ORCPP members or that are State Agencies with appropriate authority or written authorization. Contractor may verify that a particular entity is an ORCPP member on-line at <http://www.oregon.gov/das/Procurement/Pages/Orcppmember.aspx>.

#### **4. Payment Provisions.**

4.1 All payments will be made in US Dollars. Purchasing Entity's obligation to pay late charges is subject to ORS 293.462.

4.2 Purchasing Entity will not be obligated to make any payment for Goods or Services or other charges that exceed the maximum amount payable under a Contract, unless the maximum additional amount payable is agreed upon in advance and authorized by Purchasing Entity in writing.

4.3 Purchasing Entity will not be obligated to pay any travel expenses unless expressly agreed upon in a Contract. Any Purchasing Entity obligation to pay travel expenses, including transportation, lodging, or meals, is subject to the rates and limitations set under Oregon law. Contracts with the State of Oregon are subject to the rates and limitations of the Statewide Travel Policy, currently found online at: <http://www.oregon.gov/das/Financial/Acctng/Documents/40.10.00.pdf>.

4.4 Contractor shall not retain fees paid but not earned if a Contract is terminated prior to its expiration.

**5. Funds Available and Authorized/Non-Appropriation.** The State of Oregon's and its agencies' payment obligations under Contracts entered into under this Addendum are conditioned upon Purchasing Entity receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Purchasing Entity, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Contract entered into under this Addendum. Contractor is not entitled to receive payment under this Addendum or any Contract from any part of Oregon state government other than Purchasing Entity. Nothing in this Addendum or any Contract 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. Purchasing Entity represents that it has sufficient appropriations and limitation for the current biennium to make payments under any Contract entered into under this Addendum.

**6. Volume Sales Reports (VSRs) / Vendor Collected Administrative Fee (VCAF).** Contractor shall submit Volume Sales Reports (VSRs) and submit Vendor Collected Administrative Fees (VCAF) in accordance with Exhibit No. 5 of this Addendum.

DAS PS may, upon reasonable request during regular business hours, by itself or by a person authorized by it, audit Contractor's records and other pertinent data, to determine and verify the figures reported in any VSRs furnished by Contractor. In the event that any such audit reveals underpayment of administrative fees, Contractor shall immediately pay the amount of deficiency, together with interest. If the audit reveals that an underpayment exists, Contractor shall pay the cost of the audit.

**7. Warranties.** Purchasing Entities are entitled to the warranties, rights, remedies, and benefits under the Master Agreement, and this Addendum for any Contracts entered into by Purchasing Entities under this Addendum. Without limiting the generality of the warranty provisions of the Master Agreement, Contractor represents and warrants to DAS PS and Purchasing Entity that:

7.1 Contractor has the power and authority to enter into and perform this Addendum and each Contract entered into under this Addendum, and that this Addendum and any Contract entered into under this Addendum, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms.

7.2 All Services to be performed under Contracts entered into under this Addendum will be performed in accordance with the highest applicable professional or industry standards, and that only workmanship of the first quality will be employed in the performance of the Services.

7.3 Contractor shall transfer to or secure on behalf of Purchasing Entity all rights to use deliverables.

7.4 Contractor has no undisclosed liquidated and delinquent debt owed to the State of Oregon or any department or State Agency.

7.5 All Services and any deliverables are free and clear of any liens or encumbrances, and that Contractor has full legal title or sufficient rights to use any third party intellectual property included in the Services.

7.6 Contractor has established and will maintain privacy and security measures that meet or exceed the standards set in laws, rules, and regulations applicable to the safeguarding, security, and privacy of Data. Contractor shall monitor, periodically assess, and update its physical, technical, and logical security controls and risk to ensure continued effectiveness of those controls.

7.7 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 Purchasing Entity the broadest warranty protection available.

