

BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA

131000741

**RESOLUTION APPROVING AGREEMENT WITH NEXTRAQ FOR HARDWARE
PURCHASE AND SERVICE**

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2012), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2012), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-3108 (Reissue 2012), the County is not subject to the sealed bidding requirements of the County Purchasing Act if the value of the personal property and/or services sought are less than twenty thousand dollars (\$20,000); and

WHEREAS, three quotes for the purchase of GPS equipment and service for the highway department, the value of each being less than twenty thousand dollars (\$20,000), have been solicited and reviewed pursuant to applicable Nebraska State Statutes; and

WHEREAS, the County of Sarpy desires to enter in an agreement with NexTraq for the purchase of GPS hardware and service as outlined in the agreement attached hereto, which most fully meets the County specifications; and,

WHEREAS, said attached agreement is in the best interests of the citizens of Sarpy County; and,

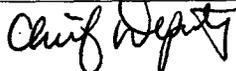
NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves and adopts the agreement with NexTraq, a copy of which is attached.

BE IT FURTHER RESOLVED that the Chairman of the Board is hereby authorized to sign on behalf of this Board the agreement with NexTraq, a copy of which is attached, and any other related documents, the same being approved by the Board.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 4th day of June 2013.

Attest
SEAL


Sarpy County Board Chairman


County Clerk




Sarpy County Purchasing Department

SARPY COUNTY COURTHOUSE
1210 GOLDEN GATE DRIVE
PAPILLION, NE 68046



Brian Hanson, Purchasing Agent
(402) 593-2349

Debby Peoples, Asst. Purchasing Agent
(402) 593-4164

Beth Garber, Senior Buyer/Contract Administrator
(402) 593-4476

Lois Spethman, Supply Clerk/Purchaser
(402) 593-2102

Memo

To: Sarpy County Board of Commissioners

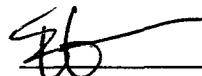
From: Beth Garber

Re: Public Works GPS Tracking Services

On June 4, 2013 the County Board will be asked to approve the hardware purchase and service agreement with NexTraq for the Public Works Department. The GPS equipment will be installed in Public Works vehicles to assist in tracking and management of their fleet. The GPS system will assist the Department in managing fuel costs, labor expenses, idle time and productivity. Because of the tracking abilities Public Works will be better able to investigate liability claims associated with their fleet.

Please feel free to contact me with any questions.

May 31, 2013



Beth Garber

Cc: Deb Houghtaling
Mark Wayne
Scott Bovick
Brian Hanson
Denny Wilson

HARDWARE PURCHASE AND SERVICE AGREEMENT TERMS AND CONDITIONS

1. EQUIPMENT.

1.1 Certain Defined Terms. As used in this Agreement: (a) "Equipment" means all of the hardware equipment listed on the Order Form, whether manufactured by or for NexTraq or by a third party, and (b) "Tracking Device(s)" means Equipment consisting of a vehicle or asset mounted tracking device manufactured by or for NexTraq, excluding all peripheral, ancillary or related accessories.

1.2 Purchase, Delivery and Acceptance of Equipment. You agree to purchase from NexTraq the Equipment shown on the Order Form at the prices shown on the Order Form. NexTraq will use reasonable efforts to meet requested delivery dates but is not responsible for delays caused by third parties or otherwise beyond NexTraq's reasonable control. All deliveries of Equipment (whether shipped to or retrieved by you) are F.O.B. point of origin. You are responsible for inspection upon receipt, and acceptance of Equipment will be deemed to have occurred 10 days after shipment or pick up (as applicable, "Delivery"), unless you reject the Equipment within that 10 day period. The prices on the Order Form apply only to the Equipment shown, and any subsequent purchases of Equipment shall be governed by a separate agreement. NexTraq reserves the right to allocate available products among all NexTraq customers and distributors.

