

# 791 PURCHASING COOPERATIVE AND VENDOR AGREEMENT

Between \_\_\_\_\_ *Ion Wave Technologies, Inc. d/b/a SpedTrack*

with the principal place of business at

\_\_\_\_\_ *3653 South Avenue Springfield, MO*

\_\_\_\_\_ and

**791 Purchasing Cooperative**

**For**

**RFP #2020-05-016 Special Education Products and Services**

**Issued: May 15, 2020**

## General Information

The Vendor Agreement (“Agreement”) made and entered into by and between 791 PURCHASING COOPERATIVE (hereinafter referred to as “791COOP”) a government cooperative purchasing program authorized by the Region 15 Education Service Center, having its principal place of business 612 Irene Street San Angelo TX 76903 and **Company listed at the top of page one** (hereinafter referred to as “Vendor”) a provider having its principal place of business as listed at the top of page one. This Agreement consists of the provisions set forth below, including provisions of all Attachments referenced herein. In the event of a conflict between the provisions set forth below and those contained in any Attachment, the provisions set forth shall control.

The following pages will constitute the Agreement between the successful vendors(s) and 791 PURCHASING COOPERATIVE.





## **Terms and Conditions**

### **1. Assignment of Vendor Agreement**

No assignment of the Vendor Agreement may be made without the prior written approval of 791 PURCHASING COOPERATIVE. This approval will not be unreasonably withheld, particularly in the event that the majority of Vendor's assets are acquired and the responsibilities under this Agreement are assumed by the acquiror. A simple change of name agreement will not change the Agreement obligations of awarded vendor.

### **2. 791 PURCHASING COOPERATIVE Contract**

The 791 PURCHASING COOPERATIVE Contract herein refers to the Vendor's standard license agreement that was submitted as part the **RFP #2020-05-016 Special Education Products and Services**. The 791 PURCHASING COOPERATIVE Contract will be executed between the Vendor and 791 PURCHASING COOPERATIVE Member and will govern all aspects of a sale for Products and/or Services between Vendor and a 791 PURCHASING COOPERATIVE Member. 791 PURCHASING COOPERATIVE recognizes that a 791 PURCHASING COOPERATIVE Member may, in agreement with Vendor, make modifications to the 791 PURCHASING COOPERATIVE Contract to reflect specific needs of the 791 PURCHASING COOPERATIVE Member. This modified form will still be referred to as the 791 PURCHASING COOPERATIVE Contract.



To further clarify, vendor may sell to a 791 PURCHASING COOPERATIVE member or potential 791 PURCHASING COOPERATIVE members, which is any governmental or other public entity in Texas through the 791 PURCHASING COOPERATIVE preferred supplier program. If a potential customer is not currently a 791 PURCHASING COOPERATIVE member, they may join 791 PURCHASING COOPERATIVE by contacting 791 PURCHASING COOPERATIVE at [admin@791COOP.org](mailto:admin@791COOP.org). Awarded vendors are not restricted from any sales activity outside of the 791 PURCHASING COOPERATIVE or responding to any Texas entity that issued a Request for Proposals and has chosen not to use the 791 PURCHASING COOPERATIVE interlocal cooperative method of procurement.

**ANY AGREEMENT BETWEEN A 791 PURCHASING COOPERATIVE MEMBER AND VENDOR THAT REQUIRES THE 791 PURCHASING COOPERATIVE MEMBER TO INDEMNIFY ANY OTHER PARTY WILL BE AUTOMATICALLY LIMITED TO THE EXTENT PERMITTED BY THE APPLICABLE CONSTITUTION, LAWS OR REGULATIONS OF THE JURISDICTION OF THE LOCATION OF THE 791 PURCHASING COOPERATIVE MEMBER OR THE LOCATION OF THE PERFORMANCE OF THE CONTRACT UNDER THIS AGREEMENT.**

### **3. Disclosures**

a) Vendor affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this Agreement.



b) Vendor shall attach, in writing, a complete description of any and all relationships that might be considered a conflict of interest in doing business with 791 PURCHASING COOPERATIVE under a 791 PURCHASING COOPERATIVE Agreement if Vendor feels that such possible conflicts of interest exist. If you believe there is a conflict of interest as described in the form CIQ instruction sheet contained in this RFP, please complete and submit the form CIQ provided as instructed.