## **8. Indemnifications.**

**8.1** General Indemnity per 15.1 and 15.2 of the NASPO Cooperative Purchasing Master Agreement #00318.

**8.2** Infringement Indemnity. Contractor shall, at Contractor's sole expense, defend, save, hold harmless and indemnify Purchasing Entities 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 resulting from, relating to, or arising out of a claim that any aspect of the Goods or Services furnished under a Contract 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"). The Contractor's obligation 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.

**8.3 Control of Defense and Settlement.** Contractor's obligation to indemnify Purchasing Entity as set forth in this Addendum is conditioned on Purchasing Entity providing to Contractor prompt notification of any claim or potential claim of which Purchasing Entity 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 8; however, neither Contractor nor any attorney engaged by Contractor may defend the claim in the name of the State of Oregon or any Purchasing Entity 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.

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

## **9. Term and Termination of Addendum.**

9.1 Term. This Addendum remains in effect until the earlier of (i) the expiration or termination of the Master Agreement, or (ii) expiration or termination of this Addendum in accordance with its terms.

9.2 Termination. DAS PS may terminate this Addendum, in whole or in part, at any time upon 30 calendar days' prior written notice to Contractor.

9.3 In addition, DAS PS may terminate this Addendum, in whole or in part, immediately upon written 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:

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

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

9.3.3 Purchasing Entity does not receive authorization from the State of Oregon's Office of Enterprise Information Services (EIS) or EIS authorization is withdrawn or modified in a way that performance of the Services is prohibited or is no longer in the best interest of the State.

9.3.4 Contractor has undisclosed liquidated and delinquent debt owed to the State of Oregon or any department or State Agency.

9.4 DAS PS' Right to Terminate for Cause. In addition to any other rights and remedies DAS may have under this Addendum, DAS PS may terminate this Addendum, in whole or in part, immediately upon written notice to Contractor of Contractor's material breach of this Addendum or under one or more Contracts.

9.5 Upon receipt of written notice of termination, Contractor will stop performance under Contracts if and as directed by State.

9.6 Termination under any provision of this Addendum does not extinguish or prejudice State's or a Purchasing Entity's right to enforce this Addendum or a Contract 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 a Purchasing Entity to indemnification by Contractor.

## **10. Term and Termination of Contracts.**

10.1 Contract Term. The effective date of a Contract may be no earlier than the date it is fully executed and approved in accordance with applicable law. A Contract will remain in effect until the date stated in the Contract, unless terminated or extended in accordance with its terms. A Contract entered into before the expiration or termination of the Master Agreement and this Addendum will continue for the term stated in the Contract unless it is terminated earlier.

10.2 Individual Contracts may be terminated at any time by written consent of Purchasing Entity and Contractor.

10.3 Purchasing Entity may, at its sole discretion, terminate a Contract, in whole or in part, upon 30 calendar days' written notice to Contractor.

10.4 Purchasing Entity may terminate a Contract, in whole or in part, immediately upon written notice to Contractor, or at such later date as Purchasing Entity may establish in such notice, upon the occurrence of any of the following events:

10.4.1 Purchasing Entity fails to receive funding, or appropriations, limitations or other expenditure authority at levels sufficient to pay for the Services to be purchased under the Contract.

10.4.2 Federal or State laws, regulations, or guidelines are modified or interpreted in such a way that either the purchase of Services under the Contract is prohibited or Purchasing Entity is prohibited from paying for such Services from the planned funding

source.

10.4.3 A Purchasing Entity that is a State Agency does not receive authorization from the EIS or EIS authorization is withdrawn or modified in a way that performance of the Services is prohibited or is no longer in the best interest of the State.

10.4.4 Contractor has undisclosed liquidated and delinquent debt owed to the State of Oregon or any department or State Agency.

10.4.5 Contractor commits any material breach of this Addendum or the Contract.

10.5 Upon receipt of written notice of termination, Contractor will stop performance under the Contract as directed by Purchasing Entity.

