



# City of San Leandro

Meeting Date: April 18, 2016

## Staff Report

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**File Number:** 16-127                                      **Agenda Section:** CONSENT CALENDAR

**Agenda Number:** 8.H.

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Lianne Marshall  
Assistant City Manager

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** Staff Report for a Resolution Approving the Agreement with Strategic Products and Services, LLC for Network Upgrades

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### **SUMMARY AND RECOMMENDATIONS**

Staff recommends that the City Council approve a resolution authorizing the City Manager to execute an agreement with Strategic Products and Services, LLC (formerly ExtraTeam) to install and configure upgraded network infrastructure. The contract is in the amount of \$144,646.95.

### **BACKGROUND**

The City of San Leandro's Internet network infrastructure needs replacement. This project would install new hardware that would allow the City to increase its Internet bandwidth to 10 gigabits per second (10 Gbps).

### **Analysis**

Cloud computing applications have increased the City's Internet bandwidth requirements and future applications are expected to continue increasing these demands. While the City has built out a state-of-the-art fiber optics network, its internal Internet hardware has not kept pace.

The proposed project represents a complete upgrade of the City's Internet network architecture in order to maximize the City's significant investments in fiber optics technology.

The new design will increase bandwidth capacity to 10 gigabits per second while lowering the cost of Internet service by aggregating traffic onto one connection. The new design would be fully redundant, with primary and secondary Internet connections, capable of withstanding multiple types of failures.

Staff worked closely with consultants at ExtraTeam (acquired by Strategic Products and Services, LLC in March, 2015) to determine the network design. ExtraTeam has a long history of successful information technology projects with the City. Based on their extensive knowledge of the City's network topology and the overall quality of their design, which met all of the City's requirements, staff recommends that the City Manager award the professional services portion of the contract, valued at \$22,520.00 to ExtraTeam.

All hardware for this project will be purchased through a NASPO ValuePoint (formerly WSCA-NASCO) contract for computer equipment. The value of the hardware is \$96,674.40. Staff proposes that the non-professional services installation and equipment purchase requested here should be awarded as a sole source contract, which would be in accordance with California Public Contract Code section 3400(c)(2) in order to match existing hardware and software designs and installations.

### **Legal Analysis**

The City Attorney's Office reviewed and approved the purchase agreements.

### **Fiscal Impacts**

The total one-time cost to install the network hardware is \$144,646.95. This includes a combination of hardware costs and consultant services.

The ongoing hardware maintenance, which includes dedicated 24/7/365 support, will be \$14,945.40 per year. This cost will be partially offset by the reduction of maintenance fees on equipment that will be replaced as part of this project.

### **Budget Authority**

The Finance Director finds there are sufficient funds in the FY 2015-2016 IT operating budget (Account 688-13-121-7410) for the one-time cost and annual maintenance. Future maintenance will be paid from Account 688-13-001-5310.

### **ATTACHMENTS**

- Non-Professional Services Agreement between the City of San Leandro and Strategic Products and Services, LLC.
- City of San Leandro Network Upgrade Scope of Work (Exhibit A)
- City of San Leandro Network Upgrade Price Quote (Exhibit B)
- Sole Source Justification Form for Services
- NASPO ValuePoint (WSCA-NASPO) Request for Proposal for Computer Equipment

**PREPARED BY:** Tony Batalla, Information Technology Manager, City Manager's Office

2600546.1

NON-PROFESSIONAL SERVICES AGREEMENT BETWEEN  
THE CITY OF SAN LEANDRO AND  
STRATEGIC PRODUCTS AND SERVICES, LLC  
FOR  
NETWORK UPGRADE

THIS AGREEMENT for the purchase and installation of network products is made by and between the City of San Leandro ("City") and Strategic Products and Services, LLC ("Contractor") (together sometimes referred to as the "Parties") as of March 7, 2016 (the "Effective Date").

**Section 1. PRODUCTS AND SERVICES.** Subject to the terms and conditions set forth in this Agreement, Contractor shall provide to City the Products and Services described in the Scope of Work (SOW) attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the Effective Date and shall end on March 7, 2017 the date of completion specified in Exhibit A, and Contractor shall complete the work described in Exhibit A on or before that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Contractor to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as referenced in Section 8.
- 1.2 **Standard of Performance.** Contractor shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Contractor is engaged.
- 1.3 **Assignment of Personnel.** Contractor shall assign only competent personnel to perform services pursuant to this Agreement.
- 1.4 **Time.** Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Subsection 1.2 above and to satisfy Contractor's obligations hereunder.
- 1.5 **City of San Leandro Living Wage Rates.** This contract may be covered by the City of San Leandro Living Wage Ordinance (LWO). Bidder's attention is directed to the San Leandro Municipal Code, Title 1, Chapter 6, Article 6. Successful Bidder must submit completed self-certification form and comply with the LWO if covered.
- 1.6 **Product and Services Warranty.** Contractor is a reseller of certain manufacturers' products and services and warrant that Contractor is authorized to sell the products and services provided to City pursuant to this Agreement. City will receive the manufacturer's original warranty on the products purchased pursuant to this Agreement and Contractor provides no other actual or implied product warranty of any kind. Subject to the manufacturer's warranty and the applicable services warranty provided by Contractor

below, the product is provided as is. The warranty period for time and materials, implementation, installation and/or professional services deliverables will be thirty (30) days from the date on which Contractor informs City that the work is functionally complete. If City purchased full service Smart Net Maintenance Service at the time of the original sale, then labor will be provided at no extra charge during the contract period, otherwise Contractor then current labor charges will apply.

- 1.7 City's Responsibility.** City is responsible for the manner in which it uses the products and services provided pursuant to this Agreement, including the maintenance and security of City facilities; choice of equipment; software; related services; and all other matters related to how City uses such products and services. In the event that the products contain manufacturer's software, City shall not resell the software or provide access to the software either directly or indirectly to third parties unless authorized to do so in an order from Contractor. City will provide Contractor with all necessary access to the equipment and facilities subject to City's normal security policies and pursuant to this Agreement. City will allow Contractor technicians to conduct a comprehensive operation and performance evaluation of any equipment provided, installed, serviced, or maintained by a vendor other than Contractor. During evaluation, City will make all equipment and services intended for use with the products and services available to Contractor technicians, including computers, auxiliary audio and video sources, and all network and telecommunications services (ex: LAN, IP and ISDN).

**Section 2. COMPENSATION.** City hereby agrees to pay Contractor a sum not to exceed \$145,000.00, notwithstanding any contrary indications that may be contained in Contractor's proposal, for services to be performed and reimbursable costs incurred under this Agreement. In the event of a conflict between this Agreement and Contractor's proposal, attached as Exhibit B, regarding the amount of compensation, the Agreement shall prevail. City shall pay Contractor for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Contractor for services rendered pursuant to this Agreement. Contractor shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City in writing, Contractor shall not bill City for duplicate services performed by more than one person.