- c) The vendor affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this Agreement.

#### 4. Renewal of Agreements

This Agreement with 791 PURCHASING COOPERATIVE is for a three (3) year term with two (2), one (1) year extension options. Any extension of the initial term will be agreed to in writing between 791 PURCHASING COOPERATIVE and Vendor. Nothing herein shall require either party to agree to an extension of the initial term.

#### 5. Invoices

Vendor is responsible for the invoicing and collection of all funds due from a 791 PURCHASING COOPERATIVE Member to Vendor.

#### 6. Member Payments

791 PURCHASING COOPERATIVE Members will make payments directly to the Vendor for all funds owed as provided for in the 791 PURCHASING COOPERATIVE Contract.

#### 7. Pricing

The price Vendor will charge a 791 PURCHASING COOPERATIVE Member will be defined in the 791 PURCHASING COOPERATIVE Contract and determined at the time Vendor and a 791 PURCHASING COOPERATIVE Member makes purchases through the 791 PURCHASING COOPERATIVE Contract. The price Vendor charges a 791 PURCHASING COOPERATIVE Member will include the 791 PURCHASING COOPERATIVE annual participation fee.

At no time during the initial term or extension term of this Agreement shall the price charged to a 791 PURCHASING COOPERATIVE Member exceed the pricing proposed by Vendor in response to **RFP #2020-05-016 Special Education Products and Services**. Vendor may adjust their pricing on an annual basis by submitting a new price list to 791 PURCHASING COOPERATIVE.

Language similar to the following will be added to the Contract between the 791 PURCHASING COOPERATIVE and the Vendor:

“Seller represents that this Agreement is entered into pursuant to the Seller’s award under 791 PURCHASING COOPERATIVE’s **RFP #2020-05-016 Special Education Products and Services**.”

#### 8. Participation Fees

Vendor agrees to pay 791 PURCHASING COOPERATIVE a 1.0 % percent annual participation fee for all product sales to 791 PURCHASING COOPERATIVE Members utilizing a 791 PURCHASING COOPERATIVE awarded contract to purchase products specifically proposed in Vendor’s response to 791 PURCHASING COOPERATIVE’s **RFP #2020-05-016 Special Education Products and Services**. The participation fee will be the total dollars derived from 1.0% of total sales volume through this program. The participation fee will be included in the amounts quoted and invoices sent by Vendor and a 791 PURCHASING COOPERATIVE Member. Participation fees will only be paid on amounts actually due to Vendor during the term of this Agreement (including any renewals).that is

**The 791 PURCHASING COOPERATIVE participation fee will not be a provided as a separate line item to the 791 PURCHASING COOPERATIVE Member.** Vendor will remit the participation fee to 791 PURCHASING COOPERATIVE within ninety (90) business days of receipt of the payment for Purchases

made under this agreement, which includes the annual participation fee, from the 791 PURCHASING COOPERATIVE Member. Failure to pay the participation fee will result in termination of Agreement and 791 PURCHASING COOPERATIVE reserves the right to take any action under the law or equity for any breach of contract.

#### **9. Sales Reporting Procedures for Vendor**

Vendor will report any sale under this Agreement that is made to a 791 PURCHASING COOPERATIVE Member with Vendor on a quarterly basis. Thus, any order entered in a particular month shall report with ninety (90) business days of the 791 PURCHASING COOPERATIVE Member issuing a Purchase Order or otherwise purchasing from the vendor under this Agreement.