10.6 Termination of a Contract does not extinguish or prejudice Purchasing Entity's right to enforce the Contract 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 Purchasing Entity to indemnification by Contractor. In addition, termination of a Contract does not extinguish or prejudice Purchasing Entity's right to enforce the warranty, indemnification, governing law, venue and consent to jurisdiction provisions of this Addendum. If a Contract is so terminated, Purchasing Entity will pay Contractor in accordance with the terms of the Contract (including this Addendum) for Services delivered and accepted by Purchasing Entity.

**11. Return of Property.** Upon termination (including by expiration) of this Addendum or a Contract for any reason whatsoever, Contractor shall immediately deliver to Purchasing Entity all of its property, which includes Purchasing Entity's Confidential Information, Purchasing Entity's data, and any deliverables for which Purchasing Entity has made payment in whole or in part, that are in the possession or under the control of Contractor in whatever stage of development and form of recordation such property is expressed or embodied at that time. Obligations under this section are in addition to Contract terms specifically addressing treatment of property, and data, during the term and following termination or expiration of a Contract.

11.1 Except as necessary to meet Contractor's obligations under Section 21, Access to Records, Contractor shall not retain any copies of Purchasing Entity property or Confidential Information. Contractor shall notify Purchasing Entity of any conditions that make returning all Purchasing Entity property or Confidential Information not feasible. Upon Purchasing Entity's written acknowledgement that returning all property is not feasible, Contractor shall destroy such Purchasing Entity property and provide Purchasing Entity with written certification of destruction of the property.

11.2 Contractor shall maintain protections required by law, this Addendum, or a Contract for any retained Purchasing Entity property for so long as Contractor (including through any subcontractor) retains the property.

## **12. Compliance with Law.**

12.1 Compliance with Law Generally. Contractor shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Contractor, this Addendum, and Contracts entered into under this Addendum, as may be adopted or modified from time to time. Without limiting the generality of the foregoing, Contractor expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the

Addendum and Contracts: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the American Recovery and Reinvestment Act of 2009 (ARRA); (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) ORS Chapter 659, as amended; (ix) all regulations and administrative rules established pursuant to the foregoing laws; and (x) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable and required by law to be so incorporated. DAS PS' and Purchasing Entities' performance is conditioned upon Contractor's compliance with the obligations of contractors under ORS 279B.220, 279B.230 and 279B.235, which are incorporated by reference herein.

12.2 Oregon False Claims Act. Contractor acknowledges the Oregon False Claims Act, ORS 180.750 to 180.785, applies to any action by Contractor pertaining to this Addendum or a Contract, including the procurement process relating to this Addendum, which constitutes a "claim" (as defined by ORS 180.750(1)). By its execution of this Addendum, Contractor certifies the truthfulness, completeness, and accuracy of any statement or claim it has made, it makes, it may make, or causes to be made that pertains to this Contract. In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false claim or performs a prohibited act under the Oregon False Claims Act, the Oregon Attorney General may enforce the liabilities and penalties provided by the Oregon False Claims Act against Contractor. Contractor understands and agrees that any remedy that may be available under the Oregon False Claims Act is in addition to any other remedy available to the State of Oregon under this Contract or any other provision of law.

12.3 Tax Compliance. Contractor certifies that it 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, all Contracts, 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: (i) All tax laws of this state, including but not limited to ORS 305.380(4), 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.

Any failure to comply with the provisions of this subsection constitutes a material breach of this Addendum and any Contract. Any failure to comply entitles DAS PS to terminate this Addendum and any Contract, to pursue any or all of the remedies available under this Addendum, a Contract under which an executive department agency is the Purchasing Entity, at law, or in equity, including but not limited to:

- Termination, in whole or in part;
- Exercise of the right of setoff, or garnishment as applicable, and withholding of amounts otherwise due and owing to Contractor, without penalty; and
- Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. Purchasing Entity may recover any and all damages suffered as the result of Contractor's breach of this Contract.

This Addendum and Contracts entered into by state executive agencies 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 and related Contracts, or (ii) exercising a right of setoff against Contractor's compensation for any amounts that may be due and unpaid to State or its political subdivisions for which the Department of Revenue collects debts.

