

**Business Case for**  
**Migrating WLD to encompass**



**Wyoming Liquor Division**

**Greg Cook**

**greg.cook@wyo.gov**

**307-777-6448**

**July 8, 2019**

# Business Case Abstract

## I. Business Case

New Solution

Existing Solution - New Development – Replacement

Prior Business Case was submitted to the Department of Enterprise Technology Service in 6/27/2011

Support and Maintenance

Prior Business Case was submitted to the Department of Enterprise Technology Service in

## II. Problem Statement Summary

Replace the three aging applications that the Wyoming Liquor Division (WLD) uses to conduct business; Epicor, eliquor and Pick-to-Voice with a state of the art SAAS Cloud Based application provided by encompass. In addition WLD has informed that the Pick-to-Voice system recently acquired by Honeywell would no longer be offered or supported in the Liquor Distribution function that WLD is currently using it and that support would terminate September 31, 2020.

## III. Solution Description Summary

Migrate Epicor, eliquor and Pick-to-Voice to encompass's SaaS Cloud Based application by October 2019 enabling WLD to using existing maintenance funding to switch over.

## IV. Solution Cost Summary

The funding for the migration will come from the Enterprise Fund. WLD is looking at offsetting the migration using existing maintenance funding and server funding which are payable in October 2019. Additional funding would be required to update the Pick-to-Voice system this year, Epicor and eLiquor in the next 2-3 years.

### encompass Funding Overview

8-Jul-19

Offset Cost:	Year 1	Year 2	Year 3
Software Maintenance	\$170,902.75	\$170,902.75	\$196,538.16
Hardware Cost	\$60,787.50	\$60,787.50	\$60,787.50
Upgrade Cost	\$210,000.00	\$585,000.00	\$0.00
Total Offset Cost	\$441,690.25	\$816,690.25	\$257,325.66
<b>Migration Cost</b>			
encompass	\$407,600.00	\$196,800.00	\$205,800.00
<b>Projected Savings</b>	<b>(\$34,090.25)</b>	<b>(\$619,890.25)</b>	<b>(\$51,525.66)</b>

# Business Case Narrative

## I. Executive Summary

The Wyoming Liquor Division (WLD) conducts operations using three main applications:

- Epicor ERP Systems that handles Purchasing, Accounting and Warehousing
- cliquor WLD Retailer Portal for Ordering
- Pick-to-Voice Warehouse Order picking system

Each system was last updated in April 2015 at a cost of:

System	Upgrade Cost
Epicor	\$287,213.00
cliquor	\$21,000.00
Pick-to-Voice	\$21,600.00
<b>Total Upgrade Cost</b>	<b>\$329,813.00</b>

Earlier this year WLD was informed that the Pick-to-Voice system recently acquired by Honeywell would no longer be supported in the Liquor Distribution function that WLD is using it and support would terminate September 31, 2020.

Additionally Epicor is on Version 7.4 sp6 and the latest Version of Epicor is 10.2, so will need to be upgraded in the next 2-3 years and will be a major upgrade / revision.

The cliquor Portal is out dated and WLD was creating specifications for a major rewrite when the Pick-to-Voice end-of-support was announced by Honeywell.

The estimated costs for these updates are:

System	Estimated Cost
Epicor	\$425,000.00
cliquor	\$160,000.00
Pick-to-Voice	\$210,000.00
<b>Estimated Upgrade Cost</b>	<b>\$795,000.00</b>

In addition WLD maintains Servers and SAN in a computer room on-site and this hardware required updating ever three (3) years. To support these servers runs about \$61,000.00 per year.

## WLD's Request

In WLD's investigation to address replacing the Pick-to-Voice system, they discovered a Fort Collins, CO, company that specializes in Liquor Distribution only, encompass. encompass's application would enable WLD to move to a SAAS AWS Cloud Based solution that would replace all three of its systems Epicor, eLiquor and Pick-to-Voice.

Additionally being a hosted solution it eliminates the requirement for WLD to acquire and maintain servers on-site.

encompass believes they could port WLD onto their solution within 90 days and if done, WLD would use existing maintenance funding used for its current three application to move to encompass. This funding is payable October 1, 2019.

By migrating to encompass WLD expects to save hundreds of thousand dollars in operational and upgrade cost over the years as encompass upgrades are included in the license cost and are continuous and server maintenance / patching is included as well.

WLD is therefore requesting approval to migrate to encompass's SAAS AWS hosted solution and expedite the contract with encompass through the process in order to meet the 10/1/19 time-frame.

## II. Business Problem and Opportunity

WLD's current applications are aging or in the case of the Pick-to-Voice no longer being offered for the Liquor Distribution Business (Pick-to-Voice) application being offered for Liquor Distribution. The project cost to replace and upgrade these applications over the next 1-2 years is \$795,000. encompass is a SaaS hosted solution written specifically for the Liquor Distribution business that provides all the functionality; Purchasing, Accounting / Order taking, WMS, Pick To Voice and eCommerce to WLD at a project savings

## III. Proposed Project Objectives

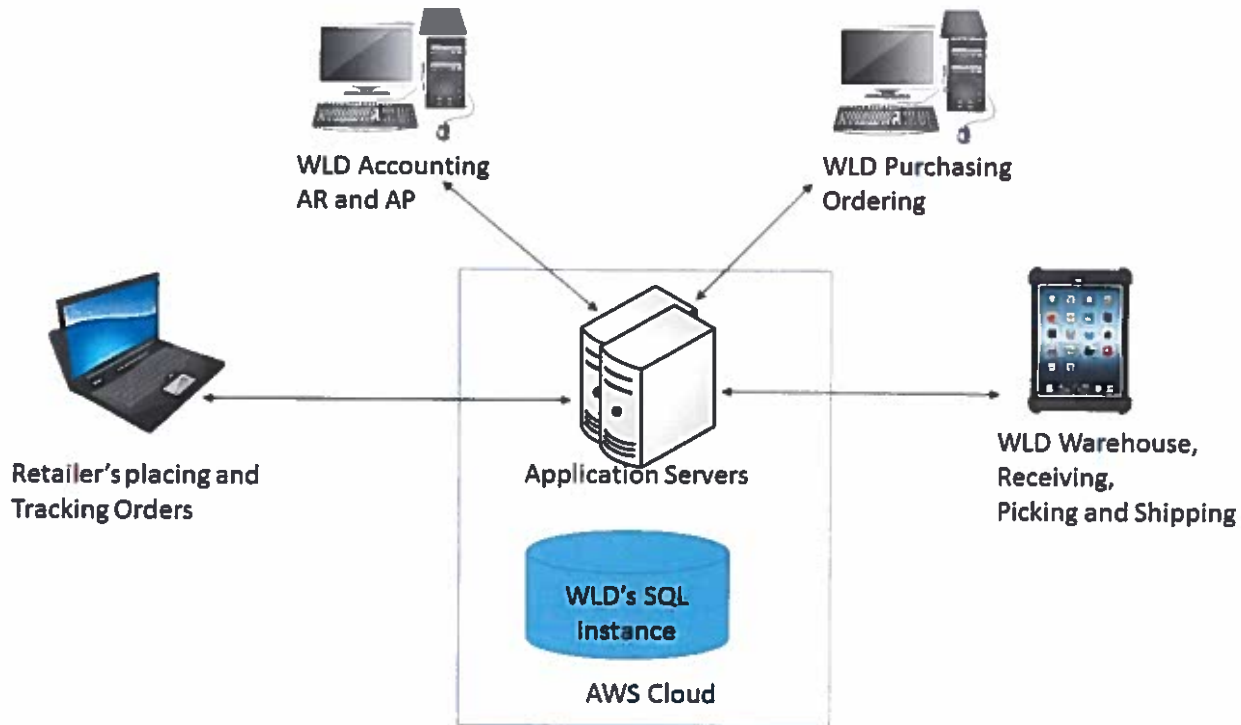
encompass will perform the following and it's estimated this could be done in 3 months.

- Provide the Project Management for the migration
- Migrate WLD's data from Epicor to encompass hosted SQL environment in AWS Cloud
- Configure encompass to for WLD's functions:
  - Purchasing,
  - Accounting / Order taking,
  - Warehouse Management System (WMS),
  - Pick To Voice
  - eCommerce
- Provide an onsite team to with the above expertize
- Provide onsite Support during and for 1-2 weeks after the migration as required.
- WMS Site Survey: Daily Rate per Person including Travel Day(s)
- Provide Reporting for all WLD Functions
- Provide the Licensing for the encompass application(s)



This process will ensure WLD can order, receive and ship wine and spirits it's primary function.