1.3 Installation and Maintenance. If you elect, NexTraq or its authorized third party will install the Equipment for the price set forth on the Order Form. NexTraq will use reasonable efforts to have installations performed on your requested dates. NexTraq warrants for 90 days from the date of its or its agent's installation of the Tracking Device that such installation will be free from material defects in materials and workmanship and that the Tracking Device will be capable of working with the Service (as defined below). If an installation is defective or a Tracking Device fails during this period due, in NexTraq's reasonable determination, to a faulty installation, NexTraq will provide the necessary parts and labor to correct the installation free of charge. If you choose to install Equipment yourself, (a) failure to follow provided guidelines will void any applicable warranties under this Agreement, and (b) installation must take place within fourteen (14) days of the date of Delivery, after which time NexTraq may begin invoicing you for the Service charges based on the total number of Tracking Devices and related Equipment delivered.

1.4 Tracking Device Warranty.

1.4.1. For a period of 12 months from the date of Delivery of a Tracking Device, NexTraq warrants (the "Tracking Device Warranty") that such Tracking Device shall be free from material defects in materials and workmanship and capable of working with the Service in accordance with NexTraq's published specifications ("Good Working Order"). During the applicable 12-month period, NexTraq will repair or replace, at its sole option, any Tracking Device not in Good Working Order. Any removal or return of the Tracking Device shall be at your expense and risk of loss. When applicable, NexTraq will issue a return authorization number upon your request, and the defective Tracking Device must be sent to NexTraq with such number within 30 days thereof or you may be invoiced for any replacement Tracking Device provided to you based on the then-current list prices. Replacement Tracking Devices will be subject to the Tracking Device Warranty for the greater of the remaining portion of the 12-month period for the original Tracking Device or 90 days from Delivery of the replacement Tracking Device. If the Order Form to which these Terms and Conditions are attached indicates you have purchased an extended warranty, then the Tracking Device Warranty as set forth in this Section 1.4.1 shall be extended through the date indicated. NexTraq makes no warranties or commitments with respect to Equipment other than the Tracking Devices, during the initial or any extended warranty period, including without limitation, third party GPS navigation systems sold together with a Tracking Device, and all such warranties are hereby

expressly disclaimed.

1.4.2 Exclusions. NexTraq excludes from the Tracking Device Warranty, and has no obligation to repair or replace any Tracking Device which is not in Good Working Order due to: (i) use of the Tracking Device with antennas, cable connections or mounting hardware other than those furnished or approved in writing by NexTraq; (ii) damage to the Tracking Device resulting from physical impact, ordinary wear and tear, or product abuse following Delivery; (iii) improper handling or installation (unless performed by NexTraq or its authorized installer), or (iv) alteration, modification or repair other than by NexTraq or its authorized third party. Any attempt to open a Tracking Device (other than to change replaceable batteries, where applicable) voids the Tracking Device Warranty with respect to such device. Equipment other than Tracking Devices, including but not limited to antennas, batteries, cables and mounting hardware and GPS navigation systems, are excluded from the Tracking Device Warranty provided by NexTraq.

2. SERVICES.

2.1 Certain Defined Terms. As used herein, (a) "Services" means NexTraq's data collection and internet-based vehicle and asset location service that uses the Global Positioning System and Tracking Devices for position location reporting and a wireless or satellite network operated by one or more third-parties for data communications, together with any other service (including third-party services) offered by NexTraq for use in connection with the Tracking Devices, and (b) "Application" means a NexTraq-hosted Internet web site that allows you to receive and access data generated by the Services.

2.2 Scope. These terms and conditions govern your use of the Services indicated on the Order Form to which they are attached. From time to time, you may choose to subscribe for additional Services offered by NexTraq or its partners. Unless otherwise specified in writing, such Services shall be governed by these terms and conditions, together with any supplemental terms provided at the time of subscription.