12.4 Changes in Law Affecting Performance. Each party will immediately provide notice to the other of any change in law, or any other legal development, which may significantly affect its ability to perform its obligations in accordance with the provisions of this Addendum or a Contract. Each party shall monitor changes in federal and state laws, ordinances, and regulations applicable to its performance hereunder, and will be deemed aware of such changes within 30 calendar days of the enactment of any such change.

12.5 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 Purchasing Entity to terminate this Addendum or a Contract for cause.

12.6 Non-Discrimination. The anticipated total value of the Services to be provided under Contracts entered into under this Addendum is \$150,000 or more. Therefore, Contractor certifies that it has a written policy and practice that meets the requirements described in ORS 279A.112 for preventing sexual harassment, sexual assault, and discrimination against employees who are members of a protected class. Contractor agrees, as a material condition, to maintain such policy and practice in force during the term of this Addendum and each Contract.

**13. Oregon Public Records Law.** Contractor acknowledges that any disclosures Contractor makes to Purchasing Entity 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 DAS PS or Purchasing Entity may depend upon official or judicial determinations made pursuant to the foregoing laws. Contractor will be notified prior to DAS PS' or Purchasing Entity'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.

**14. Recycled Products.** Contractor will use, to the maximum extent economically feasible in the performance of this Addendum or any Contract, 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)).

**15. Notices.** Except as otherwise provided in a Contract (including for security incident and breach notifications), any formal communications between Purchasing Entity and Contractor, or notices to be given under a Contract, will be given in writing by personal delivery of an electronic transmission or the notice of mailing the notice, postage prepaid, at the address set forth in the Contract. Any communication so addressed and mailed will be deemed to have been received five calendar days after mailing. Any communication delivered electronically 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 electronic transmission must be confirmed by telephone notice to the receiving party's authorized representative, as set forth in the Contract. Any communication or notice by personal delivery will be deemed to be given when actually received by the appropriate authorized representative.

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

**16. 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 Contracts, including, without limitation, their validity, interpretation, construction, performance, and enforcement.

**17. Dispute resolution.** The parties shall cooperate to resolve any dispute pertaining to this Addendum efficiently, as timely as practicable, and at the lowest possible level with authority to resolve such dispute. If, however, a dispute persists and cannot be resolved, it may be escalated within each organization. In such situation, upon notice by either party, each party, within five (5) business days shall reduce its description of the dispute to writing and deliver it to the other party. The receiving party then shall have three (3) business days to review and respond in writing. In the event that the parties cannot then agree on a resolution of the dispute, the parties shall schedule a conference between the respective senior managers of each organization to attempt to resolve the dispute. In the event the parties cannot agree, either party may resort to court to resolve the dispute.

**18. Jurisdiction and Venue.** Any claim, action, suit or proceeding (collectively, "Claim") between the State of Oregon (including DAS PS, Purchasing Entities who are State Agencies, OCRPP Purchasing Entities who are Oregon executive department agencies, and any other agency or department of the State of Oregon) and Contractor that arises from or relates to this Addendum or a Contract 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 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 the consent to jurisdiction in State or Federal Court.

18.1. Any Claims between Contractor and a Purchasing Entity other than the State of Oregon or a State Agency that arise from or are related to individual Contracts 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 Purchasing Entity resides or has its principal office, or at Purchasing Entity's option, within such other county as Purchasing Entity 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.

**19. 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 Contract. A Purchasing Entity may withhold final payment under a Contract until Contractor has provided the Oregon Department of Revenue with the required information.

**20. 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.

**21. Independent Contractor.** Contractor shall act at all times as an independent contractor and not as an agent or employee of Purchasing Entity. Contractor has no right or authority to incur or create any obligation for or legally bind Purchasing Entity in any way. Contractor is not an "officer", "employee", or "agent" of Purchasing Entity (or any 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.