#### **10. Adoption of Agreement by State or Federal Agencies**

Awarded Vendor may present this Agreement to State agencies for adoption by the State. Vendor may agree to pay an additional fee to the State Agency. The Awarded Vendor shall continue to pay the Participation fee to 791 Purchasing Cooperative and report these sales to 791 Purchasing Cooperative. Failure for the Awarded Vendor to comply with this section of the Agreement will result the in Awarded Vendor being in breach of this Agreement and have their Agreement with 791 Purchasing Cooperative terminated for cause

Furthermore, Awarded Vendor may present this Agreement to Federal Government Agencies who may adopt this agreement. Participation fees shall continue to be paid and sales reported to 791 Purchasing Cooperative, even if a fee is paid the approving Federal Agency. Failure for the Awarded Vendor to comply with this section of the Agreement will result the in Awarded Vendor being in breach of this Agreement and have their Agreement with 791 Purchasing Cooperative terminated for cause.

#### **11. Indemnity**

Vendor agrees to indemnify and hold harmless and defend 791 PURCHASING COOPERATIVE, 791 PURCHASING COOPERATIVE officers and employees, from and against all claims and suits for damages, injuries to persons (including death), property damages, losses, and expenses including court costs and reasonable attorney's fees, arising out of, or resulting from, Vendor's performance of this Agreement or sales made to 791 PURCHASING COOPERATIVE Members under this agreement, including all such causes of action based upon common, constitutional, or statutory law, or based in whole or in part, upon allegations of negligent or intentional acts on the part of the Vendor, its officers, employees, agents, subcontractors, licensees, invitees, unless such claims are based in whole upon the negligent acts or omissions of the 791 PURCHASING COOPERATIVE, 791 PURCHASING COOPERATIVE officers, employees, or agents. If based in part upon the negligent acts or omissions of the 791 PURCHASING COOPERATIVE, 791 PURCHASING COOPERATIVE officers, employees, or agents, Vendor shall be responsible for their proportional share of the claim.

#### **12. State of Texas Franchise Tax**

By signature hereon, the Vendor hereby certifies that to the best of its knowledge, it is not currently delinquent in the payment of any franchise taxes owed the State of Texas under Chapter 171, Tax Code.

#### **13. Miscellaneous**

Nothing in the Agreement or in any other communication between 791 PURCHASING COOPERATIVE and the Vendor may be construed as a guarantee that 791 PURCHASING COOPERATIVE Members will purchase items and services under this contract from Vendor at any time.

#### **14. Termination**

This Agreement shall terminate at the end of the term or at the end of any contract extensions. Either party may terminate for breach of contract which would include bankruptcy, or due to continued failure to perform the terms in this Agreement. Prior to exercising termination for breach, the non-breaching party must provide notice by certified mail to provide the other party 30 days to solve the stated problems.

However, if this Agreement is terminated prior to the end date of the initial term or the end date of an agreed to extension term, any 791 PURCHASING COOPERATIVE Purchase Contract entered into between Vendor and a 791 PURCHASING COOPERATIVE Member shall survive and will not be terminated. Upon termination of this Agreement between 791 PURCHASING COOPERATIVE and the Vendor, this Agreement shall survive only insofar as to govern all surviving 791 PURCHASING COOPERATIVE Contracts between the Vendor and 791 PURCHASING COOPERATIVE Members. Termination for convenience is required under 2 CFR part 200.

#### **15. Marketing**

Awarded vendor agrees to allow 791 PURCHASING COOPERATIVE to use their name and logo within the 791 PURCHASING COOPERATIVE website, marketing materials and advertisement. Vendor may use the 791 PURCHASING COOPERATIVE name and logo in marketing the 791 PURCHASING COOPERATIVE Contract to 791 PURCHASING COOPERATIVE Members or other Texas government or public entities.

#### **16. Legal obligations**

It is the responding vendor's responsibility to be aware of and comply with all local, state and federal laws governing the sale of products/services identified in this RFP and any awarded Agreement thereof. Applicable laws and regulations must be followed even if not specifically identified herein. 791 PURCHASING COOPERATIVE acknowledges that Vendor is a Springfield, Missouri based corporation and is required to comply with Missouri law in the event the conflict with any other state or local laws that may be applicable to this Agreement.