2.3 Trial-Based Services. Certain Services ("Trial-Based Services") may be offered with a risk-free trial evaluation period. Such Services will either be labeled as Trial-Based Services on an Order Form or may be offered by telephone after your initial subscription. The trial period for each Trial-Based Service begins upon activation and will continue on a month to month term. No charges will be due for Trial-Based Services provided during the trial period. Unless you call NexTraq customer service or contact us in writing to cancel your Trial-Based Service subscription before the end of the trial period, your subscription to the Trial-Based Services will automatically continue and Charges will become payable and due as described in Section 3.1 below.

2.4 Access. NexTraq will assign you, and you will be responsible for controlling, user name(s) and password(s) which permit your employees and independent contractors to access and use the Application. You must promptly notify NexTraq of any unauthorized use of the user name(s) or password(s), and you will be responsible for all use thereof prior to such notification. NexTraq shall not be liable for any loss or damage arising from any unauthorized use of a user name or password prior to your notifying us of unauthorized use. You shall not assign, transfer or otherwise permit access to the Application except as expressly set forth herein.

2.5 Service Warranty. NexTraq warrants that, throughout the Term, the Services (other than third-party provided Services) and Application will be available and operate in accordance with specifications, subject to the limitations contained in this Section 2.5 (the "Service Warranty"). The Service Warranty does not include interruption of Services or the Application as a result of Internet Unavailability, Network Interruption Factors, blocked access due to unauthorized use as described in Section 6.1, or force majeure events as described in Section 6.9. As used in this Section 2.5, (a) "Internet Unavailability" means (i) failure or unavailability of Internet access; (ii) unauthorized use, theft or operator errors relating to your telephone, cable or Internet service provider; (iii) bugs, errors, configuration problems or incompatibility of equipment or services relating to your computer or network; or (iv) failure of communications networks or data transmission facilities, and (b) "Network Interruption Factors" means any wireless or satellite network outages or constraints that may occur due to the availability of such network being temporarily refused, interrupted, curtailed or otherwise limited by factors including but not limited to atmospheric, environmental or topographical conditions, physical features such as buildings, tunnels or landmass features, satellite or transponder failure, coverage loss or gaps, capacity constraints, or network provider facilities changes, modifications, updates, relocations, repairs, maintenance or other similar activities necessary for the proper or improved operation of the applicable network. Subject to the foregoing, if the Services (other than third-party provided Services) do not perform in accordance with the specifications described herein, your sole remedy shall be to receive a credit of charges for each day during which your ability to access and use the Services or Application was materially impaired, based on the total number of impaired Tracking Devices.

2.6 Network Issues. You will be solely responsible for the choice of an Internet Service Provider necessary to access the Application and for all related fees and expenses; NexTraq shall have no liability for the Internet connection between your facilities and the NexTraq server hosting the Application. Certain features and/or functionality of some cellular-based Services may be limited in roaming areas. Over time, wireless network or satellite provider requirements may change and Equipment may need to be upgraded to accommodate such changes. You may be responsible for costs related to such upgrades, and NexTraq provides no guarantee that Services will continue to be available if required upgrades are not made. NexTraq will notify you in writing as soon as reasonably practicable after receiving notice from the wireless network or satellite provider that upgrades will be required.

2.7 Data Retention and Retrieval. You are solely responsible for establishing any long-term data retention and retrieval requirements. NexTraq makes no guarantee that access to such data will be available after the expiration or termination of this Agreement.

3. INVOICING AND PAYMENT; TAXES.

3.1 Invoicing and Payment. Charges for Equipment, installation and activation will be invoiced and due at the time of Delivery or as otherwise agreed upon by the parties. Monthly charges for the Services, in the amount shown on the Order Form or, where applicable agreed to by phone, will be due once per month during the Term based on the number of active Tracking Devices and other Service related equipment associated with your account at such time. Other than during periods of malfunction reported to and acknowledged by NexTraq, such equipment is deemed "Active" at all times during the Term, regardless of the status of the vehicle in which it is installed. An initial invoice with pro-rated charges and any applicable activation fees should be expected within two (2) weeks of the date this Agreement is received by NexTraq. Any additional services provided by NexTraq or an authorized third party and not covered by an express warranty hereunder will be invoiced following the provision of such services. You shall have sole responsibility for paying the costs, if any, associated with equipment other than the Tracking Device used in connection with the Service, even if such equipment was provided by NexTraq or an authorized third-party. Such fees may include map