**22. Access to Records.** Contractor will maintain all fiscal records relating to its performance under this Addendum and each Contract in accordance with generally accepted accounting principles and will maintain any other records relating to its performance in such a manner as to clearly document Contractor's performance. Purchasing Entity, the State and its agencies, and the Oregon Secretary of State Audits Division and its 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 Purchasing Entities. Contractor shall retain and keep accessible all such fiscal records, books, documents, papers, plans, and writings for a minimum of 6 years, or such longer period as may be required by applicable law following final payment and termination of this Addendum and all Contracts entered into under this Addendum, or until the conclusion of any audit, controversy or litigation arising out of or related to this Addendum or any Contract, whichever date is later.

**23. Severability.** If any term or provision of this Addendum or any Contract 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 or Contract did not contain the particular term or provision held to be invalid.

**24. Survival.** Any terms of this Addendum or any Contract, which by their nature are intended to survive termination or expiration do so survive. Terms include but are not limited to warranty, indemnification, access to records, governing law, venue, consent to jurisdiction, termination and remedies provisions.

**25. Insurance.** No later than ten days following the Effective Date, Contractor must provide insurance as set forth on Exhibit No. 2, Insurance, of this Addendum. No Contracts may be placed or accepted until proof is provided that these requirements have been met. A Purchasing Entity may require additional amounts or types of insurance under a Contract.

**26. Amendments.** This Addendum may only be modified in writing agreed to and executed by the parties and approved in accordance with applicable law. A Contract may only be modified in writing agreed to and executed by the parties and approved in accordance with applicable law.

**27. Security and Privacy.** Unless this Addendum or a Contract specifies otherwise, Contractor shall comply with the following security and privacy requirements:

**27.1 Ownership of Data.** Any information Contractor or its employees or agents receives or creates incorporating Purchasing Entity or Purchasing Entity's clients (Data) is owned by Purchasing Entity. Purchasing Entity hereby grants Contractor a license to use Data to fulfill the purposes of this Addendum or a Contract under which Data is accessed, and otherwise only as specifically described in the Addendum or Contract. Contractor hereby irrevocably assigns, transfers and conveys, and will cause its employees, subcontractors and agents to assign, transfer and convey without further consideration all right, title, and interest in Data to Purchasing Entity to the extent said Data does not incorporate Contractor's confidential or proprietary information. Upon request by Purchasing Entity, Contractor will or will cause the execution and delivery of any documents that may be necessary to preserve or enable Purchasing Entity to enforce, its rights with respect to its Data.

**27.2 Requests for Data.** In the event Contractor receives a third-party request for Data, including any electronic discovery, litigation hold, or discovery searches, Contractor shall first give Purchasing Entity notice and provide such information as may reasonably be necessary to enable Purchasing Entity to take action to protect its interests.

**27.3 Privacy and Security Training.** Contractor shall ensure its employees, agents, and contractors receive periodic training on privacy and security obligations relating to the Services.

27.4 Limited Purposes. Contractor shall limit the use or disclosure of Data to persons directly connected with the administration of the Addendum or the related Contract.

27.5 No Overseas Access, Storage, or Transmission. Data will not be accessed from, transmitted, or stored outside of the United States (or its territories), except that in the event there is a need for Support Services at Level 3 or Level 4, as described in Contractor's descriptions of the Support Services, Contractor's authorized New Zealand-based personnel may access or transmit Purchasing Entity Data as required to provide the necessary support.

27.6 Prohibition on Data Mining. Contractor shall not capture, maintain, scan, index, share or use Data, or otherwise use any data-mining technology, for any non-authorized activity, and shall not permit its agents or subcontractors to do so. For purposes of this requirement, "non-authorized activity" means data mining or processing of data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any other purpose other than security analysis that is not explicitly authorized in this Addendum or a Contract.