#### **17. Audit rights**

Awarded Vendor shall, at their sole expense, maintain appropriate due diligence of all purchases made by any 791 PURCHASING COOPERATIVE Member that utilizes this Agreement. 791 PURCHASING COOPERATIVE and Region 15 ESC each reserve the right to audit the records directly related to purchases by cooperative members for a period of four (4) years from the time such purchases are made. This audit right shall survive termination of this Agreement for a period of four (4) years from the effective date of termination. 791 PURCHASING COOPERATIVE shall have the ability to conduct the audit internally or may engage a third-party auditing firm. In the event of an audit, the requested materials shall be provided in a mutually acceptable format and method/location. 791 PURCHASING COOPERATIVE shall bear the cost of such audit requested by 791 PURCHASING COOPERATIVE, but all documents maintained by the vendor shall be produced and made available to 791 PURCHASING COOPERATIVE or its agents at no cost.

#### **18. Force Majeure**

If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and cause of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

#### **19. Remedies**

The parties shall be entitled to exercise any right or remedy available to it either at law or in equity, subject to the choice of law, venue and service of process clauses limitations agreed herein. Nothing in this agreement shall commit the ESC Region 15/791 PURCHASING COOPERATIVE to a binding arbitration resolution of any disagreement under any circumstances. 


## **20. Choice of Law**

This agreement and any addenda or other additions and all contracts or awards resulting from this procurement process, however described, shall be governed by, construed and enforced in accordance with the laws of the State of Texas, regardless of any conflict of laws principles.

## **21. Alternative Dispute Resolution**

Prior to filing of litigation, the parties may mutually select non-binding mediation as a method of conflict resolution for issues arising out of or relating to this procurement process or any contract resulting from or any contemplated transaction. The parties agree to share equally the cost of the mediation process and venue cost.

## **22. Acts or Omissions**

The successful vendor will be expected to indemnify and hold harmless the ESC Region 15/791 PURCHASING COOPERATIVE, its officers, employees, agents, representatives, contractors, assignees and designees from and against any and all liability, actions, claims, demands or suits, and all related costs, attorney's fees and expenses arising out of, or resulting from any intentionally malicious acts or gross and negligent omissions of the vendor or its agents, employees, subcontractors, or suppliers in the execution or performance of any agreements ultimately made by ESC Region 15/791 PURCHASING COOPERATIVE and the vendor.

## **23. Contract Governance**

Any contract made or entered into by the ESC Region 15/791 PURCHASING COOPERATIVE is subject to and is to be governed by Section 271.151 et seq, Tex Loc Gov't Code. Otherwise, ESC Region 15/791 PURCHASING COOPERATIVE does not waive its governmental immunities from suit or liability except to the extent expressly waived by other applicable laws in clear and unambiguous language.

## **24. Supplemental Agreements**

The 791 PURCHASING COOPERATIVE Member entity participating in the 791 PURCHASING COOPERATIVE Agreement and awarded vendor may enter into a separate supplemental agreement or contract to further define the level of service requirements over and above the minimum defined in this Agreement i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement or contract developed as a result of this Agreement is exclusively between the participating entity and awarded vendor. 791 PURCHASING COOPERATIVE, its agents, 791 PURCHASING COOPERATIVE Members and employees shall not be made party to any claim for breach of such agreement unless named and agreed by the Party in question in writing in the agreement. If a vendor submitting a Proposal requires 791 PURCHASING COOPERATIVE and/or 791 PURCHASING COOPERATIVE Member to sign an additional agreement, those agreements shall comply with the award made by 791 PURCHASING COOPERATIVE to the Vendor. Supplemental Vendor's Agreement documents may not become part of 791 PURCHASING COOPERATIVE's Agreement with vendor unless and until an authorized representative of 791 PURCHASING COOPERATIVE reviews and approves it. 791 PURCHASING COOPERATIVE permits 791 PURCHASING COOPERATIVE Members to negotiate additional terms and conditions with the Vendor for the provision of goods or services under the Vendor's 791 PURCHASING COOPERATIVE Agreement.