## encompasss High Level Process Flow



### IV. Business Risks

The risk associated with this project are:

- Redundant networking must be put into WLD's Campstool site as there is currently on a 1gb line and if down WLD will not be able to operate. It's estimated that this redundant line will cost \$800 per month.
- Support for the current Pick-to-Voice application will end September 31, 2020 and while WLD believes they could still use the application, there will not be support if issues occur. WLD will not have access to the code to make changes.
- Replacing the current Pick-to-Voice application is estimated to cost \$210,000 and the impact on Epicor and eLiquor is not clearly understood. If changes are required to those systems, additional funding will be required.
- Upgrading all three applications takes about 12-15 months at an estimated cost of \$795,000 and normally has to be done every 5-10 years.

## V. Alternative Solutions

WLD has not found an application like encompass that is specifically written for Liquor Distribution, handling all their required functions, however is using or has used the following applications after prior investigations:

**Epicor:** The current application that requires WLD to pay ~\$123,000 a year for maintenance (\$80k for Core and \$43 for Custom). eLiquor was written to interface with Epicor and is outdated. Pick-to-Voice interfaced with Epicor, however as noted will not be offered by Honeywell after September 31, 2020. Epicor was put into service under duress after SAP failed and at times Epicor is slow to address issues. As noted it will require about \$795,000 to update all three applications over the next 1-2 years.

**SAP:** WLD was on SAP for a short time and it imploded resulting in WLD operating off of Spreadsheets for six (6) months prior to bring up Epicor in 2006.

## VI. Project Management

Project Management will be handled by encompass and based on their expertise in converting other business is expected to take 3 months to complete. Please see the High Level Project Plan in Section III. Proposed Project Objectives.

## VII. Recommendation

Based on encompass being the only application WLD has been able to find that is specifically written for their business, WLD is requesting this Business Case be approved for the following reasons:

- 1) Positions WLD for the foreseeable future in an AWS Hosted SaaS environment fully supported by encompass
- 2) Can be done with existing funding
- 3) Eliminates the need to spend an estimated \$795,000 over the next 1-2 years to update existing applications. This cost will only increase and will need to be done every 5-10 years.
- 4) Eliminate the need to have servers and server support onsite at the Campstool site
- 5) Eliminates the need to fund Core and Custom Support Cost for Epicor which as times has been problematic is getting issues resolved.

# Business Case Budget Narrative

## I. Budget Summary

The cost to fund this project will come from existing funding within the Enterprise Budget. These costs are identified as Offset Cost and are as follows:

### Epicor, eLiquor and Pick-to-Voice Replacement Opportunity

Prepared By: Scott & Dave

Last Updated: 7/8/19

Description	Custom	Core	Year 1 Cost	Year 2 Cost	Year 3 Cost	Notes
<b>Software Maintenance</b>						
Epicor Support	\$41,000.00	\$83,000.00	\$124,000.00	\$124,000.00	\$142,600.00	
Epicor Change Request (CR)	\$15,000.00	\$15,000.00	\$15,000.00	\$15,000.00	\$17,250.00	Will increase over years
Software (Print Server)		\$950.00	\$950.00	\$950.00	\$1,092.50	
Pick-To-Voice		\$5,500.00	\$5,500.00	\$5,500.00	\$6,325.00	
eLiquor Maintenance		\$18,000.00	\$18,000.00	\$18,000.00	\$20,700.00	
Phones		\$5,612.50	\$5,612.50	\$5,612.50	\$6,454.38	
Phone Batteries		\$1,840.25	\$1,840.25	\$1,840.25	\$2,116.29	
<b>Software Total Maintenance</b>	<b>\$56,000.00</b>	<b>\$129,902.75</b>	<b>\$170,902.75</b>	<b>\$170,902.75</b>	<b>\$196,538.16</b>	
<b>Hardware Cost</b>						
Servers		\$17,025.00	\$17,025.00	\$17,025.00	\$17,025.00	
SAN		\$11,212.50	\$11,212.50	\$11,212.50	\$11,212.50	
Server Room Cost		\$2,550.00	\$2,550.00	\$2,550.00	\$2,550.00	30 U's at \$85 per month
SQL Licenses						
O/S License						
VMWare		\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	
Support Resource		\$25,000.00	\$25,000.00	\$25,000.00	\$25,000.00	25% FTE at \$100k per year
<b>Hardware Total</b>		<b>\$60,787.50</b>	<b>\$60,787.50</b>	<b>\$60,787.50</b>	<b>\$60,787.50</b>	

**Upgrade Cost**

Pick-to-Voice Upgrade	\$210,000.00	\$210,000.00			Will need to pay if we don't move to encompass and have to upgrade Pick-to-Voice (NOTE: THIS IS NOT BUDGETED)
Cliaquor Upgrade	\$160,000.00		\$160,000.00		Will need to pay if we don't move to encompass and have to upgrade Pick-to-Voice (NOTE: THIS IS NOT BUDGETED)
Epicore Upgrade	\$425,000.00		\$425,000.00		Will need to pay if we don't move to encompass and have to upgrade Pick-to-Voice (NOTE: THIS IS NOT BUDGETED)
<b>Total Upgrade Cost</b>	<b>\$795,000.00</b>	<b>\$210,000.00</b>	<b>\$585,000.00</b>	<b>0</b>	
<b>Total Offset Cost</b>	<b>\$56,000.00</b>	<b>\$985,690.25</b>	<b>\$441,690.25</b>	<b>\$816,690.25</b>	<b>\$257,325.66</b>

The Cost to implement encompass and potential savings are as follows:

**encompass Cost**

7/8/2019

Description	Cost	One Time	Year 1 Cost	Year 2 Cost	Year 3 Cost	Notes
Network	\$9,600.00		\$9,600.00	\$9,600.00	\$9,600.00	Will be on going
ITW	\$72,000.00	\$72,000.00	\$72,000.00	\$7,200.00	\$7,200.00	Scanners / Labels / etc 10% per year
Project Management	\$54,000.00	\$54,000.00	\$54,000.00			
Conversion / Migration	\$92,000.00	\$92,000.00	\$92,000.00			Last Epicor upgrade was \$310K
Support & Hosting	\$15,000.00		\$180,000.00	\$180,000.00	\$189,000.00	Upgrades included and scheduled rollouts
<b>Est Total Cost</b>		<b>\$218,000.00</b>	<b>\$407,600.00</b>	<b>\$196,800.00</b>	<b>\$205,800.00</b>	
<b>Total Offset Cost</b>			<b>\$441,690.25</b>	<b>\$816,690.25</b>	<b>\$257,325.66</b>	
<b>Projected Savings</b>			<b>(\$34,090.25)</b>	<b>(\$619,890.25)</b>	<b>(\$51,525.66)</b>	

**II. Expenses by Type**

Type	FY 19	FY 20	FY 21
One-time Costs	\$218,000		
On-going Costs	\$189,600	\$196,800	\$205,800

### III. Expenses by Funding Source

Funding Source	FY 19	FY 20	FY 21
General Funds			
Federal Funds			
School Foundation			
Other Funds - Enterprise	\$407,600	\$196,800	\$205,800

### IV. Expenses by Outcome

[List each deliverable and/outcome that is expected when implementing the proposed solution. Insert additional rows/columns as need.]

Outcome	FY 19	FY 20	FY 21
Migrate to encompass	\$407,600		
On-going encompass Licensing, Hosting and Support		\$196,800	\$205,800
<b>TOTALS</b>	\$407,600	\$196,800	\$205,800

### V. Expenses by Object Code

Description	Code	FY 19	FY 20	FY 21
<b>Personal Services</b>				
Salaries Classified	0103			
Salaries Other	0104			
Employer Pd Benefits	0105			
AWEC Salary & Benefits	0110			
<b>TOTAL Personal Services</b>				
<b>Supportive Services</b>				
Licenses-Registrations	0207			
Miscellaneous	0210			
Travel In State	0221			
Travel Out of State	0222			
Supplies	0230			
Office Equip-Furnish	0241			
Data Processing Reproduction Other Eq.	0242	\$72,000	\$7,200	\$7,200
Education-Recreational Tech	0246			
Equipment Rental	0252			
Maintenance Contracts External	0292			
<b>TOTAL Supportive Services</b>		\$72,000	\$7,200	\$7,200
<b>Central Services/Data Services</b>				

Central-Ser Data-Ser	0410			
Telecommunications	0420	\$9,600	\$9,600	\$9,600
<b>TOTAL Central Services/Data Services</b>		\$9,600	\$9,600	\$9,600
<b>Contractual Services</b>				
Professional Fees	0901	\$326,000	\$180,000	\$189,000
Consulting Services	0902			
Special Project & Services	0903			
<b>TOTAL Contractual Services</b>		\$326,000	\$180,000	\$189,000
<b>EXPENDITURES</b>	<b>TOTALS</b>	\$407,600	\$196,800	\$205,8000

## Business Case Checklist

[This checklist is designed as a guideline to determine the type of content that should be included in a business case. Not all criteria within this checklist may be applicable to the scenario. Criteria that is not applicable is not required to be documented for each business case. Include only the items that are applicable to the project. Any additional clarification will be discussed with the agencies upon review of the submitted business case.]