27.7 Privacy Protections. The information exchanged with Contractor may include Data subject to specific confidentiality protections under state or federal law, and the implementing regulations of those laws. Contractor, its employees, agents, and contractors shall comply with laws and regulations applicable to the information, including as those laws and regulations may be updated from time to time. Contractor shall maintain protections required by law, this Addendum, or an applicable Contract for any retained Data for so long as Contractor (including through any third party) retains it.

27.8 Access. Contractor shall not suspend a Purchasing Entity's access to its Data at any time during the term of the applicable Contract or the post-termination access period.

27.9 Post-Termination Access to Data. Upon Contract termination (including by expiration), Contractor shall, at the Purchasing Entity's discretion, either return all Data to Purchasing Entity (or delegate) in an agreed-upon format, or ensure Purchasing Entity has access and the ability to retrieve its Data for at least a 90 calendar day period following termination. This 90-day period will be at no additional charge to Purchasing Entity. Contractor shall not retain any copies of Purchasing Entity's Data following Purchasing Entity's written verification that it no longer requires post-termination access, except as necessary for audit verification purposes.

27.10 Sanitization. Subject to Section 21, Access to Records, Contractor shall not retain any copies of a Purchasing Entity's Data following its written authorization to destroy Purchasing Entity property that cannot be returned following the Term of a Contract. Contractor shall notify Purchasing Entity of any conditions that make returning all Data not feasible. Upon Purchasing Entity's written acknowledgement that returning all Data is not feasible and its consent, Contractor shall purge or destroy retained Data in all its forms (including copies of returned Data) in accordance with the most current version of NIST SP 800-88 or other agreed-upon standard and provide Purchasing Entity with written certification of sanitization.

27.11 Incidents and Breaches. In the event Contractor or its subcontractor or agents discover or are notified of a security incident, or a breach of security or privacy, Contractor shall immediately notify the affected Purchasing Entity's point of contact (or delegate) of the issue. Breaches include a failure to comply with Contractor's confidentiality obligations. If Purchasing Entity

determines that a breach requires notification of its clients, or other notification required by law, Purchasing Entity will have sole control over the notification content, timing, and method, subject to Contractor’s obligations under applicable law.

27.12 Confidentiality Related to Security and Privacy. Notwithstanding the provisions of the Master Agreement, Contractor acknowledges that, it and its employees, subcontractors or agents in the course of this Addendum and any Contract may be exposed to or acquire information that is confidential to DAS PS, Purchasing Entity, or Purchasing Entity’s clients, and such information is Confidential Information as described in the Master Agreement. Contractor shall maintain the confidentiality of such Confidential Information. Confidential information does not include:

- Information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation by Contractor;
- Information subsequently and rightfully received from third parties who have the necessary rights to transfer the information without any obligation of confidentiality;
- Information that was known to Contractor prior to the Effective Date of the Addendum or a Contract without obligation of confidentiality;
- Information that is independently developed by Contractor and documented in writing without use of, or reference to, any Confidential Information; and
- Subject to Contractor’s obligation to provide notice under this Addendum, information required to be disclosed by compulsory judicial or administrative process or by law or regulation.

27.13 Compliance with Laws, Regulations, and Policies Related to Security and Privacy. Contractor shall comply with all applicable state and federal laws and regulations, and Purchasing Entity policies governing use and disclosure of Data, including as those laws, regulations, and policies may be updated from time to time. Applicable State of Oregon Laws, Regulations and Policies include the following:

- Oregon’s Statewide Information Security Standards: <https://www.oregon.gov/das/OSCIO/Documents/2019StatewideInformationAndCyberSecurityStandardsV1.0.pdf>
- Oregon’s Statewide Information Security Plan, <https://www.oregon.gov/das/OSCIO/Pages/SecurityGuidance.aspx> .
- Oregon’s Statewide Policies: [www.oregon.gov/das/Pages/policies.aspx#IT](http://www.oregon.gov/das/Pages/policies.aspx#IT) .

27.14 Contractor shall comply with the Oregon Consumer Information Protection Act (OCIPA), ORS 646A.600 through 646A.628. For purposes of OCIPA, Contractor is a vendor.