Contractor and City acknowledge and agree that compensation paid by City to Contractor under this Agreement is based upon Contractor's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Contractor. Consequently, the Parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Contractor and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 Invoices.** City agrees to pay an amount equal to fifty percent (50%) of the total charge for product, and fifty percent (50%) of total charge for services upon execution of this Agreement. The remaining balance of product charges, shipping, plus applicable taxes, is due upon delivery of the product pursuant to this Agreement. The remaining balance of

charges for services, plus applicable taxes, is due upon final invoice. Risk of loss of the product will pass to City upon shipment and City is responsible for providing and maintaining insurance against loss for the full replacement value of the products. Title to the products will pass to City when Contractor receives full payment for the products. Recurring charges for Smart Net Maintenance Services are invoiced in advance. City must pay all applicable taxes when invoiced. Invoices are due within thirty (30) days of the date of invoice. For past due invoices, City agrees to pay late payment charges of one and one-half percent (1.5%) of the overdue amount per month, or the maximum lawful amount, whichever is less. In the event of a disputed invoice, City agrees to pay the entire undisputed amount of such invoice by the due date and to include with the remittance sufficient detail for Contractor to ascertain what amount is in dispute and why. The Parties shall use good faith efforts to reconcile the disputed amount within thirty (30) days of receiving notification of any dispute. After one hundred and twenty (120) days any disputes unresolved at that time shall be referred to a collection agency at Contractor discretion.

- 2.2 **Total Payment.** City shall pay for the products and services to be rendered by Contractor pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Contractor in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Contractor submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment.

- 2.3 **Hourly Fees.** Fees for work performed by Contractor on an hourly basis shall not exceed the amounts shown on the compensation schedule attached hereto as Exhibit B.

- 2.4 **Reimbursable Expenses.** Reimbursable expenses are specified in Exhibit B, and shall not exceed \$0.00. Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total amount of compensation provided under this Agreement that shall not be exceeded.

- 2.5 **Payment of Taxes.** Contractor is solely responsible for the payment of employment taxes incurred under this Agreement and any similar federal or state taxes.

- 2.6 **Payment upon Termination.** In the event that the City or Contractor terminates this Agreement pursuant to Section 8, the City shall compensate the Contractor as follows: Product. If City cancels a product order, all product must be returned in resalable condition which means it is undamaged, factory sealed in the original manufacturers' packaging, and is complete with all manuals, cables, etc. Prior to returning the product, City must request

a Return Material Authorization ("RMA") through Contractor's customer service department. City is responsible for shipping the product(s) back to Contractor. If after receiving and inspecting the product, Contractor finds it meets the requirements above, Contractor will credit City account the applicable value of the returned product less a restocking fee of fifteen percent (15%). If Contractor determines that the product is not resalable, Contractor will send the product back to City and no credit will apply. Licenses and all other special order items are non-returnable.

Services. City agrees to pay for time and material services rendered up to and through the effective date of cancellation. City may terminate installation, implementation and/or professional services upon written notification and payment of the fees specified in Exhibit B for such service(s) up to and through the effective date of termination plus all non-refundable out-of-pocket expenses.

Maintenance. If City purchases Smart Net Maintenance Services or Dedicated Technician Services, the termination charge to cancel before the term is over is an amount equal to one year's fee or payment for the remaining term, whichever is less.

- 2.7 Authorization to Perform Services. The Contractor is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of authorization from the Contract Administrator.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Contractor shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Contractor only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein. Contractor shall make a written request to City to use facilities or equipment not otherwise listed herein.

- 3.1 Safety Requirements. In accordance with generally accepted construction practices and state law, Contractor shall be solely and completely responsible for conditions on the jobsite, including safety of all persons and property during performance of the work. This requirement shall apply continuously and not be limited to normal working hours.

Contractor shall take all necessary precautions and provide all necessary safeguards to prevent personal injury and property damage. Contractor shall provide protection for all persons including, but not limited to, its employees and employees of its subcontractors; members of the public; and employees, agents, and representatives of the City and regulatory agencies that may be on or about the work.

The services of the City in conducting review and inspection of Contractor's performance is not intended to include review of the adequacy of Contractor's work methods, equipment, bracing or scaffolding, or safety measures, in, on, or near any Contractor jobsite.

All work and materials shall be in strict accordance with all applicable state, city, county, and federal rules, regulations and codes, with specific attention to the United States

Department of Labor Occupational Health and Safety Administration (OSHA) requirements. Contractor shall be solely responsible for compliance with all city, county, and state explosive transport, storage, and blasting requirements and for any damages caused by such operations.

Contractor is hereby informed that work on City property could be hazardous. Contractor shall carefully instruct all personnel working on City property that all conditions of the property are potentially hazardous work areas as to potential dangers and shall provide such necessary safety equipment and instructions as are necessary to prevent injury to personnel and damage to property. Special care shall be exercised relative to work underground.

In addition to complying with all other safety regulations, Contractor shall abide by any and all other City requirements contained in any specifications, special conditions or manuals, which shall be made available by City upon request.

Contractor shall provide and maintain all necessary safety equipment such as fences, barriers, signs, lights, walkways, guards, and fire prevention and fire-fighting equipment and shall take such other action as is required to fulfill its obligations under this section. It is the intent of the City to provide a safe working environment under normal conditions. CONTRACTOR IS ADVISED THAT CITY'S OPERATIONS AND PROPERTY ARE INHERENTLY HAZARDOUS BECAUSE OF CONDITIONS SUCH AS CONFINED SPACES, POTENTIALLY EXPLOSIVE ATMOSPHERES, AND POSSIBLE EXPOSURE TO PATHOGENS.

Contractor shall maintain all portions of the jobsite in a neat, clean, and sanitary condition at all times.

Contractor shall keep adequate first aid facilities and supplies available and instruction in first aid for its employees shall be given.

**Section 4. INSURANCE REQUIREMENTS.** Before fully executing this Agreement, Contractor, at its own cost and expense, unless otherwise specified below, shall procure the types and amounts of insurance listed below against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Contractor and its agents, representatives, employees, and subcontractors. Consistent with the following provisions, Contractor shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects, and that such insurance is in effect prior to beginning work to the City. Contractor shall maintain the insurance policies required by this section throughout the term of this Agreement. The cost of such insurance shall be included in the Contractor's bid. Contractor shall not allow any subcontractor to commence work on any subcontract until Contractor has obtained all insurance required herein for the subcontractor(s) and provided evidence that such insurance is in effect to City. VERIFICATION OF THE REQUIRED INSURANCE SHALL BE SUBMITTED AND MADE PART OF THIS

AGREEMENT PRIOR TO EXECUTION. Contractor shall maintain all required insurance listed herein for the duration of this Agreement.

**4.1 Workers' Compensation.**

**4.1.1 General Requirements.** Contractor shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Contractor. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than \$1,000,000 per accident. In the alternative, Contractor may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the California Labor Code shall be solely in the discretion of the Contract Administrator.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the entity for all work performed by the Contractor, its employees, agents, and subcontractors.

**4.1.2 Submittal Requirements.** To comply with Subsection 4.1, Contractor shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section; and
- b. Waiver of Subrogation Endorsement as required by the section.

**4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General Requirements.** Contractor, at its own cost and expense, shall maintain commercial general liability insurance for the term of this Agreement in an amount not less than \$1,000,000 and automobile liability insurance for the term of this Agreement in an amount not less than \$1,000,000 per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum Scope of Coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form



CG 0001 (most recent edition) covering comprehensive General Liability on an "occurrence" basis. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001, Code 1 (any auto). No endorsement shall be attached limiting the coverage.