### Business Case Abstract

- A prior business case number is listed if an existing solution is in place
- The problem statement clearly defines the business problem
- Relative statutory, legislation, and/or mandates are listed (if appropriate)
- A proposed solution is clearly given
- Project costs are given and explained

### Executive Summary

- The executive summary presents a business reason driving the project
- An explanation as to why the proposed project is the best solution to resolve the given business problem.
- The executive summary is limited to a single page.

### Business Problem and Opportunity

- The business problem is clearly defined
- The opportunity to resolve the business problem is explained, i.e., funding, statutory requirements, federal mandates, technology, etc.
- Agency information is provided to support the problem/opportunity, i.e., business performance, strategic plan, mission, goals, objectives, mandates, cross agency collaborations and impacts, etc.
- A brief historical baseline surrounding the project and the business problem is given
- Considerations for location have been presented, such as rural development, telecommunications, facilities, etc.

### Proposed Project Objectives

- Project objectives are listed, such as technical architecture, customer and agency benefits, fiscal impact, efficiencies to be had, etc.
- Objectives are consistent with established agency business performance, mission, goals, and strategic plan
- The objectives are Project objectives align with business needs
- Customers and agency program affected by the project objectives are identified

### Business Risks

- Internal and external risks have been identified, including measurable and nonmeasurable information.

- Risks associated if the proposed project does not occur have been defined
- Risks associated with the project being deployed have been listed along with any tasks that may mitigate such risks.

### **Alternative Solutions**

- At least three alternative solutions have been investigated and compared to the proposed solution, one of which is maintaining the status quo.
- Alternatives include functional description, technical architecture, benefits, associated risks, and fiscal impact.

### **Project Management**

- A project manager or project management approach, either through external or internal sources, has been identified.
- Define the human resources involved or needed for this project, including executive support, internal and external key stakeholders, developers, business analysts, etc.
- An overview of the project timeline is given such as the time to get the project deployed, key milestone, and time expectancy of the deployed solution.

### **Recommendation**

- A proposed solution is clearly stated and the reasons the agency is recommending the solution

### **Budget Summary**

- Tangible and intangible costs are listed
- Initial investment, one-time costs, ongoing costs have been included
- Costs for non-financial benefits have been identified and included
- Funding sources have been identified
- Expenses by outcome during project deployment are listed
- Expenses by object code have been properly categorized and subtotals for each budget series has been entered.





*State of Wyoming*

## DEPARTMENT OF REVENUE

MATTHEW H. MEAD, *Governor*  
DAN W. NOBLE, *Director*

122 West 25th Street, 2-West, Cheyenne, Wyoming 82002-0110  
Telephone: (307) 777-7961 • Web: <http://revenue.state.wy.us> • E-mail: [dor@wy.gov](mailto:dor@wy.gov)  
Administration Fax (307)777-7722 • Property Tax Division Fax (307)777-7527 • Mineral Division Fax (307)777-3632 • Mineral Division Fax (307)777-

Date: July 12, 2019

To: Lori Galles, Procurement Division

From: Dan Noble

Subject: Wyoming Department of Revenue's Liquor Divisions – Encompass Technologies Request

The Wyoming Liquor Division (WLD) conducts operations using three applications that have been tailored to interact with each other:

- Epicor ERP Systems that handles Purchasing, Accounting and Warehousing
- eLiquor WLD Retailer Portal for Ordering and Broker information
- Pick-to-Voice Warehouse order picking system

The three systems were last updated in April 2015 at a cost of \$329,813.00.

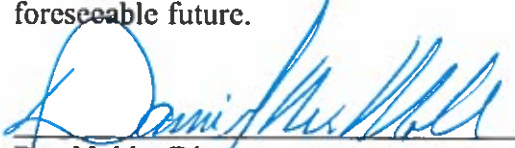
Earlier this year WLD was informed the Pick-to-Voice system had recently been acquired by Honeywell, and will no longer be supported in the liquor order picking system WLD is using it for. Support will terminate September 30, 2020. In addition, Epicor is on Version 7.4 sp6, and the latest Version of Epicor is 10.2. Epicor will need to be upgraded in the next 2-3 years. The eLiquor Portal is outdated, and WLD had created specifications for a rewrite. The rewrite was put on hold when the Pick-to-Voice end-of-support was announced. The estimated costs to replace Pick-to-Voice and update / rewrite Epicor and eLiquor are \$795,000.00.


WLD maintains servers and SAN in a computer room on-site to run the applications. This hardware requires updating every three (3) years. The cost to support these servers runs about \$61,000.00 per year. There are also concerns about the fire suppression system currently in place. Server rooms require halon gas fire suppression systems to protect the hardware. The server room at WLD has standard water based fire suppression which will destroy the servers if and when it is activated.

In WLD's investigation to replace the Pick-to-Voice system, a Fort Collins, CO company named Encompass Technologies specializing exclusively in liquor distribution was discovered. Encompass's application is the only solution found that will replace the "Pick to Voice" system, but also the eLiquor Portal and the ERP Accounting system while also enabling WLD to move to a cloud-based infrastructure capable of utilizing Software as a Service (SaaS) and Amazon Web Services (AWS). The cloud based solution removes the hardware replacement requirements and the concern of inadequate fire suppression. Encompass estimates they can port WLD onto their solution within 90 days.

WLD is planning to use existing maintenance funding for its current three applications to move to Encompass. This funding is payable October 1, 2019. Encompass includes upgrades, continuous server maintenance and patching in the license cost, resulting in a reduction in annual operating expense to the WLD expected to accumulate to hundreds of thousands of dollars of savings over a period of years. (Please see table on next page.)

Encompass Technologies is located at 420 Linden St #200, Fort Collins, CO 80524 and will migrate WLD's three applications to its SaaS AWS cloud-based solution for five hundred fifty six thousand dollars (\$556,000.00) including two years of licensing. WLD requests that a Sole Source for the migration and licenses be approved enabling WLD to remain operational and supportable for the foreseeable future.

  
 Dan Noble, Director  
 Department of Revenue  
 (307)777-5287

  
 Date

**Encompass Funding Overview**  
 8-Jul-19

Offset Cost:	Year 1	Year 2	Year 3
Software Maintenance	\$170,902.75	\$170,902.75	\$196,538.16
Hardware Cost	\$60,787.50	\$60,787.50	\$60,787.50
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**Contract #: 201118**

Entry Date: 3/24/2020 4:11:44 PM

**Department:** Wyoming Department of Revenue, Liquor Division

**Agency Contact:** Bauer, Arlis

**Phone:** 3077776189

**Other Agency Contact:**

WYOMING ATTORNEY  
GENERAL'S OFFICE

SEP 17 2020

Bobbi K. Owen  
APPROVED AS TO FORM

**Client Comments:**

**Contractor/Vendor Name:** Encompass Technologies Development, Inc.

**Contract Title:** New ERP System

**Contract Type:** IT Contract (routes to OCIO first)

**Contract Amount:** 0

**Contract Effective Date:**

**Contract Expiration Date:**

**Status:** AG Approved as to Form

**RETURN VIA:** Ink Signature - Inter-agency Mail

**Assigned Attorney:** Bobbi Owen

**INFORMATION TECHNOLOGY (IT) CONTRACT BETWEEN  
WYOMING DEPARTMENT OF REVENUE, WYOMING LIQUOR DIVISION  
AND  
ENCOMPASS TECHNOLOGIES DEVELOPMENT INC.**

1. **Parties.** The parties to this Contract are Wyoming Department of Revenue, Wyoming Liquor Division (Agency), whose address is: 122 West 25<sup>th</sup> Street, Cheyenne, WY 82002, and Encompass Technologies Development Inc.(Provider), whose address is: 420 Linden St #200, Fort Collins, CO 80524.
2. **Purpose of Contract.** The purpose of this Contract is to set forth the terms and conditions by which the Provider shall provide it's ERP solution to the Agency on Encompass's Software as a Service (SaaS) application hosted on Amazon's Web Services (AWS) cloud enabling the Agency to eliminate the use of its current applications and dedicated servers.
3. **Term of Contract.** This Contract is effective when all parties have executed it (Effective Date). The term of the Contract is from the Effective Date through September 30, 2022. All services shall be completed during this term.

This Contract may be extended four (4) times, with each extension being for a two (2) year period, by agreement of both parties in writing and subject to the required approvals. There is no right or expectation of extension and any extension will be determined at the discretion of the Agency.