27.15 Background Checks. Contractor shall complete a criminal background check on its employees, agents, and contractors providing Services and who have access to Data. Upon reasonable written request of DAS PS or a Purchasing Entity, Contractor shall certify in writing that such background checks have been completed, and the checks revealed no negative findings pertaining to dishonesty, fraud, or theft on employees, agents, or contractors providing Services.

27.16 Network and Services. Contractor networks and systems will not be accessed from, transmitted, or stored outside of the United States (including its territories) or New Zealand. Contractor shall not transfer or materially modify the location or access restrictions on its networks or systems or Data without advance written consent from DAS PS and any affected Purchasing Entity.

## **Exhibit No. 2 Insurance**

Contractor shall obtain at Contractor's expense the insurance specified in this Exhibit No. 2 prior to performing under any Contract and shall maintain it in full force and at its own expense throughout the duration of this Addendum and any Contract, and 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 the State of Oregon and that are acceptable to DAS PS and Purchasing Entity. Coverage must be primary and non-contributory with any other insurance and self-insurance. Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

### **1. INSURANCE REQUIRED.**

#### **1.1 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 require and ensure that each of its out-of-state subcontractors complies with these requirements.

#### **1.2 Professional Liability.**

Contractor shall provide Technology Errors & Omissions insurance in an amount of not less than \$3,000,000 per claim covering Contractor's liability arising from acts, errors or omissions in rendering or failing to render computer or information technology services, including the failure of technology products to perform the intended function or serve the intended purpose as set forth in this Contract. This insurance must include coverage for violation of intellectual property rights including trademark and software copyright, privacy liability, the failure of computer or network security to prevent a computer or network attack, misrepresentations, and unauthorized access or use of computer system or networks. This insurance must also include coverage for unauthorized disclosure, access or use of Purchasing Entity data (which may include, but is not limited to, Personally Identifiable Information ("PII"), Payment Card Data and Protected Health Information ("PHI")) in any format. Coverage must extend to Business Associates (if applicable) and independent contractors providing Services on behalf of or at the direction of Contractor.

### **1.3 Commercial General Liability.**

Contractor shall provide Commercial General Liability Insurance covering bodily injury, and property damage in a form and with coverage that are satisfactory to the State. This insurance must include personal and advertising injury liability, products and completed operations, contractual liability coverage, in each case arising out of Contractor's negligence, and have no limitation of coverage to designated premises, project, or operation. Coverage must be written on an occurrence basis in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

### **1.4 AUTOMOBILE LIABILITY INSURANCE.**

Contractor shall provide Automobile Liability Insurance covering Contractor's business use including 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.

## **2. EXCESS/UMBRELLA INSURANCE.**

A combination of primary and excess/umbrella insurance may be used to meet the required limits of insurance.

## **3. ADDITIONAL INSURED.**

The Commercial General Liability, and Automobile Liability insurance required under this Contract 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 under this Addendum and any Contract. The Additional Insured endorsement with respect to liability arising out of Contractor's 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 07 04 or equivalent.

## **4. 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 (twenty-four) 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 Purchasing Entity's acceptance of all Services required under all Contracts entered into under this Addendum, or, (ii) The expiration of all warranty periods provided under a Contract entered into under this Addendum.

**5. CERTIFICATE(S) AND PROOF OF INSURANCE.**

Contractor shall provide to DAS PS and any requesting Purchasing Entity Certificate(s) of Insurance for all required insurance before delivering any goods or performing any Services required under this Addendum or any Contract entered into under this Addendum. The Certificate(s) must list the State of Oregon, its officers, employees and agents as a Certificate holder and as an endorsed Additional Insured as specified in this exhibit. 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 and any Purchasing Entity party to a Contract has the right to request copies of insurance policies and endorsements relating to these insurance requirements and any additional insurance required under any applicable Contract.

**6. NOTICE OF CHANGE OR CANCELLATION.**

Contractor or its insurer must endeavor to provide at least 30 calendar 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).