updates, software or firmware upgrades, or traffic subscriptions. All invoices are stated in U.S. dollars and due within 30 days from the invoice date. If any amounts due hereunder are not paid by the applicable due date, a late fee may be charged on any delinquent balance for undisputed amounts in an amount not to exceed the lesser of 1.0% of the unpaid balance per month or the maximum amount permitted by law. All reasonable costs and expenses, including but not limited to attorneys' fees, court costs and service charges, incurred by NexTraq in collecting payment shall be payable by you. Credit terms are at NexTraq's discretion and are subject to change.

3.2 Taxes. All prices, fees and rates under this Agreement exclude sales, use, excise or any other taxes assessed at any time. Except for taxes imposed upon NexTraq's income and FCC license fees, you must pay all applicable taxes and/or assessments, whether invoiced separately or with the Services.

3.3 Credit Card Authorization. If you elect to pay by credit card, by providing credit card information (on the Order Form or otherwise), you authorize us to initiate debit entries to such card account for the charges on a monthly basis and for any other amounts due hereunder at any time. You understand that if a debit is rejected for any reason, you may be charged additional fees, and you agree to hold us harmless from any consequences of acting in accordance with this authorization. You agree that you will remain responsible for all payments due hereunder if funds cannot be charged to the account, and you agree to pay us for any expenses incurred for unsuccessful debit attempts..

4. TERM AND TERMINATION.

4.1 Term. The initial term of this Agreement shall commence upon the date set forth in the Order Form to which these Terms and Conditions are attached, and unless terminated earlier pursuant to Section 4.2, shall continue in effect until the expiration of the initial term set forth on the Order Form. Unless a party notifies the other of its intention to discontinue this Agreement at the end of the initial term no less than 30 days prior to such date, this Agreement will automatically renew on the same terms and conditions for successive twelve (12) month periods unless either party provides the other with notice of its intention to cease such automatic renewals at least 30 days prior to the then applicable termination date. The initial term and any renewals or extensions thereof are referred to herein collectively as the "Term."

4.2 Termination. The occurrence of any of the following is a material breach of this Agreement and shall allow the non-breaching party to terminate for cause upon notice after the expiration of the applicable period of cure, if any: (i) your failure to pay all sums which you are obligated to pay within 10 calendar days of written notice that the sums are due; (ii) your use of the Equipment, the Service or the Application in violation of the restrictions in Section 6.1 below; (iii) any event which would constitute a material breach of any other contract between you and NexTraq or with any third party for any lease or financing of the Tracking Device(s); or (iv) any material breach under this Agreement by either party other than those listed above, which is not cured within 30 calendar days after the breaching party receives written notice of the breach.

4.3 Effect of Termination. In addition to any other remedy available at law, upon any early termination of this Agreement, whether during the initial term or a renewal thereof, for any reason other than a material breach by NexTraq, you must, within 30 days thereof, pay NexTraq, as compensation for loss of our bargain and not as a penalty, an amount equal to the aggregate Service charges otherwise payable over the remaining Term for all active Tracking Devices and other Service related equipment associated with your account at the effective time of termination (in addition to any other amounts then owed). If applicable, you will also be responsible for any reactivation fees imposed by the wireless or satellite network provider relating to your account.