4. **Payment.**
  - A. The Agency agrees to pay the Provider for the services described in Attachment A Master Subscription Agreement, which is attached to and incorporated into this Contract by this reference. Total payment under this Contract shall not exceed five hundred fifty six thousand dollars (\$556,000.00). As part of the grand total, when the Agency is running on the Encompass application, Agency shall pay Contractor a sum of one hundred forty-six thousand dollars (\$146,000.00). As another part of this grand total, Agency shall also pay Contractor eight (8) quarterly subscription payments in the amount of forty-five thousand dollars each (\$45,000.00). Payment shall be made within forty-five (45) days after submission of invoice pursuant to Wyo. Stat. § 16-6-602. Provider shall submit invoices in sufficient detail to ensure that payments may be made in conformance with this Contract.

- B. No payment shall be made for work performed before the Effective Date of this Contract. Should the Provider fail to perform in a manner consistent with the terms and conditions set forth in this Contract, payment under this Contract may be withheld until such time as the Provider performs its duties and responsibilities to the satisfaction of Agency.
- C. When the Provider is working at a location requiring an overnight stay, the Provider shall be reimbursed at the rates set out in Wyo. Stat. §§ 9-3-102 and 9-3-103.
- D. **Final Product Clause.**

At any time prior to Acceptance of the Encompass system and services, the parties agree that should the Encompass system and services materially fail to perform substantially in compliance with the Agency's specifications, the Provider's liability in such an event will be to return fees associated with product development and configuration. However, Provider will retain onsite consulting/travel fees. Prior to Acceptance, such termination decision will be at the sole discretion of the Agency and is in addition to any other Termination provisions contained within this Contract.

5. **Responsibilities of Provider.** The Provider agrees to:

Provide the services described in Attachment A Master Subscription Agreement.

6. **Responsibilities of Agency.** The Agency agrees to:

- A. Pay Provider in accordance with Section 4 above.
- B. Comply with duties set forth in Attachment A Master Subscription Agreement.

7. **Special Provisions.**

- A. **Change Control Management.** The Provider shall maintain a change control process with all changes which shall be approved through the Agency's change control board if the change was requested by the Agency. The Provider reserves the right to make platform and functional changes to continue providing functionality to all subscribers, to stay abreast of technology changes and security requirements without explicit or implicit approval of the Agency. These changes will be provided to Agency as part of the Subscription cost.

The change control process will include the reason for the change, a complete description of work to be performed, an estimate of time and cost



to complete the change, a completion date for the change and an impact analysis indicating ramifications or impact to the project. If unforeseen circumstances arise where a change order might be needed, the Provider will submit in writing a description of the problem and proposed resolution to the project manager and primary point of contact Greg Cook for their consideration. If change orders are needed, the Provider agrees provide the primary point of contact the cost of the requested change for approval prior to starting work.

If unforeseen circumstances arise where a dispute resolution might be needed, Provider will submit in writing a description of the problem and proposed resolution to the Agency Project Representative for consideration. If change orders are needed, the Provider agrees to continue at the hourly rate specified in Attachment A for Solution Engineering, Master Subscription Agreement.

In the event it is determined that a change to Attachment A, Master Subscription Agreement, is required, a Contract amendment will be made in accordance with the Contract. The change request will be used by the Provider as the justification for a change to the Master Subscription Agreement.

**B. Conflicting Language.** In the event of a conflict between the Contract, Attachment A, Master Subscription Agreement, or any other document attached or incorporated by reference, the following order of precedence will govern, in the order listed: (1) the Contract, (2) Attachment A, Master Subscription Agreement, then any other document incorporated by reference.

**C. Conflicts of Interest.**

(i) Provider shall not engage in providing consultation or representation of clients, agencies or firms which may constitute a conflict of interest which may result in a disadvantage to the Agency or a disclosure which may adversely affect the interests of the Agency. Provider shall notify the Agency of any potential or actual conflicts of interest arising during the course of the Provider's performance under this Contract. This Contract may be terminated in the event a conflict of interest arises. Termination of this Contract will be subject to a mutual settlement of accounts. In the event this Contract is terminated under this provision, the Provider shall take steps to ensure that all files, evidence, evaluations and data are provided to the Agency or its designee. This provision does not prohibit or

affect the Provider's ability to engage in consultations, evaluations or representation under agreement with other agencies, firms, facilities, or attorneys so long as no conflict exists.

(ii) A conflict of interest warranting termination of this Contract may include, but is not necessarily limited to, acting on behalf of a client in an adversarial proceeding against the State of Wyoming, its agencies, boards, commissions or the University of Wyoming, or initiating suits in equity including injunctions, declaratory judgments, writs of prohibition or quo warranto.

**D. Kickbacks.** Provider certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Contract, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Contract. If Provider breaches or violates this warranty, Agency may, at its discretion, terminate this Contract without liability to the Agency, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

**E. Monitoring Activities.** The Agency shall have the right to monitor all Contract related activities of the Provider and all subcontractors. This shall include, but not be limited to, the right to make site inspections at any time, to bring experts and consultants on site to examine or evaluate completed work or work in progress, and to observe all Provider personnel in every phase of performance of Contract related work.

**F. No Finder Fees.** No finder's fee, employment agency fee, or other such fee related to the procurement of this Contract will be paid by either party.

**G. Project Representative.** All project management and coordination for the Agency shall be through a single point of contact designated as the Project Representative. The Agency Project Representative for this project is Greg Cook.

Any and all work performed under this Contract will be subject to approval and acceptance by the Agency Project Representative. In no instance will the Provider's staff refer any matters to any Agency Director or Deputy Directors or any other official in Wyoming unless initial contact, both verbal and in writing, regarding the matter has first been presented to the Agency Project Representative.

All correspondence from the Provider shall be addressed directly to the Agency Project Representative. The Agency Project Representative or his



designee shall be responsible for corresponding and arranging meetings with Agency personnel and outside Agencies and associations.

The Agency Project Representative shall document performance of the Provider as to the satisfaction of any deliverables required to meet the requirements of the Contract.

The Provider will be required to perform its work in compliance with Agency technology standards, policies, and procedures, as well as any applicable Federal guidelines.

- H. Source Code Ownership and/or Escrow.** Encompass is a SaaS application hosted in the AWS Cloud and access to the software as a service is provided to the Agency based on the subscription fee for each month's worth of services. This software is proprietary and solely owned by Provider. In the event the Provider becomes insolvent, goes out of business or ceases to support the software, Provider agrees to transfer a copy of the source code, either custom or proprietary, to the Agency in order for the Agency to continue to support the software.
- I. System Failure or Damage.** In the event of system failure or damage, as defined in this paragraph, directly caused in whole or in part as a result of the services provided by the Provider, Provider agrees to use its best efforts to restore the system to operational capacity. System failure or damage for purposes of this Contract will mean the inability of any mechanism provided by the Provider pursuant to the terms of this Contract, to operate properly and, as a result of its failure to operate properly, critical government functions, including sending and receiving data information, are unable to be performed.
- J. Use of Subcontractors.** The Provider shall be wholly responsible for performance of the entire Contract whether or not subcontractors are used. In any event, whether or not there are subcontracting or joint venture arrangements, a prime provider shall be designated and the prime provider shall sign this Contract.
- K. Warranty of the Deliverables.** In the event that the Provider develops software and applications for the Agency, the Provider shall commit to a minimum warranty period of twelve (12) months for the software and applications related to this Contract. Notwithstanding prior acceptance of deliverables by the Agency, the Provider shall expressly warrant all delivered programs and documentation as properly functioning at the start of operations and compliant with the terms of the Contract thereafter. The warranty period will begin at the time the implementation of the application has been formally accepted in writing by the Agency. During the warranty

period, the Provider shall be responsible to correct, at its expense, any problems, defects and deficiencies reported which do not meet the specifications set forth in the Statement of Work. The Provider will correct all defects and deficiencies in the system and replace incorrect or defective programs and documentation within five (5) business days of notification from the Agency of such deficiencies or within such period as may be necessary to make correction(s) using all due diligence and dispatch as agreed upon between the Agency and the Provider. Deficiencies properly noted before expiration of the warranty will be covered regardless of such expiration. System modifications and other changes made during the Contract period will also be covered by this warranty.

- L. Limitation on Liability.** Under the terms of the Contract, the Provider shall not be held liable for data entered incorrectly into the system.