4.2.3 **Additional Requirements.** Each of the following shall be included in the insurance coverage or added as a certified endorsement to the policy:

- a. The Insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- b. City, its officers, officials, employees, and volunteers are to be covered as additional insureds as respects: liability arising out of work or operations performed by or on behalf of the Contractor; or automobiles owned, leased, hired, or borrowed by the Contractor.
- c. Contractor hereby agrees to waive subrogation which any insurer or contractor may require from vendor by virtue of the payment of any loss. Contractor agrees to obtain any endorsements that may be necessary to affect this waiver of subrogation.
- d. For any claims related to this Agreement or the work hereunder, the Contractor's insurance covered shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

4.2.4 **Submittal Requirements.** To comply with Subsection 4.2, Contractor shall submit the following:

- a. Certificate of Liability Insurance in the amounts specified in the section;
- b. Additional Insured Endorsement as required by the section;
- c. Waiver of Subrogation Endorsement as required by the section; and
- d. Primary Insurance Endorsement as required by the section.

4.3 **All Policies Requirements.**

4.3.1 **Acceptability of Insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A:VII.

- 4.3.2 **Verification of Coverage.** Prior to beginning any work under this Agreement, Contractor shall furnish City with complete copies of all Certificates of Liability Insurance delivered to Contractor by the insurer, including complete copies of all endorsements attached to the policies. All copies of Certificates of Liability Insurance and certified endorsements shall show the signature of a person authorized by that insurer to bind coverage on its behalf. If the City does not receive the required insurance documents prior to the Contractor beginning work, it shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete copies of all required insurance policies at any time.
- 4.3.3 **Deductibles and Self-Insured Retentions.** Contractor shall disclose to and obtain the written approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, employees, and volunteers; or the Contractor shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- 4.3.4 **Wasting Policies.** No policy required by this Section 4 shall include a "wasting" policy limit (i.e. limit that is eroded by the cost of defense).
- 4.3.5 **Endorsement Requirements.** Each insurance policy required by Section 4 shall be endorsed to state that coverage shall not be canceled by either party, except after 30 days' prior written notice has been provided to the City.
- 4.3.6 **Subcontractors.** Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.
- 4.4 **Remedies.** In addition to any other remedies City may have if Contractor fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Contractor's breach:
- Order Contractor to stop work under this Agreement or withhold any payment that becomes due to Contractor hereunder, or both stop work and withhold any payment, until Contractor demonstrates compliance with the requirements hereof; and/or
  - Terminate this Agreement in accordance with Section 8.

**Section 5. INDEMNIFICATION AND CONTRACTOR'S RESPONSIBILITIES.**

Contractor shall indemnify, defend with counsel acceptable to City, and hold harmless City and its officers, officials, employees, agents and volunteers from and against any and all liability, loss, damage, claims, expenses, and costs (including without limitation, attorney's fees and costs and fees of litigation) (collectively, "Liability") of every nature arising out of or in connection with Contractor's performance of the Services or its failure to comply with any of its obligations contained in this Agreement, except such Liability caused by the sole negligence or willful misconduct of City.

The Contractor's obligation to defend and indemnify shall not be excused because of the Contractor's inability to evaluate Liability or because the Contractor evaluates Liability and determines that the Contractor is not liable to the claimant. The Contractor must respond within 30 days, to the tender of any claim for defense and indemnity by the City, unless this time has been extended by the City. If the Contractor fails to accept or reject a tender of defense and indemnity within 30 days, in addition to any other remedy authorized by law, so much of the money due the Contractor under and by virtue of this Agreement as shall reasonably be considered necessary by the City, may be retained by the City until disposition has been made of the claim or suit for damages, or until the Contractor accepts or rejects the tender of defense, whichever occurs first.

Notwithstanding the forgoing, to the extent this Agreement is a "construction contract" as defined by California Civil Code Section 2782, as may be amended from time to time, such duties of Contractor to indemnify shall not apply when to do so would be prohibited by California Civil Code Section 2782.

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Contractor shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

## **Section 6. STATUS OF CONTRACTOR.**

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Contractor shall be an independent contractor and shall not be an employee of City. City shall have the right to control Contractor only insofar as the results of Contractor's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subsection 1.3; however, otherwise City shall not have the right to control the means by which Contractor accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Contractor and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.

- 6.2 **Contractor Not an Agent.** Except as City may specify in writing, Contractor shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Contractor shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

**Section 7. LEGAL REQUIREMENTS.**

- 7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2 **Compliance with Applicable Laws.** Contractor and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3 **Licenses and Permits.** Contractor represents and warrants to City that Contractor and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Contractor represents and warrants to City that Contractor and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions. In addition to the foregoing, Contractor and any subcontractors shall obtain and maintain during the term of this Agreement valid Business Licenses from City.
- 7.4 **Nondiscrimination and Equal Opportunity.** Contractor shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Contractor under this Agreement. Contractor shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Contractor thereby.

Contractor shall include the provisions of this Subsection in any subcontract approved by the Contract Administrator or this Agreement.

**Section 8. TERMINATION AND MODIFICATION.**

- 8.1 **Termination.** City may cancel this Agreement at any time and without cause upon written notification to Contractor.

Contractor may cancel this Agreement upon 10 days' written notice to City and shall include in such notice the reasons for cancellation.

In the event of termination, Contractor shall be entitled to compensation in accordance with Section 2.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Contractor understands and agrees that, if City grants such an extension, City shall have no obligation to provide Contractor with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the Contract Administrator, City shall have no obligation to reimburse Contractor for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 **Amendments.** The Parties may amend this Agreement only by a writing signed by all the Parties.
- 8.4 **Assignment and Subcontracting.** City and Contractor recognize and agree that this Agreement contemplates personal performance by Contractor and is based upon a determination of Contractor's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Contractor. Contractor may not assign this Agreement or any interest therein without the prior written approval of the Contract Administrator. Contractor shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors noted in the proposal, without prior written approval of the Contract Administrator.
- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Contractor shall survive the termination of this Agreement.
- 8.6 **Termination for Breach.** If a Party materially breaches its obligations under this Agreement and the breach is not cured within thirty (30) days of receipt of notice, then the non-defaulting Party will have the right to terminate this Agreement effective upon receipt of termination notice.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 **Records Created as Part of Contractor's Performance.** All reports, data, maps, models, charts, studies, surveys, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Contractor prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Contractor hereby agrees to deliver those documents to the City upon termination of the Agreement. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. City and Contractor agree that, until

final approval by City, all data, plans, specifications, reports and other documents are confidential and will not be released to third parties without prior written consent of both Parties.

- 9.2 **Contractor's Books and Records.** Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of 3 years, or for any longer period required by law, from the date of final payment to the Contractor to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Subsection 9.2 of this Agreement requires Contractor to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds \$10,000.00, the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of 3 years after final payment under the Agreement.

## **Section 10. MISCELLANEOUS PROVISIONS.**

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Alameda or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the Parties.

- 10.6 **Conflict of Interest.** Contractor may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Contractor in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Contractor shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Section 1090 *et seq.*

Contractor hereby warrants that it is not now, nor has it been in the previous 12 months, an employee, agent, appointee, or official of the City. If Contractor was an employee, agent, appointee, or official of the City in the previous 12 months, Contractor warrants that it did not participate in any manner in the forming of this Agreement. Contractor understands that, if this Agreement is made in violation of California Government Code Section 1090 *et seq.*, the entire Agreement is void and Contractor will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Contractor will be required to reimburse the City for any sums paid to the Contractor. Contractor understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of California Government Code Section 1090 *et seq.*, and, if applicable, will be disqualified from holding public office in the State of California.