5. RELATIONSHIP WITH WIRELESS CARRIER. CUSTOMER EXPRESSLY UNDERSTANDS AND AGREES THAT IT HAS NO CONTRACTUAL RELATIONSHIP WHATSOEVER WITH THE UNDERLYING WIRELESS SERVICE PROVIDER OR ITS AFFILIATES OR CONTRACTORS AND THAT CUSTOMER IS NOT A THIRD PARTY BENEFICIARY OF ANY AGREEMENT BETWEEN NEXTRAQ AND THE UNDERLYING CARRIER. IN ADDITION, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE UNDERLYING CARRIER AND ITS AFFILIATES AND CONTRACTORS SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO CUSTOMER AND CUSTOMER HEREBY WAIVES ANY AND ALL CLAIMS OR DEMANDS THEREFOR. CUSTOMER FURTHER ACKNOWLEDGES THAT REPRESENTATIVES OF THE UNDERLYING WIRELESS SERVICE PROVIDER MAY HAVE MET WITH CUSTOMER INDIVIDUALLY OR TOGETHER WITH NEXTRAQ TO DISCUSS AND REVIEW PRINTED MATERIALS THAT EXPLAINED THE UNDERLYING WIRELESS SERVICE PROVIDER'S UNDERSTANDING OF NEXTRAQ'S SERVICES. CUSTOMER ACKNOWLEDGES THAT IT HAS HAD THE OPPORTUNITY TO FULLY INVESTIGATE THE CAPABILITIES, QUALITY AND RELIABILITY OF THE NEXTRAQ SERVICES AND HAS SATISFIED ITSELF THAT THE SERVICES SATISFACTORILY MEETS ITS BUSINESS NEEDS. CUSTOMER AGREES THAT THE UNDERLYING WIRELESS SERVICE PROVIDER AND ITS AFFILIATES AND CONTRACTORS SHALL HAVE NO LEGAL, EQUITABLE, OR OTHER LIABILITY OF ANY KIND TO CUSTOMER ARISING FROM OR RELATED TO ANY MEETINGS, DISCUSSIONS OR EXPLANATIONS REGARDING THE NEXTRAQ SERVICES AND CUSTOMER HEREBY WAIVES ANY AND ALL CLAIMS OR DEMANDS IT MAY HAVE AGAINST THE UNDERLYING WIRELESS SERVICE PROVIDER AND ITS AFFILIATES AND CONTRACTORS THEREFOR. CUSTOMER FURTHER ACKNOWLEDGES AND AGREES THAT, IF A TRACKING DEVICE IS NO LONGER ACTIVE, OR IF THE SERVICE HAS BEEN MODIFIED TO USE A DIFFERENT WIRELESS CARRIER, THEN, DURING THE TERM OF THIS AGREEMENT OR ANY TIME THEREAFTER, THE INITIAL UNDERLYING WIRELESS SERVICE PROVIDER MAY ACCESS SUCH TRACKING DEVICE USING OVER THE AIR PARAMETER ADMINISTRATION OR OTHER MEANS IN ORDER TO DOWNLOAD SOFTWARE OR OTHER INFORMATION INTENDED TO PREVENT SUCH TRACKING DEVICE FROM ATTEMPTING TO CONTACT SUCH CARRIER'S WIRELESS NETWORK.

6. OTHER TERMS.

6.1 License; Restrictions. NexTraq hereby grants you, for use during the Term only, a non-exclusive, non-transferable (except as set forth herein), license to use any software, firmware or proprietary information integrated into or stored on the Equipment, Application or Service, solely in conjunction with the authorized use of Equipment installed on your or your independent contractors' vehicles. You shall not attempt to reverse engineer or clone the Tracking Device or the Application, and NexTraq shall have the right to block your access to the Application and Service in the event your use interferes with the operation and utilization of the Service by any other party, provided NexTraq uses reasonable efforts to provide advance notice and opportunity to cure. NexTraq and/or its licensors expressly reserve and retain all right, title and interest in and to their respective proprietary information and materials, including but not limited to, all intellectual property rights not expressly granted hereunder.

6.2 Limitation of Liability; Exclusive Remedies. NexTraq's entire liability and your sole and exclusive remedies for any damages arising from the performance or nonperformance under this Agreement shall be as follows:

6.2.1 For a breach of the Tracking Device Warranty or for installation or maintenance obligations relating to the Tracking Devices, your sole remedy is the repair or replacement described in Section 1.