**8. General Provisions.**

- A. Amendments.** Any changes, modifications, revisions, or amendments to this Contract which are mutually agreed upon by the parties to this Contract shall be incorporated by written instrument, executed by all parties to this Contract.
- B. Applicable Law, Rules of Construction, and Venue.** The construction, interpretation, and enforcement of this Contract shall be governed by the laws of the State of Wyoming, without regard to conflicts of law principles. The terms “hereof,” “hereunder,” “herein,” and words of similar import, are intended to refer to this Contract as a whole and not to any particular provision or part. The Courts of the State of Wyoming shall have jurisdiction over this Contract and the parties. The venue shall be the First Judicial District, Laramie County, Wyoming.
- C. Assignment Prohibited and Contract Shall Not be Used as Collateral.** Neither party shall assign or otherwise transfer any of the rights or delegate any of the duties set out in this Contract without the prior written consent of the other party. The Provider shall not use this Contract, or any portion thereof, for collateral for any financial obligation without the prior written permission of the Agency.

The Agency may not sell, assign or transfer (including by sale of Agency’s equity or assets, or transfer to any parent, subsidiary or affiliate) any rights under this Contract without the Providers prior written consent.

- D. Audit and Access to Records.** The Agency and its representatives shall have access to any books, documents, papers, electronic data, and records of the Provider which are pertinent to this Contract.

The Provider shall immediately, upon receiving written instruction from the Agency, provide to any independent auditor or accountant all books, documents, papers, electronic data, and records of the Provider which are pertinent to this Contract. The Provider shall cooperate fully with any such independent auditor or accountant during the entire course of any audit authorized by the Agency.

- E. Availability of Funds.** Each payment obligation of the Agency is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation and which may be limited for any reason including, but not limited to, congressional, legislative, gubernatorial, or administrative action. If funds are not allocated and available for continued performance of the Contract, the Contract may be terminated by the Agency at the end of the period for which the funds are available. The Agency shall notify the Provider at the earliest possible time of the services which will or may be affected by a shortage of funds. No penalty shall accrue to the Agency in the event this provision is exercised, and the Agency shall not be obligated or liable for any future payments due or for any damages as a result of termination under this section.
- F. Award of Related Contracts.** The Agency may award supplemental or successor contracts for work related to this Contract or may award contracts to other contractors for work related to this Contract. The Provider shall cooperate fully with other contractors and the Agency in all such cases.
- G. Certificate of Good Standing.** The Provider shall provide to the Agency a Certificate of Good Standing from the Wyoming Secretary of State, or other proof that Provider is authorized to conduct business in the State of Wyoming, if required, before performing work under this Contract. Provider shall ensure that all annual filings and corporate taxes due and owing to the Secretary of State's office are up-to-date before signing this Contract.
- H. Compliance with Laws.** The Provider shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this Contract.
- I. Confidentiality of Information.** All documents, data compilations, reports, computer programs, photographs, data, and other work provided to or produced by the Provider in the performance of this Contract shall be kept confidential by the Provider unless written permission is granted by the Agency for its release. If and when Provider receives a request for information subject to this Contract, Provider shall notify Agency within ten (10) days of such request and shall not release such information to a third party unless directed to do so by Agency.

- J. Entirety of Contract.** This Contract, consisting of sixteen (16) pages; and Attachment A, Master Subscription Agreement, consisting of twelve (12) page(s); represent the entire and integrated Contract between the parties and supersede all prior negotiations, representations, and agreements, whether written or oral. In the event of a conflict or inconsistency between the language of this Contract and the language of any attachment or document incorporated by reference, the language of this Contract shall control.
- K. Ethics.** Provider shall keep informed of and comply with the Wyoming Ethics and Disclosure Act (Wyo. Stat. § 9-13-101, *et seq.*) and any and all ethical standards governing Provider's profession.
- L. Extensions.** Nothing in this Contract shall be interpreted or deemed to create an expectation that this Contract will be extended beyond the term described herein. Any extension of this Contract shall be initiated by the Agency and shall be accomplished through a written amendment between the parties entered into before the expiration of the original Contract or any valid amendment thereto, and shall be effective only after it is reduced to writing and executed by all parties to the Contract.
- M. Force Majeure.** Neither party shall be liable for failure to perform under this Contract if such failure to perform arises out of causes beyond the control and without the fault or negligence of the nonperforming party. Such causes may include, but are not limited to, acts of God or the public enemy, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather. This provision shall become effective only if the party failing to perform immediately notifies the other party of the extent and nature of the problem, limits delay in performance to that required by the event, and takes all reasonable steps to minimize delays.
- N. Indemnification.** The Provider shall release, indemnify, and hold harmless the State, the Agency, and their officers, agents, and employees from any and all claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of Provider's failure to perform any of the Provider's duties and obligations hereunder or in connection with the negligent performance of Provider's duties or obligations, including but not limited to, any claims, suits, liabilities, court awards, damages, costs, attorneys' fees, and expenses arising out of the Provider's negligence or other tortious conduct.
- O. Independent Contractor.** The Provider shall function as an independent contractor for the purposes of this Contract and shall not be considered an employee of the State of Wyoming for any purpose. Consistent with the

express terms of this Contract, the Provider shall be free from control or direction over the details of the performance of services under this Contract. The Provider shall assume sole responsibility for any debts or liabilities that may be incurred by the Provider in fulfilling the terms of this Contract and shall be solely responsible for the payment of all federal, state, and local taxes which may accrue because of this Contract. Nothing in this Contract shall be interpreted as authorizing the Provider or its agents or employees to act as an agent or representative for or on behalf of the State of Wyoming or the Agency or to incur any obligation of any kind on behalf of the State of Wyoming or the Agency. The Provider agrees that no health or hospitalization benefits, workers' compensation, unemployment insurance or similar benefits available to State of Wyoming employees will inure to the benefit of the Provider or the Provider's agents or employees as a result of this Contract.

**P. Nondiscrimination.** The Provider shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act (Wyo. Stat. § 27-9-105, *et seq.*), the Americans with Disabilities Act (ADA), 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto and shall not discriminate against any individual on the grounds of age, sex, color, race, religion, national origin, or disability in connection with the performance under this Contract.

**Q. Notices.** All notices arising out of, or from, the provisions of this Contract shall be in writing either by regular mail or delivery in person at the addresses provided under this Contract.

Notices shall be sent to:

Agency: Greg Cook, Wyoming Liquor Division Administrator  
Provider: Attention of the General Manager,

Addresses and persons specified for receipt may be changed on written notice to the other party.

**R. Notice of Sale or Transfer.** The Provider shall provide the Agency with notice of any sale, transfer, merger, or consolidation of the assets of the Provider. Such notice shall be provided in accordance with the notices provision of this Contract and, when possible and lawful, in advance of the transaction. If the Agency determines that the sale, transfer, merger, or consolidation is not consistent with the continued satisfactory performance of the Provider's obligations under this Contract, then the Agency may, at its discretion, terminate or renegotiate the Contract.

**S. Ownership and Destruction of Documents and Information.** Agency owns all documents, data compilations, reports, photographs, data, and other

work provided to or produced by the Provider in the performance of this Contract. Upon termination of services, for any reason, Provider agrees to return all such original and derivative information and documents to the Agency in a useable format. In the case of electronic transmission, such transmission shall be secured. The return of information by any other means shall be by a parcel service that utilizes tracking numbers. Upon Agency's verified receipt of such information, Provider agrees to physically and electronically destroy any residual Agency-owned data, regardless of format, and any other storage media or areas containing such information. Provider agrees to provide written notice to Agency confirming the destruction of any such residual Agency-owned data. Notwithstanding the foregoing sentences,

the Provider retains all ownership of and copyrights and other rights in all Software (as defined in Attachment A), including all functionalities, any Derivatives (as defined in Attachment A), and customization to or modification of the software, even if made at Agency's direction or cost. All customization/modifications may be included in the software generally and provided to other customers of the Provider.

Any duties performed by the Provider for Agency, including customization or Software modification pursuant to any SOW, **SHALL NOT BE DEEMED WORK FOR HIRE** under applicable laws, including any copyright laws, and Agency will not receive any ownership rights as a result. Agency is not entitled to obtain a copy of the Software, or to access the Software other than through the functionality provided by Provider.