- 10.7 **Solicitation.** Contractor agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.
- 10.8 **Contract Administration.** This Agreement shall be administered by Anton D. Batalla ("Contract Administrator"). All correspondence shall be directed to or through the Contract Administrator or his or her designee.

- 10.9 **Notices.** Any written notice to Contractor shall be sent to:  
Strategic Products and Services, LLC  
Attn: Legal Department  
300 Littleton Road, Suite 200  
Parsippany, NJ 07054

Any written notice to City shall be sent to:  
City of San Leandro  
c/o Anton Batalla  
835 East 14<sup>th</sup> Street  
San Leandro, CA 94577

With a copy to:  
City of San Leandro  
Department of Finance  
c/o Purchasing Technician  
835 East 14<sup>th</sup> Street

San Leandro, CA 94577

- 10.10 **Integration.** This Agreement, including the scope of work attached hereto and incorporated herein as Exhibits A, B, represents the entire and integrated agreement between City and Contractor and supersedes all prior negotiations, representations, or agreements, either written or oral.

Exhibit A            Scope of Services

Exhibit B            Compensation Schedule & Reimbursable Expenses

- 10.11 **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

- 10.12 **Certification per Iran Contracting Act of 2010.** In the event that this contract is for one million dollars (\$1,000,000.00) or more, by Contractor's signature below Contractor certifies that Contractor, and any parent entities, subsidiaries, successors or subunits of Contractor are not identified on a list created pursuant to subdivision (b) of Section 2203 of the California Public Contract Code as a person engaging in investment activities in Iran as described in subdivision (a) of Section 2202.5, or as a person described in subdivision (b) of Section 2202.5 of the California Public Contract Code, as applicable.

**SIGNATURES ON FOLLOWING PAGE**



The Parties have executed this Agreement as of the Effective Date. The persons whose signatures appear below certify that they are authorized to sign on behalf of the respective Party.

CITY OF SAN LEANDRO

Strategic Products and Services, LLC

\_\_\_\_\_  
Chris Zapata, City Manager

\_\_\_\_\_  
[NAME, TITLE]

Attest:

\_\_\_\_\_

\_\_\_\_\_  
Tamika Greenwood, City Clerk

Approved as to Fiscal Authority:

\_\_\_\_\_  
David Baum, Finance Director

\_\_\_\_\_  
Account Number

Approved as to Form:

\_\_\_\_\_  
Richard D. Pio Roda, City Attorney

2606078.1

**Exhibit A:**

**City of San Leandro**

**Firewall and Internet Upgrade**

*a business proposal*



## Exhibit A: City of San Leandro Firewall and Internet Upgrade

February 9, 2016

### Introduction

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The City of San Leandro is currently operating separate Internet connections at various locations with the main purpose of providing Internet access to those locations. The City would like to consolidate these separate Internet connections into a single 10Gig connection located at City Hall. The new 10Gig Internet connection will also operate with the BGP routing protocol for the sole purpose of failover to a secondary service provider (also running BGP) on a 100Mb link also at City Hall. BGP will provide active/standby failover as both service providers will share the same Internet IP addresses (BGP announced prefix(es)) and the “secondary line” will not be usable when the primary is up.

The City will purchase new firewalls for this connectivity, a primary ASA5585-X-SSP20 for the 10G link and an ASA5515-X for the 100Mb backup link. The configuration of these two firewalls will be manually synchronized. The main “inside” connection will be to City Hall networks (via a full 1Gig connection); the Police Department will receive its Internet via a new DMZ (also a full 1Gig connection); and 3 other locations (2 wireless service locations and “library public”) will receive internet via new DMZs (full 1Gig); and 3 existing DMZs will be trunked from a 1Gig DMZ. **The 5585-X-SSP20 has a maximum total throughput of 10G with “real-world throughput” at 5G.** Failover between service providers and 5585/5515 will be automatic for City Hall and Police Department (as both are capable of a dynamic routing protocol, expected EIGRP). Failover between service providers and 5585/5515 for all other DMZs shall be done as a manual process.

This statement of work shall provide professional services to the City for the implementation of the new firewalls, planning and executing of a migration to the new firewall/Internet design, and an onsite production cut-over.

ExtraTeam is pleased to provide the following proposal for professional services.

### Project Proposal

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All tasks in the below sections (with except of cutover) shall be performed remotely using collaborative technology (phone and web conferencing, etc) during standard business hours. There is a single cutover event for the new firewalls and Internet. ExtraTeam will provide an onsite engineer for the cutover event which is assumed during an afterhours time period. Day-1 post cutover support shall be performed remotely.

ExtraTeam will be responsible for the following tasks and deliverables associated with this project.

### **Phase 1: Firewall and Internet Migration Planning**

- Develop a migration plan to migrate existing Cisco ASA5520 configurations to Cisco ASA5585. Configuration will migrate like-for-like except the following:
  - Public IP Addresses will change as the ISP is changing. A new IP subnet will be allocated by the ISP and routed in BGP. Firewall configurations must change to accommodate the IP address change.
    - IPSEC site-to-site VPNs at remote City locations: ExtraTeam will change/reconfigure upto 3 remote City owned devices to accommodate new IP addresses: ASA firewalls (5505 or similar) or SOHO Cisco Routers (IOS based).
    - The City will be responsible for DNS changes or changes needed outside of City owned Cisco network equipment to accommodate the IP address change.
  - EIGRP routing will be enabled on the “inside” interface to enable automatic failover of City Hall networks to backup 5515 or backup 100Mb ISP.
  - A new DMZ will be provisioned to provide Internet access to the Police Department, connected to a new 3850 IP-Services switch stack.
    - EIGRP routing will be enabled on this “Police Internet DMZ” to enable automatic failover of Police networks to backup 5515 or backup 100Mb ISP.
    - The 3850 IP-Services switch stack will make routing decisions and provide a new fiber connection to the PD for Internet.
  - 3 new DMZs will be provisioned to provide Internet access to remote locations who’s networks are currently trunked back to City Hall via fiber optic cable:
    - 2 separate wireless networks (connected as 1G Ethernet to the ASA firewalls).
    - The “library public” network (connect as 1G Ethernet to the ASA firewalls).
    - A new 2960-X switch stack will be provisioned to provide Layer-2 VLANs for the DMZs and 1G connectivity.
    - NOTE: VLANs are assumed trunked via fiber optic cables to the remote sites, shall exist as Layer-2 only VLANs on City Hall switching equipment, connected as 1G access ports to the ASA firewalls.
- BGP Planning:
  - Teleconference with ISPs (Internet Service Providers) to assist with the provisioning and related planning with turn-up of BGP routing.
  - The design will require the service providers to announce (via BGP) a single default route (0.0.0.0/0) for the entire Internet. The 10G provider’s 0.0.0.0/0 will always be preferred. NOTE: there are rare conditions such that a service provider may be having problems with their own network or peering connections, yet that provider still announces a route for 0.0.0.0/0 to us. In this case, we are unable to automatically failover to the backup provider because the primary provider must first stop announcing 0.0.0.0/0 route to indicate that their Internet is down. This caveat is commonly accepted by customers if they trust the reliability of their service provider’s network. The only “perfect failover” requires dedicated ASR routers to accept full Internet routing tables (nearly 1 million IP routes, which the ASA firewall cannot handle).
  - The primary 10G service provider will assign 1 or more IP Address blocks for use on the Internet. This IP address block will be shared by both providers, with the primary provider having a higher preference.