6.2.2 For a breach of the Service Warranty, your sole remedy is to receive a credit of Service charges for each day during which your ability to access and use the Service or Application was materially impaired, based on the total number of Active Tracking Devices impacted.

6.2.3 For claims other than a breach of the Service Warranty or Tracking Device Warranty (or installation or maintenance obligations relating to the Tracking Devices), NexTraq's total liability shall be limited to direct damages proven in an amount not to exceed the amount you paid for Tracking Devices and Service during the twelve (12) month period immediately preceding the earliest date on which the claim arose. If any of the remedies in subsections 6.2.1 or 6.2.2 above fails of

its essential purpose, your sole and exclusive remedy shall be for NexTraq to re-purchase from you the Tracking Devices for which you have a claim, in an amount not to exceed the purchase price paid for the Tracking Devices (exclusive of taxes, fees and shipping costs), depreciated on a sixty (60) month straight line basis from the date of Delivery.

6.2.4 IN NO EVENT SHALL NEXTRAQ OR ITS AFFILIATES BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, NON-COMPENSATORY, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOST PROFITS, LOST SAVINGS, LOSS OF DATA OR BUSINESS OPPORTUNITY OR OTHER INCIDENTAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE EQUIPMENT OR SERVICE PROVIDED UNDER THIS AGREEMENT, EVEN IF NEXTRAQ OR SUCH AFFILIATE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A LIMITED REMEDY SET FORTH IN THE AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE.

6.3 Disclaimer of Warranties. EXCEPT FOR THE WARRANTIES SPECIFICALLY SET FORTH IN SECTION 1 FOR THE EQUIPMENT, SECTION 2 FOR THE SERVICE, OR AS REQUIRED BY LAW, THE EQUIPMENT AND THE SERVICE PROVIDED UNDER THIS AGREEMENT ARE PROVIDED "AS IS" AND THERE ARE NO OTHER WARRANTIES MADE BY NEXTRAQ, EXPRESS, IMPLIED, OR ARISING OUT OF A COURSE OF DEALING, USAGE OR TRADE PRACTICE, INCLUDING, BUT NOT LIMITED TO, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6.4 Indemnification. You shall indemnify NexTraq, its successors and assigns and each of their respective directors, officers, employees and agents against any and all losses, claims, damages or expenses (including attorneys' fees) arising out of or related to any personal injury to or death of any person or persons and any loss or damage of any property or any interruption of services which are caused or claimed to have been caused directly or indirectly from your (including your employees' or independent contractors') negligent or intentional misuse or installation of the Equipment, the Service or the Application.

6.5 Choice of Law, Venue and Attorney's Fees. This Agreement shall be governed by and construed under the laws of the State of Georgia without reference to its conflict of laws provisions. All disputes arising under this Agreement will be heard only by a court of competent jurisdiction in Fulton County, Georgia and the parties hereby submit to the exclusive jurisdiction of such courts for the purpose of litigating such disputes. If either party commences an action arising out of or in connection with this Agreement, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees and costs of suit.

6.6 Assignability. Neither this Agreement, nor any rights, duties nor interest herein shall be assigned, transferred, subcontracted or sublicensed by you without NexTraq's prior written consent, not to be unreasonably withheld. Any such action without consent shall be void and shall constitute a material breach entitling NexTraq to terminate this Agreement. Notwithstanding the foregoing, NexTraq may condition its provision of Service to any transferee upon NexTraq's approval of transferee's creditworthiness, the payment by transferee of a re-licensing fee and/or required upgrades of the Tracking Devices at transferee's expense. Subject to this Section 6.6, this agreement shall be binding on and inure to the benefit of any successor or assign.

6.7 Severability; Waiver. If any of the provisions of this Agreement are determined to be unenforceable, the enforceability of the remaining provisions shall not in any way be affected or impaired, and the parties shall substitute an enforceable provision for the affected provision which approximates the intent and economic effect of the affected provision as closely as possible. The waiver by any party of a breach of any of the provisions of this Agreement shall not operate as a waiver of any subsequent breach.