- T. Patent or Copyright Protection.** The Provider recognizes that certain proprietary matters or techniques may be subject to patent, trademark, copyright, license, or other similar restrictions, and warrants that no work performed by the Provider or its subcontractors will violate any such restriction. The Provider shall defend and indemnify the Agency for any infringement or alleged infringement of such patent, trademark, copyright, license, or other restrictions.
- U. Prior Approval.** This Contract shall not be binding upon either party, no services shall be performed, and the Wyoming State Auditor shall not draw warrants for payment, until this Contract has been fully executed, approved as to form by the Office of the Attorney General, filed with and approved by A&I Procurement, and approved by the Governor of the State of Wyoming, or his designee, if required by Wyo. Stat. § 9-2-1016(b)(iv).
- V. Insurance Requirements.**



- (i) During the term of this Contract, the Provider shall obtain and maintain, and ensure that each subcontractor obtains and maintains, each type of insurance coverage specified in Insurance Coverage, below.
- (ii) All policies shall be primary over any insurance or self-insurance program carried by the Provider or the State of Wyoming. All policies shall include clauses stating that each insurance carrier shall waive all rights of recovery under subrogation or otherwise against Provider or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- (iii) The Provider shall provide Certificates of Insurance to the Agency verifying each type of coverage required herein. If the policy is a “claims made” policy instead of an “occurrence” policy, the information provided shall include, but is not limited to, retroactive dates and extended reporting periods or tails.
- (iv) All policies shall be endorsed to provide at least thirty (30) days advance written notice of cancellation to the Agency. A copy of the policy endorsement shall be provided with the Certificate of Insurance.
- (v) In case of a breach of any provision relating to Insurance Requirements or Insurance Coverage, the Agency may, at the Agency’s option, obtain and maintain, at the expense of the Provider , such insurance in the name of the Provider , or subcontractor, as the Agency may deem proper and may deduct the cost of obtaining and maintaining such insurance from any sums which may be due or become due to the Provider under this Contract.
- (vi) All policies required by this Contract shall be issued by an insurance company with an A.M. Best rating of A- VIII or better.
- (vii) The Agency reserves the right to reject any policy issued by an insurance company that does not meet these requirements.

**W. Insurance Coverage.** The Provider shall obtain and maintain the following insurance in accordance with the Insurance Requirements set forth above:

- (i) Commercial General Liability Insurance. Commercial general liability insurance (CGL) coverage, occurrence form, covering liability claims for bodily injury and property damage arising out of premises, operations, products and completed operations, and personal and advertising injury, with minimum limits as follows:

- (a) \$1,000,000.00 each occurrence;
- (b) \$1,000,000.00 personal injury and advertising injury;
- (c) \$2,000,000.00 general aggregate; and
- (d) \$2,000,000.00 products and completed operations.

The CGL policy shall include coverage for Explosion, Collapse and Underground property damage. This coverage may not be excluded by endorsement.

- (ii) Workers' Compensation and Employer's Liability Insurance. Employees hired in Wyoming to perform work under this Contract shall be covered by workers' compensation coverage obtained through the Wyoming Department of Workforce Services' workers' compensation program, if statutorily required. Employees brought into Wyoming from Provider's home state to perform work under this Contract shall be covered by workers' compensation coverage obtained through the Wyoming Department of Workforce Services' workers' compensation program or other state or private workers' compensation insurance approved by the Wyoming Department of Workforce Services, if statutorily required.

The Provider shall provide the Agency with a Certificate of Good Standing or other proof of workers' compensation coverage for all of its employees who are to perform work under this Contract, if such coverage is required by law. If workers' compensation coverage is obtained by Provider through the Wyoming Department of Workforce Services' workers' compensation program, Provider shall also obtain Employer's Liability "Stop Gap" coverage through an endorsement to the CGL policy required by this Contract, with minimum limits as follows:

- (a) Bodily Injury by Accident: \$1,000,000.00 each accident;
- (b) Bodily Injury by Disease: \$1,000,000.00 each employee; and
- (c) Bodily Injury by Disease: \$1,000,000.00 policy limit.

- (iii) Unemployment Insurance. The Provider shall be duly registered with the Department of Workforce Services and obtain such unemployment insurance coverage as required. The Provider shall supply Agency with a Certificate of Good Standing or other proof of unemployment insurance coverage.

- (iv) Automobile Liability Insurance. Automobile liability insurance covering any auto (including owned, hired, and non-owned) with minimum limits of \$1,000,000.00 each accident combined single



limit.

(v) Professional Liability or Errors and Omissions Liability Insurance. Professional liability insurance or errors and omissions liability insurance protecting against any and all claims arising from the Provider 's alleged or real professional errors, omissions, or mistakes in the performance of professional duties under this Contract, with minimum limits as follows:

- (a) \$1,000,000.00 each occurrence; and
- (b) \$1,000,000.00 general aggregate.

The policy shall have an extended reporting period of two (2) years.

(vi) Commercial Crime Insurance. Commercial crime insurance including employee dishonesty coverage with minimum limits of \$1,000,000.00 each occurrence.

(vii) Cyber Liability Insurance. Cyber liability insurance which shall be sufficiently broad to cover all duties and obligations undertaken by Provider and shall include, but not be limited to, claims involving infringement of intellectual property, including, but not limited to, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and network security, with minimum limits as follows:

- (a) \$2,000,000.00 each occurrence; and
- (b) \$2,000,000.00 general aggregate.

Coverage shall include breach response costs, regulatory fines and penalties, and credit monitoring expenses, with limits sufficient to respond to these obligations.

**X. Publicity.** Any publicity given to the projects, programs, or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices in whatever form, prepared by or for the Provider shall identify the Agency as the sponsoring agency and shall not be released without prior written approval from the Agency.

**Y. Severability.** Should any portion of this Contract be judicially determined to be illegal or unenforceable, the remainder of the Contract shall continue

in full force and effect, and the parties may renegotiate the terms affected by the severance.

**Z. Sovereign Immunity and Limitations.** Pursuant to Wyo. Stat. § 1-39-104(a), the State of Wyoming and Agency expressly reserve sovereign immunity by entering into this Contract and specifically retain all immunities and defenses available to them as sovereigns. The parties acknowledge that the State of Wyoming has sovereign immunity and only the Wyoming Legislature has the power to waive sovereign immunity. Designations of venue, choice of law, enforcement actions, and similar provisions shall not be construed as a waiver of sovereign immunity. The parties agree that any ambiguity in this Contract shall not be strictly construed, either against or for either party, except that any ambiguity as to sovereign immunity shall be construed in favor of sovereign immunity.

**AA. Taxes.** The Provider shall pay all taxes and other such amounts required by federal, state, and local law, including, but not limited to, federal and social security taxes, workers' compensation, unemployment insurance, and sales taxes.

**BB. Termination of Contract.** This Contract may be terminated, without cause, by either party upon ninety (90) days written notice. This Contract may be terminated by either party immediately for cause if the other party fails to perform in accordance with the terms of this Contract

If at any time during the performance of this Contract, in the opinion of the Agency, the work is not progressing satisfactorily or within the terms of this Contract, then, at the sole discretion of the Agency and after written notice to the Provider, the Agency may terminate this Contract or any part of it. As of the termination date, the Provider will be entitled to a pro rata payment for all work accomplished and accepted by the Agency.

**CC. Third-Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of third-party beneficiary, and this Contract shall not be construed so as to create such status. The rights, duties, and obligations contained in this Contract shall operate only between the parties to this Contract and shall inure solely to the benefit of the parties to this Contract. The provisions of this Contract are intended only to assist the parties in determining and performing their obligations under this Contract.

**DD. Time is of the Essence.** Time is of the essence in all provisions of this Contract.

- EE. Titles Not Controlling.** Titles of sections and subsections are for reference only and shall not be used to construe the language in this Contract.
- FF. Waiver.** The waiver of any breach of any term or condition in this Contract shall not be deemed a waiver of any prior or subsequent breach. Failure to object to a breach shall not constitute a waiver.
- GG. Counterparts.** This Contract may be executed in counterparts. Each counterpart, when executed and delivered, shall be deemed an original and all counterparts together shall constitute one and the same Contract. Delivery by the Provider of an originally signed counterpart of this Contract by facsimile or PDF shall be followed up immediately by delivery of the originally signed counterpart to the Agency.

The Provider's failure to deliver, either personally or via US Mail, postage prepaid, the originally signed counterpart to the Agency within five (5) business days shall be considered a material breach and may result in immediate termination of this Contract by the Agency.

**THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.**

9. **Signatures.** The parties to this Contract, either personally or through their duly authorized representatives, have executed this Contract on the dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this Contract.

The Effective Date of this Contract is the date of the signature last affixed to this page.

**AGENCY:**


WYOMING DEPARTMENT OF REVENUE, WYOMING LIQUOR DIVISION

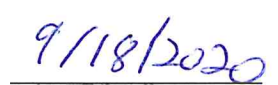
  
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Dan Noble

  
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Date

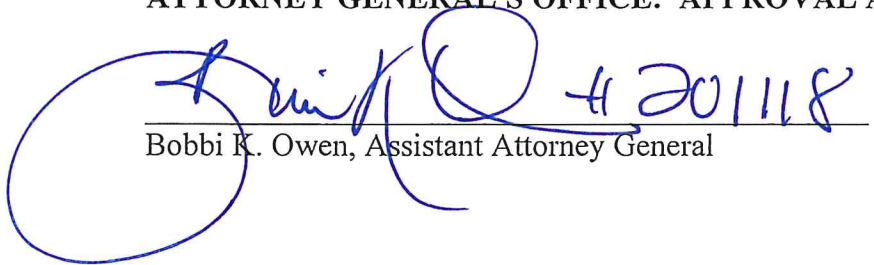
**PROVIDER :**


Encompass Technologies Development Inc.