- Develop a testplan to include a handful of core test cases to validate like-to-like functionality as well configurations which have changed. Define simulated failure scenario with targeted hosts for validation of fail-over.
- Review and get approval from City of San Leandro IT team prior to actual migration.

### ***Phase 2: Configuration Staging and Preparation***

- Stage and prepare configurations of the following equipment prior to migration/cut-over:
  - (1) 5585-X primary firewall.
  - (1) 5515 backup firewall.
  - Upto (3) ASA firewalls (5505 or similar) or SOHO Cisco Routers (IOS based) at City locations which make a site-to-site IPSEC VPN connection back to the main City Hall firewall.
  - (2) 3850 12-Port 1GE and 4 Port 1G Fiber switches in single stack configuration to perform routing decisions in PD for the new internet connection.
  - (2) 2960-X 24-Port 1GE switches in a single stack configuration to provide Layer-2 VLANs and connectivity for the DMZs.
  - Configurations on existing switching/routing equipment needed to support the new Internet connectivity and failover at City Hall, Police Department, and other affected locations.

### ***Phase 3: Cutover***

- Provide onsite engineering for cutover:
  - New 10Gig Primary Internet.
  - BGP routing with 10G primary and 100Mb backup link.
  - New 5585-X primary firewall.
  - New 5515 backup firewall.
  - New 3850 switch stack at PD.
  - New 2960-X switch stack for DMZ at City Hall.
  - As required, changes to existing network equipment on the City network.
- Provide remote post go-live support.

### ***Training***

- There is no formal training for end users or administrators included in this proposal. ExtraTeam will include knowledge transfer to Exhibit A: City of San Leandro IT staff throughout the project.

### ***Documentation***

- ExtraTeam will provide as-built configuration files for devices which have changed as part of this project.
- ExtraTeam will provide updates to the existing Visio diagram of the City network for changes that were made as part of this project. The existing City network Visio diagram which has been provided to ExtraTeam.

## Project Coordination

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The ExtraTeam Project Coordinator shall work with the customer to manage the project timeline and all ExtraTeam resources. The Project Coordinator shall be the single point of contact for all non-technical communications including changes in project scope, timelines, and deliverables.

### ***Project Management (additional services, not included)***

ExtraTeam offers PMP-certified project management services “above and beyond” the project coordination services included in this proposal. These services are offered for an additional fee, and may include deliverables such as:

- Onsite project meetings
- Project Plan that includes customer resource allocation
- Equipment inventory and facilities readiness inventory, if appropriate
- Third-party vendor coordination
- End User Communication (may include Communication Plan, Adoption Plan, and Training Plan)

### ***Project Change Management***

During the course of the project, Exhibit A: City of San Leandro may request significant feature or functionality changes that are beyond the scope of the original Statement of Work, and/or are not specified in the customer-approved Design Documentation. In the event that Exhibit A: City of San Leandro requests such a change, the ExtraTeam Project Coordinator will submit a Change Order for this request. No work will commence on the change until the Change Order is approved by both ExtraTeam and Exhibit A: City of San Leandro.

## Project Completion

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ExtraTeam will make commercially reasonable efforts to complete the activities described in the Project Proposal section as limited by the assumptions described in this document and the Customer’s performance of responsibilities pursuant to the *Customer Responsibilities* section below.

Exhibit A: City of San Leandro will be responsible for acknowledging delivery of the project by signing a Project Acceptance document at the conclusion of this engagement. If ExtraTeam is not notified of any problems with the work within 30 days of the completion of the engagement, the services delivered will be deemed accepted.

## Assumptions

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This proposal assumes the following:

- All work will be scheduled in advance. This consulting engagement does not include on-call or emergency support services. ExtraTeam provides a separate 24x7 priority support contract for emergency service.
- Desktop level configuration changes and software deployments by ExtraTeam engineers are out of scope for this engagement. This includes software client installations, GPO, and registry settings. These changes must be implemented by Exhibit A: City of San Leandro staff with direction and assistance from the Project Team.

## Customer Sites

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This engagement will involve the following customer sites: City of San Leandro

ExtraTeam will deliver engineering services for this project onsite at City of San Leandro and via remote access, such as secure VPN.

## Customer Responsibilities

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Exhibit A: City of San Leandro or its designated partners shall perform the following:

- Exhibit A: City of San Leandro will designate a person to whom ExtraTeam can address all communications and who has the authority to act on all aspects of the Services. Such person shall be identified as the Customer Project Manager.
- Exhibit A: City of San Leandro will designate a back up to the primary Customer Project Manager who has the same authority when the primary Customer Project Manager is not available.
- Exhibit A: City of San Leandro will provide access to Customer facilities associated with this engagement, including equipment rooms and data centers. For all onsite service engagements, Exhibit A: City of San Leandro will provide ExtraTeam with a dedicated and suitable workspace such as a dedicated desk, cubicle, or office.
- Exhibit A: City of San Leandro will provide ExtraTeam with remote access to networks and systems associated with this project using VPN or other technologies agreed upon by both parties.
- Exhibit A: City of San Leandro will provide full administrative-level account access privileges when recommended or required by vendor documentation for all devices and domains directly related to the project. Any additional costs incurred by Exhibit A: City of San Leandro or ExtraTeam as a result of delays or inability to provide such access will be the sole responsibility of the Exhibit A: City of San Leandro.

- Unless otherwise noted in the *Project Proposal* section above, Exhibit A: City of San Leandro is responsible for the installation, configuration, and testing of all external communication equipment and materials not provided by ExtraTeam. This includes, but is not limited to, circuits provided by telecommunications service providers. Likewise, Exhibit A: City of San Leandro is responsible for all physical equipment installations, including: rack mounts, cabling, station-area wiring, and connectivity to power.
- If requested, Exhibit A: City of San Leandro will provide comprehensive documentation for existing network and system deployments not installed or maintained by ExtraTeam, including physical and logical schematics, prior to service commencement.
- Unless otherwise agreed to by the parties, Exhibit A: City of San Leandro will respond within two business days of ExtraTeam's request for documentation or information needed for the project.
- Delays caused by the lack of site readiness or the Customer's failure to meet any responsibilities specified in this Statement of Work shall be billed at ExtraTeam time-and-materials rates, including travel and other expenses. Any additional costs incurred by Exhibit A: City of San Leandro as a result of delays shall be the sole responsibility of the Exhibit A: City of San Leandro.
- Once a project timeline is agreed upon by both parties, Exhibit A: City of San Leandro will provide ExtraTeam with written advanced notice of schedule changes. Unless otherwise agreed to by both parties, failure to notify ExtraTeam of schedule changes in writing (email, fax, etc) within 2 business days will result in a project change order. Delays necessitated by Exhibit A: City of San Leandro totaling more than 30 business days may result in a project change order.



## Summary

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ExtraTeam sincerely appreciates the opportunity to work with Exhibit A: City of San Leandro. Our technical expertise, proven track record, and our unwavering commitment to customer success will ensure we meet and exceed your expectations in all areas.