## 25. Survival Clause

All applicable agreements, contracts, software license agreements, warranties or service agreements that were entered into between Vendor and 791 PURCHASING COOPERATIVE or the 791 PURCHASING COOPERATIVE Member Customer under the terms and conditions of this Agreement shall survive the expiration or termination of this Agreement. All Orders, Purchase Orders issued or contracts executed by 791 PURCHASING COOPERATIVE or a 791 PURCHASING COOPERATIVE Member and accepted by the Vendor prior to the expiration or termination of this agreement, shall survive expiration or termination of the Agreement, subject to previously agreed terms and conditions agreed by the parties or as otherwise specified herein relating to termination of this agreement.

## 26. Smoking

Persons working under Agreement shall adhere to the 791 PURCHASING COOPERATIVE Member's or local smoking statutes, codes or policies.

## 27. Novation

If awarded vendor sells or transfers all assets or the entire portion of the assets used to perform this Agreement, a successor in interest must guarantee to perform all obligations under this Agreement. A simple change of name agreement will not change the Agreement obligations of awarded vendor.

## 28. Licenses

Awarded vendor shall maintain in current status all federal, state and local licenses, bonds and permits required and applicable for the operation of the business conducted by awarded vendor. Awarded vendor shall remain fully informed of and in compliance with all ordinances and regulations pertaining to the lawful provision of goods or services under the Agreement. 791 PURCHASING COOPERATIVE and its Members reserves the right to stop work and/or cancel Agreement of any awarded vendor whose license(s) expire, lapse, are suspended or terminated subject to a 30-day cure period unless prohibited by applicable statute or regulation.

## 29. Registered sex offender restrictions

For work to be performed at schools, awarded vendor agrees that no employee of a sub-contractor who has been adjudicated to be a registered sex offender will perform work at any time when students are, or reasonably expected to be, present unless otherwise agreed by the 791 Purchasing Cooperative Member. Awarded vendor agrees that a violation of this condition shall be considered a material breach and may result in the cancellation of the purchase order at the 791 Purchasing Cooperative Member's discretion.

## 30. Insurance Requirements

a)

**Insurance.** For the term of this Agreement, IWT agrees to maintain insurance coverages meeting or exceeding the following:

Workers Compensation in the amount as required by Missouri law.  
Commercial General Liability - \$1,000,000 per occurrence.  
Auto Liability - \$1,000,000 combined single limit.  
Cyber Liability (Third Party) - \$1,000,000 per occurrence.  
Data Breach (First Party) - \$500,000 per occurrence.

Upon request by Client, IWT shall provide Client with a copy of IWT's then current certificate of insurance.

**[SIGNATURE PAGE IMMEDIATELY FOLLOWING]**





**791 PURCHASING COOPERATIVE and Vendor Agreement**  
**Signature Form**

**RFP #2020-05-016 Special Education Products and Services**

**Vendor:**

Company Name: Ion Wave Technologies, Inc. d/b/a SpedTrack\_\_\_\_\_

Address: 3653 South Avenue\_\_\_\_\_

City: Springfield\_\_\_\_\_ State: MO\_\_ Zip: 65807 \_\_\_\_\_

Phone: 866-277-2645\_\_\_\_\_ Fax: 417-823-7778\_\_\_\_\_

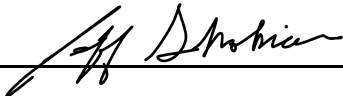
Name of Authorized Representative: Darren C. Henderson \_\_\_\_\_

Title: CEO\_\_\_\_\_ Date: June 14, 2020\_\_\_\_\_

Email of Authorized Representative: \_\_\_\_\_

Signature of Authorized Representative \_\_\_\_\_ (Required)

**791 PURCHASING COOPERATIVE:**

Authorized Representative Signature: \_\_\_\_\_  


Name Jeffrey Shokrian\_\_\_\_\_

Title CEO\_\_\_\_\_

Email jeff@791coop.org\_\_\_\_\_

Address P.O Box 592867\_\_\_\_\_

City San Antonio\_\_\_\_\_ State TX Zip 78259\_\_\_\_\_

Phone 832-752-5978\_\_\_\_\_ Fax \_\_\_\_\_

Date 06/14/2022\_\_\_\_\_