  
\_\_\_\_\_  
Eric Nieters, VP Finance

  
\_\_\_\_\_  
Date

**ATTORNEY GENERAL'S OFFICE: APPROVAL AS TO FORM**

  
\_\_\_\_\_  
Bobbi K. Owen, Assistant Attorney General

  
\_\_\_\_\_  
Date

# Attachment A - Master Subscription Agreement



Wyoming Department of Revenue, Wyoming Liquor Division (Agency)

Migrating Agency to Encompass

**Provided by:**

Encompass Technologies Development Inc. (Provider)

420 Linden St #200, Fort Collins, CO 80524

(970) 449-8000

**September 9, 2019**

## General Description

This document is intended as a Master Subscription Agreement (MSA) in place of the State's Statement of Work (SOW) to identify and describe the work and services to be provided by Provider to the Agency. The goal of the project is to migrate the Agency's applications; Epicor, eLiquor, Pick-to-Voice, and Compliance Access DB off dedicated servers at the Agency's Campstool location to Provider's Software as a Service (SaaS) application hosted on Amazon's Web Services (AWS) cloud.

## Timeline and Deliverables

The following table details specific tasks, milestones, completion dates and estimated costs.

The Provider estimates approximately 3-6 months to completion the migration with a projected end date of September 30, 2022 which included the migration and twenty-four (24) months of subscription to the Provider's SaaS application on the AWS cloud. The Provider will pursue all options to complete this project ahead of schedule and under the quoted costs. Payments of invoices will be based upon the Provider meeting the stated deadlines for deliverables and upon the Agency's acceptance of the proposed deliverables.

The Agency and PROVIDER, in exchange for the services and fees outlined below, agree as follows:

1. **Definitions.** All capitalized terms have the meanings set forth in this MSA and Exhibit A.
2. **Exhibits and Other Terms.** The attached:
  - Exhibit A: Definitions
  - Exhibit B: Form Statement of Work ("SOW")
  - Exhibit C: Terms of Service

are all included as part of and incorporated in this MSA.

### 3. **Subscription to Software.**

(a) Access to Software. For so long as you pay those Fees specified in this MSA (which is attached as Exhibit A) and comply with the Terms of Service and other provisions of the Contract and this MSA, and the Term of this MSA is continuing, PROVIDER will grant you a revocable subscription to use, and provide you access to the Software.

(b) Services Provided. For the Fees specified in the SOW, PROVIDER will provide you with the following "**Services**" during the Term and any renewals of the Term:

- (i) a subscription for log-in access to and use of the Software. Access and use is worldwide, nonexclusive, non transferable, revocable and, without PROVIDER's consent, non



- assignable;
- (ii) conversion and configuration of your existing data to a Software database exclusive to you;
  - (iii) Up front training of your employees on the use of the Software, up to and in the two (2) weeks immediately following project completion;
  - (iv) technical phone support for the Software, from 7:00 am to 5:00 pm, Mountain Time Monday-Friday and after-hours Emergency support including weekends and the Memorial Day, Labor Day, Independence Day, Thanksgiving, Christmas, and New Year's Day holidays; and
  - (v) any other Services described in a SOW that the Agency and PROVIDER agree to upon execution of a Contract amendment under Section 8.A of the Contract..

TASK	DESCRIPTION	COST	DATE
1	WMS Site Survey: (Daily Onsite rate per person = \$1000 x 2 person days)	\$2,000	1 month after Contract execution
2	Data Conversion	\$40,000	1 month after Contract execution
3	Solutions Engineering	\$50,000	1 -3 months after contract execution
4	Project Management (Daily On-site rate per person = \$1000 x 12 person days)	\$12,000	1-6 months after Contract execution
5	WMS Lead/Subject Matter Expert: (Daily On-site rate per person = \$1000 x 12 person days)	\$12,000	1-6 months after Contract execution
6	Financials Subject Matter Expert: (Daily On-site rate per person = \$1000 x 12 person days)	\$12,000	1-6 months after Contract execution
7	On-site Support: (Daily On-site rate per person = \$750 x 24 person days)	\$18,000	3-6 months after Contract execution
8	Twenty Four (24) months of Subscription and Hosting <ul style="list-style-type: none"> <li>• Encompass ERP</li> <li>• Encompass Warehouse Management Solution (requires WiFi throughout the warehouse)</li> <li>• Encompass Financials</li> <li>• Encompass Voicepick</li> <li>• Estimated Monthly Retailer Ordering Based on 437 Invoices per Day</li> <li>• Estimated Monthly EDI Transaction Fee (ACH, Delivery Integration, 810s, 820s, 894s, ASNs)</li> </ul>	\$360,000	3-6 months after Contract execution
9	Incorporate WLD's Compliance Access Database and	\$0.00	3-6 months after Contract execution

	functionality, such as Direct Shipper Monthly Reporting and Tracking.		
10	10% Change Management	\$50,000	
	<b>TOTALS</b>	\$556,000	



## Expectations of State by Provider

The Provider will rely on the Agency to provide access to the Campstool site, Subject Matter Experts (SME) per functional area, assistance with contact information, review of milestones as they are completed, and general responsiveness to project needs and questions as they arise.

In addition, the Provider expects the Agency, at its cost, to:

- (a) purchase any hardware or equipment specified in any applicable SOW and necessary for use of the Software from PROVIDER at the prices/rates in the SOW or attached price sheets. The purchase price is non-refundable;
- (b) provide functional internet access and all equipment necessary to connect to the Software;
- (c) give PROVIDER personnel timely access to all people, areas and systems PROVIDER deems necessary to provide the Services;
- (d) make Agency employees who may access the Software available for training on a schedule agreed to by PROVIDER, and ensure their full and timely cooperation with PROVIDER; and
- (e) provide PROVIDER audit personnel with all necessary access to your Locations, books and records reasonably necessary, in PROVIDER' determination, for the performance of such audits.

The Provider appreciates any input and critiques, and will work closely with the Project Representative to ensure all goals and requirements of this project are met.

# EXHIBIT A

## DEFINITIONS

The following defined terms used in the MSA shall have the following meanings:

**“Confidential Information”** shall mean (i) any nonpublic proprietary Data entered into the Software by you or your Customers; (ii) all nonpublic information provided by either party hereto to the other party, (iii) PROVIDER’s Trade Secrets, and (iv) the financial terms of this MSA. Notwithstanding the above, “Confidential Information” does not include any information or material that: (A) is or becomes public other than by a breach by the receiving party of its obligations hereunder; or (B) is or becomes available to the receiving party without an obligation of confidentiality from a third party not subject, to the best of the receiving party’s knowledge, to an obligation of confidentiality; or (C) is already in the receiving party’s knowledge and/or possession prior to disclosure by the party creating the information/material.

**“Customer”** means your customers, suppliers, carriers, chains or vendors to whom you provide access to the Software in order to enter Data and to whom you sell, or use the services of to sell products.

**“Data”** means Customer identification information and , or your Customers’ accounts receivable, invoice history, routes and route stops, product or package data entered into the databases included in the Software.

**“Derivative”** means any computer software program developed containing any part of the Software, regardless of the form of the resulting code, the media it is carried on, or its intended use.

**“Emergencies”** for purposes of providing after-hours support means circumstances where you are basically unable to operate your business.

**“Location”** means each of your places of business in which one or more members of your administrative staff provide functions of an administrative nature, like: order, payroll or accounts payable processing; cash or account reconciliation; processing of customer reports; human resources services or labor scheduling. Places of business without administrative functions are not subject to Administrative Fees.

**“Project Completion”** means the population of your Data into the database used by the Software to enable you to use the Software and to create reports from such Data. Project Completion is achieved when (i) PROVIDER personnel verify that your Data has been inputted and falls within an acceptable margin of error through a report run on the first day of Software usage compared to the last day of predecessor software usage and such Data has been validated by Agency personnel; and (ii) the Software is capable of being used to deliver packaged goods to your Customers.

**“Software”** means that software-as-a-service, identified in the Contract between you and PROVIDER, from PROVIDER’ cloud-based computing environment and a suite of integrated custom and standardized operating systems, security products, and development tools (including database creation, the ability to host web sessions, user authentication and the ability to create custom dashboards and tables).

**“Terms of Service”** means the warranties, limitations on warranties, and other provisions contained in Exhibit C. The Terms of Service govern the relationship between you and PROVIDER and may be modified as provided in Exhibit C.