## Acceptance

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If the terms of this engagement are acceptable to Exhibit A: City of San Leandro, please initial all pages, sign below, and email this document along with a company purchase order to [orders@extrateam.com](mailto:orders@extrateam.com). Alternatively, you may fax the documents to (925) 398-4450.

---


Name/Title

Date



## ABOUT EXTRATEAM

### **WE DON'T USE THE WORD "TEAM" LIGHTLY**



Let's face it, the team concept is often spoken and seldom executed. Not here. We honor your vision with our experience – from planning through support. The result is a successful outcome worthy of the word "team."

### **(YOUR) EXTRATEAM**

We live to serve. You. It's no wonder we're excited. There has never been a greater time to bring the powerful gift of advanced technologies to the world at large. They move the universes of business, culture and humanity forward. Which is exactly why we feel honored to be a critical part of this reality. Day to day. Project to project. Success to success.

**Quotation**



**Customer:** Anthony Batalla  
**Company:** City of San Leandro  
**Address:** 835 East 14th Street San Leandro 94577  
**Date:** February 9 2015

**Quote:** sanleandroinet

**Exhibit B: Internet Edge Equipment**

PART	DESCRIPTION	QTY	LIST	DISCOUNT COST	EXTENDED DISCOUNT
<b>Equipment</b>					
<b>2960 Switches for DMZ</b>					
WS-C2960X-24TS-L	Catalyst 2960-X 24 GigE, 4 x 1G SFP, LAN Base	2	2,395.00	1,437.00 \$	2,874.00
CAB-16AWG-AC	AC Power cord, 16AWG	2	0.00	0.00 \$	-
PWR-CLP	Power Retainer Clip For Cisco 3560-C and 2960-C Compact Swit	2	0.00	0.00 \$	-
C2960X-STACK	Catalyst 2960-X FlexStack Plus Stacking Module	2	1,195.00	717.00 \$	1,434.00
CAB-STK-E-0.5M	Cisco FlexStack 50cm stacking cable	2	0.00	0.00 \$	-
GLC-T=	1000BASE-T SFP	1	395.00	237.00 \$	237.00
<b>3850 Layer 3 Switches</b>					
WS-C3850-12S-E	Cisco Catalyst 3850 12 Port GE SFP IP Services	2	12,000.00	7,200.00 \$	14,400.00
S3850UK9-36E	CAT3850 Universal k9 image	2	0.00	0.00 \$	-
PWR-C1-350WAC/2	350W AC Config 1 SecondaryPower Supply	2	500.00	300.00 \$	600.00
CAB-TA-NA	North America AC Type A Power Cable	4	0.00	0.00 \$	-
STACK-T1-50CM	50CM Type 1 Stacking Cable	2	0.00	0.00 \$	-
CAB-SPWR-30CM	Catalyst 3750X and 3850 Stack Power Cable 30 CM	2	0.00	0.00 \$	-
C3850-NM-4-1G	Cisco Catalyst 3850 4 x 1GE Network Module	2	500.00	300.00 \$	600.00
GLC-LH-SMD=	1000BASE-LX/LH SFP transceiver module, MMF/SMF, 1310nm, DOI	2	995.00	597.00 \$	1,194.00
<b>Standard Firewall</b>					
ASA5585-S20X-K9	ASA 5585-X Chas with SSP20,8GE,2SFP+,2GE Mgt,2 AC,3DES/AE	1	69,995.00	41,997.00 \$	41,997.00
SFP-10G-SR	10GBASE-SR SFP Module	2	995.00	597.00 \$	1,194.00
CAB-US515P-C19-US	NEMA 5-15 to IEC-C19 13ft US	2	0.00	0.00 \$	-
ASA5515-K9	ASA 5515-X with SW, 6GE Data, 1 GE Mgmt, AC, 3DES/AES	1	4,995.00	2,997.00 \$	2,997.00
CON-SNT-A15K9	SNTC-8X5XNBD ASA 5515-X with SW,	1	599.00	359.40 \$	359.40
CAB-AC	AC Power Cord (North America), C13, NEMA 5-15P, 2.1m	1	0.00	0.00 \$	-
<b>Library and PD Switching</b>					
WS-C3850-48F-L	Cisco Catalyst 3850 48 Port Full PoE LAN Base	2	11,400.00	6,840.00 \$	13,680.00
S3850UK9-32-0SE	CAT3850 UNIVERSAL	2	0.00	0.00 \$	-
CAB-TA-NA	North America AC Type A Power Cable	2	0.00	0.00 \$	-
STACK-T1-50CM	50CM Type 1 Stacking Cable	2	0.00	0.00 \$	-
PWR-C1-1100WAC	1100W AC Config 1 Power Supply	2	0.00	0.00 \$	-
C3850-NM-BLANK	Cisco Catalyst 3850 Network Module Blank	2	0.00	0.00 \$	-
PWR-C1-BLANK	Config 1 Power Supply Blank	2	0.00	0.00 \$	-
WS-C3650-48FS-L	Cisco Catalyst 3650 48 Port Full PoE 4x1G Uplink LAN Base	2	8,600.00	5,160.00 \$	10,320.00
S3650UK9-33SE	CAT3650 Universal k9 image	2	0.00	0.00 \$	-
PWR-C2-1025WAC	1025W AC Config 2 Power Supply	2	0.00	0.00 \$	-
CAB-TA-NA	North America AC Type A Power Cable	2	0.00	0.00 \$	-
STACK-T2-BLANK	Type 2 Stacking Blank	2	0.00	0.00 \$	-
PWR-C2-BLANK	Config 2 Power Supply Blank	2	0.00	0.00 \$	-
GLC-SX-MMD=	1000BASE-SX SFP transceiver module, MMF, 850nm, DOM	8	500.00	300.00 \$	2,400.00
GLC-LH-SMD=	1000BASE-LX/LH SFP transceiver module, MMF/SMF, 1310nm, DOI	4	995.00	597.00 \$	2,388.00

**SUBTOTAL EQUIPMENT \$ 96,674.40**

**Maintenance**

CON-SNT-WSC296XT	SNTC-8X5XNBD Catalyst 2960-X 24 GigE, 4 x 1G SFP, LAN	2	144.00	129.60 \$	259.20
CON-SNT-WSC385SE	SNTC-8X5XNBD Cisco Catalyst 3850 12 Port GE SFP IP Se	2	720.00	648.00 \$	1,296.00
CON-SNTP-A85S2XK9	SNTC-24X7X4 ASA 5585-X Chas with SSP20,8GE,2SFP+,2GE	1	11,759.00	10,583.10 \$	10,583.10
CON-SNT-A15K9	SNTC-8X5XNBD ASA 5515-X with SW,	1	599.00	539.10 \$	539.10
CON-SNT-WSC388FL	SNTC-8X5XNBD Cisco Catalyst 3850 48 Port Full PoE LAN	2	718.00	646.20 \$	1,292.40
CON-SNT-WSC3654	SNTC-8X5XNBD Cisco Catalyst 3650 48 Port Full PoE 4x1	2	542.00	487.80 \$	975.60