6.8 Survivability. The following provisions shall survive any expiration or complete termination of this Agreement: 1.1 and 2.1 (Certain Defined Terms), 2.6 (Data Retention and Retrieval), 3 (Invoicing and Payment; Taxes), 4.3 (Effect of Termination) and 5 (Other Terms).

6.9 Force Majeure. Except for the payment of money, neither party shall be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by acts of nature, strikes, acts of terrorism, war, riot or other civil disturbances, compliance with governmental laws or orders (including the FCC), delay or performance failure of third parties (including suppliers), or other events which are beyond the reasonable control of such party, provided that such party gives prompt written notice of such condition and resumes its performance as soon as reasonably possible.

6.10 Export Compliance Assurance. You understand that NexTraq is subject to regulation by agencies of the United States government, which prohibits export or diversion of certain products to certain countries. You warrant that you will comply with NexTraq's guidelines relating to export compliance and will not export any Equipment outside of the United States without prior approval of NexTraq.

6.11 Entire Contract. This Agreement (including all exhibits, addendums, and schedules hereto, which are hereby incorporated by reference) comprises the entire understanding, agreement and representations of the parties concerning the subject matter hereof, and supersedes all prior writings, discussions, representations and understandings with respect thereto. Any additional or different terms or conditions proposed by you, contained in any purchase order or any payment instrument are rejected and shall be of no force and effect unless expressly agreed to in writing by NexTraq. In order to be binding, any amendment or modification of any of the provisions of this Agreement must be in writing and signed by a duly authorized representative of each party. In the event of a conflict between the above terms and conditions and any written modification, the

document later in time shall prevail.

6.12 Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

6.13 Construction. The parties agree that "including" and other words or phrases of inclusion used herein shall not be construed as terms of limitation, so that references to "included" matters shall be regarded as nonexclusive, non-characterizing illustrations and equivalent to the terms "including, but not limited to," and "including, without limitation"; the words "you," "your" or "Customer" refer to the Customer shown on the Order Form to which these terms and conditions are attached; the words "we," "us," "our" or "NexTraq" refer to Discrete Wireless, Inc. (d/b/a NexTraq). The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. The captions and other headings contained in this Agreement are inserted for convenience of reference only and shall not affect the interpretation or meaning of this Agreement.

6.14 Acknowledgments. By signing this Agreement: (a) you acknowledge that you have received, read, understand and agree to all of the terms and conditions hereof; (b) you agree that you cannot terminate or cancel, and upon acceptance of the equipment ordered hereunder you have an unconditional obligation to make all payments under, this Agreement for the duration of the initial term and cannot withhold, setoff or reduce such payments for any reason; (c) you agree that the equipment will be used for business purposes only and not for personal, family or household purposes; (d) you confirm that the person signing this Agreement has the authority to do so on your behalf; and (e) you represent that the information in any credit application, statement, trade reference or financial report submitted to us is true and correct and you understand that any material misrepresentation constitutes a default under this Agreement.

THESE TERMS AND CONDITIONS, TOGETHER WITH THE ORDER FORM AND ANY EXHIBITS, ADDENDA OR AMENDMENTS THAT ARE AGREED TO IN WRITING BY BOTH PARTIES, CONSTITUTE A SINGLE AGREEMENT, AND THE PARTIES AGREE THAT THEIR ELECTRONIC OR WRITTEN SIGNATURES ON THE ORDER FORM OR THESE TERMS AND CONDITIONS EVIDENCE THEIR AGREEMENT TO BE BOUND HEREBY.

NexTraq (For Office Use Only)
Elizabeth Fisher 6/16/13
Signature Date
Elizabeth Fisher
Print Name
Billing Associate
Title

Customer (Please Sign Here)
Jim Warren 6/4/13
Signature Date
Jim Warren
Print Name
Chairman
Title

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