**“Trade Secrets”** mean the program structure, logic, data structures, design, processes, procedures, formulae, and algorithms contained in the ordered set of instructions, which may be disclosed by the Software.

# EXHIBIT B

## FORM STATEMENT OF WORK (Attached to the Contract between PROVIDER and Agency)

1. Scope of Work: PROVIDER shall perform the following Services:

(a) PROVIDER shall provide the following Software service(s):

**CHECK ALL APPLICABLE BOXES:**

<input checked="" type="checkbox"/>	Encompass ERP
<input checked="" type="checkbox"/>	Electronic Pick
<input checked="" type="checkbox"/>	Warehouse Management
<input checked="" type="checkbox"/>	Third Party Interfaces: WOLF, NABCA
<input checked="" type="checkbox"/>	Electronic Data Interchange
<input type="checkbox"/>	Fleet Tracker
<input checked="" type="checkbox"/>	DSDLink
<input checked="" type="checkbox"/>	Encompass Voice
<input checked="" type="checkbox"/>	Encompass Financials
<input type="checkbox"/>	Encompass Reflect
<input type="checkbox"/>	Optical Character Recognition

(b) Services shall be performed at the following SUBSCRIBER Location(s):

LOCATION NAME: Cheyenne  
LOCATION ADDRESS: 6601 Campstool Rd  
LOCATION CITY/STATE/POSTAL CODE: Cheyenne, WY 82002

2. Hardware and Equipment: You agree to purchase from PROVIDER the following hardware or equipment listed below:

**CHECK ALL APPLICABLE BOXES:**

<input type="checkbox"/>	Encompass PFDex
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	Encompass On Board Diagnostic Devices
	Encompass Scale Controller with iForks
	Encompass Vision QA System

All purchases of hardware/equipment are nonrefundable. See Exhibit C - Terms of Service for warranty information.

3. Fees. For the Services and initial and continued access to the Software, you agree to timely pay to PROVIDER the following “Fees”:
4. Project Services Fee. an “**Project Services Fee**” for actual work performed for project management, solutions engineering, auditing, software configuration and training. Your Project Services Fee is \$146,000.
5. Subscription Fee. a “**Subscription Fee**” of \$15,000 calculated monthly but billed and payable in accordance with Section 4 of the Contract. PROVIDER will invoice you at the beginning of each calendar quarter for three months of Subscription Fees.
6. The Monthly Subscription Fee is comprised of the following components which will be billed regardless of the Agency’s decision to use or not use all available functionality:
7. Encompass ERP: \$5,000 a month
8. Encompass WMS: \$3,000 a month
9. Encompass EDI: \$3,000 a month
10. Encompass DSDLink: \$2,000 a month
11. Encompass Voicepick: \$1,000 a month
12. Encompass Financials: \$1,000 a month
- 13.
14. Increase of Fees. The Subscription Fee is fixed for 24 months from the date of the Contract and is based on the current business profile of 2019 Dollar Volume, and thereafter, PROVIDER may increase the Subscription Fee (or any component of the Subscription Fee) each 24 months with written notice to you ninety (90) days prior to the increase. PROVIDER will not increase any Subscription Fee by more than the greater of: (i) 10% of the prior year’s Subscription Fee, or (ii) the percentage change over the prior 24 months in the U.S. Department of Labor’s most recently published Consumer Price Index, All Urban Consumers (CPI-U), U.S. City Average, not seasonally adjusted (1982-1984=100) or (iii) the percentage increase in Agency dollar volume.
15. Other Fees. The following additional fees : \_\_\_\_\_

Any future Services provided by PROVIDER after Project Completion will be for a Fee agreed to in a Contract Amendment. (See Attachment 1 for Fee Structure)

# EXHIBIT C

## ADDITIONAL TERMS OF SERVICE (attached to the Contract between PROVIDER and Agency)

Your and PROVIDER' obligations are governed by the MSA, including the following Terms of Service:

1. **Modification of Software.** PROVIDER may modify, install hotfixes or upgrade (collectively "Modify") the Software in its sole discretion from time to time at no cost to you. PROVIDER will try to give you advance notice of any modification, installation or upgrade that may impact your use of the Software and where commercially reasonable, make Modifications during the hours of 7 p.m. to 5 a.m. Mountain Time.
2. **Permitted Use of Software.** (a) You may only use the Software for the "Permitted Use", defined as:
  - (i) using the Software for your internal business purposes to provide distribution services to your Customers during the Term, and
  - (ii) allowing your Customers access to the Software, through your subscription and systems, to view and input Data to facilitate your distribution of goods to such Customers, so long as you:
    - (A) **do not** charge the Customer, whether by separate fee or markup of product cost, for access to the Software (unless otherwise allowed in this MSA); and
    - (B) issue to each Customer a unique username and password to log in to the Software.(b) You are NOT permitted to license, rent, lease, transfer, network, reproduce or distribute access to the Software, except as specifically provided, nor to provide access to persons not your Customers.
3. **Security Measures.** You will not, and will not allow your Customers to: (a) modify any links providing access to the Software; (b) modify the Software, or create any Derivatives; (c) intentionally or knowingly take any steps to avoid or defeat PROVIDER' security measures; (d) publicly share login information or passwords; (e) attempt to compromise authentication protocols or reverse engineer security measures; (f) seek to discover or disclose PROVIDER' Trade Secrets by disassembling, recompiling, or otherwise reverse engineering the Software. If you or your Customers breach of any of the foregoing obligations, PROVIDER may terminate your and/or your Customers' access to the Software immediately upon written notice.
4. **Representations and Warranties; Limitation on Warranties.**
  - (a) PROVIDER Representations and Warranties. Provider represents and warrants that:
    - (i) As to Software that:
      - (A) the Software does not infringe upon the intellectual property rights of any third party; and
      - (B) the Software will function substantially in accordance with PROVIDER's design for the Software, as it may be modified from time to time at PROVIDER' discretion.
    - (ii) As to proprietary hardware/equipment, PROVIDER will furnish parts and labor for the repair or replacement of proprietary hardware/equipment found to be defective in material or workmanship for a period of six (6) months from date of delivery. This warranty does not include normal wear and tear, modified hardware/equipment, damage from improper installation or use, or damage by accident or neglect. Provider may elect to recall, replace, or upgrade hardware/equipment at any time.
    - (iii) As to resold hardware/equipment (designated in the SOW by an \*), PROVIDER solely

Attachment A to Contract between Wyoming Department of Revenue, Wyoming Liquor Division  
And Encompass Technologies Development Inc.

transfers the warranty provided by the original manufacturer/seller, and you must deal with the warranty provider for any warranty claims.

(b) The agents and employees of PROVIDER are not authorized to make modifications to or additional warranties binding on PROVIDER. Any statements made in advertising or presentations, whether oral or written, do not constitute warranties by PROVIDER and you should not rely on them. The warranties in this Paragraph are in lieu of all other warranties, whether oral or written, express or implied.

(c) Limitation on Warranties. EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH 7, PROVIDER MAKES NO WARRANTY TO YOU, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AS TO THE SOFTWARE, OR AS TO THE AVAILABILITY GENERALLY OF CLOUD SERVICES OR THE THIRD PARTY HOSTING PROVIDER. The warranties in this MSA allocate risks of product failure between you and PROVIDER. You agree that PROVIDER' Software pricing reflects this allocation of risk and the limitations of liability contained in this MSA.

(d) PROVIDER DOES NOT WARRANT AND EXPRESS DISCLAIMS LIABILITY:

- (i) that the functionality of the Software will meet your specific data collection needs or representations made by you about the Software to third parties, including representations to your Customers, or required by any governmental or regulatory agency having jurisdiction over all or any portion of your operations;
- (ii) that the operation of the Software will be uninterrupted or error free;
- (iii) that the hosting provider hosting the Software will operate without interruption; or
- (iv) for Data entered by you or your Customers into the Software, and interruption of the Software caused by such Data. In the event you require PROVIDER to correct errors or issues caused by Data entered by you or your Customers, PROVIDER may charge you 150% of its standard Fee for such work.

# ATTACHMENT 1

(Attached to the Contract between PROVIDER and AGENCY)

## FEE SCHEDULE

Additional or future services that may be added via Contract amendment under Section 8.A. of the Contract will be billed according to the following fee structure:

- \$1,000 per day on-site for Installation Manager/Subject Matter Expert, including days spent traveling.
- \$1,000 per day for WMS Site Survey
- \$750 per day for on-site support personnel, including days spent traveling.
- \$100 per Hour for offsite Project Management
- \$250 per Hour for the Solution Engineering (Examples: Data Conversion, Report Creation)
- \$200 per Hour for On-line Training
- \$200 per Hour for Documentation Creation
- \$150 per Hour for Auditing
- all Travel Expenses of PROVIDER personnel related to Air, Auto, and Lodging