67 **SUBTOTAL RECURRING MAINTENANCE COST \$ 14,945.40**

68

69 **ExtraTeam Professional Services**

70	Staging	Not Applicable	\$	-
71	Engineering	Please refer to Statement of Work for details	\$	20,520.00
72	Project Management	Please refer to Statement of Work for details	\$	2,000.00
73	Post Implementation Support	Please refer to Statement of Work for details	\$	-

74  
75 **SUBTOTAL SERVICES \$ 22,520.00**

76  
77 **SIGNATURE** \_\_\_\_\_

78  
79 **DATE** \_\_\_\_\_

Equipment	\$	96,674.40
Maintenance	\$	14,945.40
Professional Services	\$	22,520.00
Tax		\$9,670
Shipping		\$837.15
<b>Total</b>	<b>\$</b>	<b>144,646.95</b>

82  
83 **Please select shipping and billing options under (A) and (B):**

- 84 **(A) Class of shipment**      Ground
- 85                                      2-day
- 86                                      Next business day
- 87 **(B) Partial/Full shipment**    Partial shipments and invoicing accepted
- 88                                      Hold for full shipment and single invoice


**36 Month Lease Payment:**  
(subject to credit approval)

89 **Ship-to Address if different from above:**

90 **Attn:**

91 **Customer**

92 **Address 1**

93 **Address 2**

94 **City, State, Zip**

<p>97 This Bill of Materials is conditional upon engineering review. Errors and Omissions excepted</p> <p>98 Please inspect equipment against packing list prior to opening. Opened product is not returnable.</p> <p>99 All returns are subject to manufacturer's terms and conditions. A 25% restocking fee may apply.</p> <p>100 Quote is valid for 30 days from date shown. Freight estimate covers ground shipping only.</p> <p>101 Expedited shipping charges will be applied to the final customer invoice. Credit card purchases subject to service fee.</p>
--

103 **Invoice Terms: Due on receipt of equipment.**

104 **FOB Origin**

105

106 **Inside Sales: Kelly Esskew 925-398-4448**

107 **Federal Tax ID: 94-3316357**

**Please Make Purchase Order Payable to:**

**ExtraTeam**

**7031 Koll Center Parkway, Suite 250**

**Pleasanton, CA 94566**

109 **Please send Purchase Order to:**

110 **orders@extrateam.com**

111 **Or FAX 925-398-4450**

- WCSA – Cisco Contract # 7-08-70-13
- WCSA - EMC Contract # B27161
- CMAS – Cisco Contract # 3-13-70-0861I
- CMAS - Polycom Contract # 3-13-70-0861I
- CMAS - Barracuda Contract # 3-13-70-0861J
- CMAS - F5 Contract # 3-13-70-0861K
- CMAS - NetApp Contract # 3-13-70-0861L
- CMAS - Microsoft Contract # 3-13-70-0861M
- CMAS - EMC Contract # 3-13-70-0861N
- CMAS - LifeSize Contract # 3-13-70-0861P
- CMAS - Nimble Contract # 3-13-70-0861K
- CMAS - Liebert Contract # 3-14-70-0861Q
- CMAS - Powerware Contract # 3-13-70-0861H

Quotation



Customer: Anthony Batalla  
 Company: City of San Leandro  
 Address: 835 East 14th Street San Leandro 94577  
 Date: February 9 2015

Quote: sanleandroinet

**Exhibit B: Internet Edge Equipment**

PART	DESCRIPTION	QTY	LIST	DISCOUNT COST	EXTENDED DISCOUNT
<b>Equipment</b>					
<b>2960 Switches for DMZ</b>					
WS-C2960X-24TS-L	Catalyst 2960-X 24 GigE, 4 x 1G SFP, LAN Base	2	2,395.00	1,437.00 \$	2,874.00
CAB-16AWG-AC	AC Power cord, 16AWG	2	0.00	0.00 \$	-
PWR-CLP	Power Retainer Clip For Cisco 3560-C and 2960-C Compact Swit	2	0.00	0.00 \$	-
C2960X-STACK	Catalyst 2960-X FlexStack Plus Stacking Module	2	1,195.00	717.00 \$	1,434.00
CAB-STK-E-0.5M	Cisco FlexStack 50cm stacking cable	2	0.00	0.00 \$	-
GLC-T=	1000BASE-T SFP	1	395.00	237.00 \$	237.00
<b>3850 Layer 3 Switches</b>					
WS-C3850-12S-E	Cisco Catalyst 3850 12 Port GE SFP IP Services	2	12,000.00	7,200.00 \$	14,400.00
S3850UK9-36E	CAT3850 Universal k9 image	2	0.00	0.00 \$	-
PWR-C1-350WAC/2	350W AC Config 1 SecondaryPower Supply	2	500.00	300.00 \$	600.00
CAB-TA-NA	North America AC Type A Power Cable	4	0.00	0.00 \$	-
STACK-T1-50CM	50CM Type 1 Stacking Cable	2	0.00	0.00 \$	-
CAB-SPWR-30CM	Catalyst 3750X and 3850 Stack Power Cable 30 CM	2	0.00	0.00 \$	-
C3850-NM-4-1G	Cisco Catalyst 3850 4 x 1GE Network Module	2	500.00	300.00 \$	600.00
GLC-LH-SMD=	1000BASE-LX/LH SFP transceiver module, MMF/SMF, 1310nm, DOI	2	995.00	597.00 \$	1,194.00
<b>Standard Firewall</b>					
ASA5585-S20X-K9	ASA 5585-X Chas with SSP20,8GE,2SFP+,2GE Mgt,2 AC,3DES/AE	1	69,995.00	41,997.00 \$	41,997.00
SFP-10G-SR	10GBASE-SR SFP Module	2	995.00	597.00 \$	1,194.00
CAB-US515P-C19-US	NEMA 5-15 to IEC-C19 13ft US	2	0.00	0.00 \$	-
ASA5515-K9	ASA 5515-X with SW, 6GE Data, 1 GE Mgmt, AC, 3DES/AES	1	4,995.00	2,997.00 \$	2,997.00
CON-SNT-A15K9	SNTC-8X5XNBD ASA 5515-X with SW,	1	599.00	359.40 \$	359.40
CAB-AC	AC Power Cord (North America), C13, NEMA 5-15P, 2.1m	1	0.00	0.00 \$	-
<b>Library and PD Switching</b>					
WS-C3850-48F-L	Cisco Catalyst 3850 48 Port Full PoE LAN Base	2	11,400.00	6,840.00 \$	13,680.00
S3850UK9-32-0SE	CAT3850 UNIVERSAL	2	0.00	0.00 \$	-
CAB-TA-NA	North America AC Type A Power Cable	2	0.00	0.00 \$	-
STACK-T1-50CM	50CM Type 1 Stacking Cable	2	0.00	0.00 \$	-
PWR-C1-1100WAC	1100W AC Config 1 Power Supply	2	0.00	0.00 \$	-
C3850-NM-BLANK	Cisco Catalyst 3850 Network Module Blank	2	0.00	0.00 \$	-
PWR-C1-BLANK	Config 1 Power Supply Blank	2	0.00	0.00 \$	-
WS-C3650-48FS-L	Cisco Catalyst 3650 48 Port Full PoE 4x1G Uplink LAN Base	2	8,600.00	5,160.00 \$	10,320.00
S3650UK9-33SE	CAT3650 Universal k9 image	2	0.00	0.00 \$	-
PWR-C2-1025WAC	1025W AC Config 2 Power Supply	2	0.00	0.00 \$	-
CAB-TA-NA	North America AC Type A Power Cable	2	0.00	0.00 \$	-
STACK-T2-BLANK	Type 2 Stacking Blank	2	0.00	0.00 \$	-
PWR-C2-BLANK	Config 2 Power Supply Blank	2	0.00	0.00 \$	-
GLC-SX-MMD=	1000BASE-SX SFP transceiver module, MMF, 850nm, DOM	8	500.00	300.00 \$	2,400.00
GLC-LH-SMD=	1000BASE-LX/LH SFP transceiver module, MMF/SMF, 1310nm, DOI	4	995.00	597.00 \$	2,388.00