**7. INSURANCE REQUIREMENT REVIEW.**

Contractor agrees to periodic review of insurance requirements by DAS PS under this Addendum and to meet updated requirements as agreed upon by Contractor and DAS PS.

**Exhibit No. 3  
Contractor Data**

**Contractor Information.** This information is requested pursuant to ORS 305.385.

**PLEASE PRINT OR TYPE THE FOLLOWING INFORMATION**

**Contractor Name (exactly as filed with the IRS):** TAIT NORTH AMERICA, INC.

Street address: 15354 PARK ROW DRIVE

City, state, zip code: HOUSTON, TX 77084

Email address: us.tax@taitcommunications.com

Telephone: (281) 829-3300 Fax: (281) 829-3320

**Is Contractor a nonresident alien**, as defined in 26 U.S.C. § 7701(b)(1)?

(Check one box):  YES  NO

**Business Designation:** (Check one box):

- |  |  |  |
|--|--|--|
| <input type="checkbox"/> Professional Corporation  | <input type="checkbox"/> Nonprofit Corporation         | <input type="checkbox"/> Limited Partnership |
| <input type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Limited Liability Partnership | <input type="checkbox"/> Sole Proprietorship |
| <input checked="" type="checkbox"/> Corporation    | <input type="checkbox"/> Partnership                   | <input type="checkbox"/> Other               |

**Exhibit No. 4 – Purchase Order**

	STATE OF OREGON	PURCHASE ORDER (PO) NO.	PAGE #		
Purchasing Entity's Authorized Representative		Purchase Order Date		Requisition No.	
Contractor Name and Address			Purchasing Entity's Invoicing Address		
Contractor FEIN		Price Agreement number		Purchasing Entity's Authorized Representative Email Address	
Deliver to Address			Purchasing Entity's Authorized Representative Phone and Fax Number		
			Delivery Schedule or Delivery Date		
Item	Description	Quantity	U/M	Unit Price	Net Price
				<b>Sub Total</b>	
				<b>Freight</b>	
				<b>Total</b>	
THIS PURCHASE IS PLACED AGAINST THE STATE OF WASHINGTON MASTER AGREEMENT NO. 00318. THE TERMS AND CONDITIONS OF THE MASTER AGREEMENT AND THE ASSOCIATED PARTICIPATING ADDENDUM ENTERED INTO BY THE STATE OF OREGON, OREGONBUYS MASTER BLANKET PURCHASE ORDER NO. PO-10700-00005451 APPLY TO THIS PURCHASE AND SUPERSEDE ALL CONFLICTING TERMS AND CONDITIONS, EXPRESS OR IMPLIED.					
Purchasing Entity's Authorized Representative to Make Purchase					Date

**Exhibit No. 5**  
**Vendor Collected Administrative Fee (VCAF)/Volume Sales Report (VSR)**

**1. Volume Sales Reports (VSRs).** Pursuant to the process defined by DASPS found at: <https://www.oregon.gov/das/Procurement/Pages/Supplier.aspx> Contractor shall submit a Volume Sales Report (VSR) to DASPS 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, 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.

The VSR must contain:

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

**2. Vendor Collected Administrative Fee (VCAF).**

**2.1. Vendor Collected Administrative Fee (VCAF) Percentage.** Pursuant to the process defined by DAS 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. The VCAF is a charge equal to Two Percent (2.0%) of Contractor’s Gross total sales, less any credits, made to Purchasing Entities during the reporting period.

**2.2.** Contractor may not reflect the VCAF fee as a separate line item charge to Purchasing Entities. Contractor’s prices must reflect all Contractor’s charges to Purchasing Entities.

**2.3.** Contractor is responsible for timely payment of the VCAF, regardless of entity that actually reports or makes VCAF payment to DAS. The form of payment must be specifically approved by the Contract Administrator. Late payments from Contractor will accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until such overdue amount shall have been paid in full.