**SUBTOTAL EQUIPMENT \$ 96,674.40**

**Maintenance**

CON-SNT-WSC296XT	SNTC-8X5XNBD Catalyst 2960-X 24 GigE, 4 x 1G SFP, LAN	2	144.00	129.60 \$	259.20
CON-SNT-WSC385SE	SNTC-8X5XNBD Cisco Catalyst 3850 12 Port GE SFP IP Se	2	720.00	648.00 \$	1,296.00
CON-SNTP-A85S2XK9	SNTC-24X7X4 ASA 5585-X Chas with SSP20,8GE,2SFP+,2GE	1	11,759.00	10,583.10 \$	10,583.10
CON-SNT-A15K9	SNTC-8X5XNBD ASA 5515-X with SW,	1	599.00	539.10 \$	539.10
CON-SNT-WSC388FL	SNTC-8X5XNBD Cisco Catalyst 3850 48 Port Full PoE LAN	2	718.00	646.20 \$	1,292.40
CON-SNT-WSC3654	SNTC-8X5XNBD Cisco Catalyst 3650 48 Port Full PoE 4x1	2	542.00	487.80 \$	975.60

67 **SUBTOTAL RECURRING MAINTENANCE COST \$ 14,945.40**

68

69 **ExtraTeam Professional Services**

70	Staging	Not Applicable	\$	-
71	Engineering	Please refer to Statement of Work for details	\$	20,520.00
72	Project Management	Please refer to Statement of Work for details	\$	2,000.00
73	Post Implementation Support	Please refer to Statement of Work for details	\$	-

74  
75 **SUBTOTAL SERVICES \$ 22,520.00**

76

77	<b>SIGNATURE</b>	_____	Equipment	\$	96,674.40
78			Maintenance	\$	14,945.40
79	<b>DATE</b>	_____	Professional Services	\$	22,520.00
			Tax		\$9,670
			Shipping		\$837.15
			<b>Total</b>	<b>\$</b>	<b>144,646.95</b>

82

83 **Please select shipping and billing options under (A) and (B):**

- 84 **(A) Class of shipment**      Ground
- 85                                      2-day
- 86                                      Next business day
- 87 **(B) Partial/Full shipment**    Partial shipments and invoicing accepted
- 88                                      Hold for full shipment and single invoice


**36 Month Lease Payment:**  
(subject to credit approval)

89 **Ship-to Address if different from above:**

- 90 **Attn:**
- 91 **Customer**
- 92 **Address 1**
- 93 **Address 2**
- 94 **City, State, Zip**

97 This Bill of Materials is conditional upon engineering review. Errors and Omissions excepted
98 Please inspect equipment against packing list prior to opening. Opened product is not returnable.
99 All returns are subject to manufacturer's terms and conditions. A 25% restocking fee may apply.
100 Quote is valid for 30 days from date shown. Freight estimate covers ground shipping only.
101 Expedited shipping charges will be applied to the final customer invoice. Credit card purchases subject to service fee.

103 **Invoice Terms: Due on receipt of equipment.**

104 **FOB Origin**

105

106 **Inside Sales: Kelly Esskew 925-398-4448**

107 **Federal Tax ID: 94-3316357**

**Please Make Purchase Order Payable to:**

**ExtraTeam**

**7031 Koll Center Parkway, Suite 250**

**Pleasanton, CA 94566**

109 **Please send Purchase Order to:**

110 **orders@extrateam.com**

111 **Or FAX 925-398-4450**

- WCSA – Cisco Contract # 7-08-70-13
- WCSA - EMC Contract # B27161
- CMAS – Cisco Contract # 3-13-70-0861I
- CMAS - Polycom Contract # 3-13-70-0861I
- CMAS - Barracuda Contract # 3-13-70-0861J
- CMAS - F5 Contract # 3-13-70-0861K
- CMAS - NetApp Contract # 3-13-70-0861L
- CMAS - Microsoft Contract # 3-13-70-0861M
- CMAS - EMC Contract # 3-13-70-0861N
- CMAS - LifeSize Contract # 3-13-70-0861P
- CMAS - Nimble Contract # 3-13-70-0861K
- CMAS - Liebert Contract # 3-14-70-0861Q
- CMAS - Powerware Contract # 3-13-70-0861H

119

**Exhibit A:**

**City of San Leandro**

**Firewall and Internet Upgrade**

*a business proposal*



## Exhibit A: City of San Leandro Firewall and Internet Upgrade

February 9, 2016

### Introduction

---

The City of San Leandro is currently operating separate Internet connections at various locations with the main purpose of providing Internet access to those locations. The City would like to consolidate these separate Internet connections into a single 10Gig connection located at City Hall. The new 10Gig Internet connection will also operate with the BGP routing protocol for the sole purpose of failover to a secondary service provider (also running BGP) on a 100Mb link also at City Hall. BGP will provide active/standby failover as both service providers will share the same Internet IP addresses (BGP announced prefix(es)) and the “secondary line” will not be usable when the primary is up.

The City will purchase new firewalls for this connectivity, a primary ASA5585-X-SSP20 for the 10G link and an ASA5515-X for the 100Mb backup link. The configuration of these two firewalls will be manually synchronized. The main “inside” connection will be to City Hall networks (via a full 1Gig connection); the Police Department will receive its Internet via a new DMZ (also a full 1Gig connection); and 3 other locations (2 wireless service locations and “library public”) will receive internet via new DMZs (full 1Gig); and 3 existing DMZs will be trunked from a 1Gig DMZ. **The 5585-X-SSP20 has a maximum total throughput of 10G with “real-world throughput” at 5G.** Failover between service providers and 5585/5515 will be automatic for City Hall and Police Department (as both are capable of a dynamic routing protocol, expected EIGRP). Failover between service providers and 5585/5515 for all other DMZs shall be done as a manual process.

This statement of work shall provide professional services to the City for the implementation of the new firewalls, planning and executing of a migration to the new firewall/Internet design, and an onsite production cut-over.

ExtraTeam is pleased to provide the following proposal for professional services.

### Project Proposal

---

All tasks in the below sections (with except of cutover) shall be performed remotely using collaborative technology (phone and web conferencing, etc) during standard business hours. There is a single cutover event for the new firewalls and Internet. ExtraTeam will provide an onsite engineer for the cutover event which is assumed during an afterhours time period. Day-1 post cutover support shall be performed remotely.

ExtraTeam will be responsible for the following tasks and deliverables associated with this project.



### **Phase 1: Firewall and Internet Migration Planning**

- Develop a migration plan to migrate existing Cisco ASA5520 configurations to Cisco ASA5585. Configuration will migrate like-for-like except the following:
  - Public IP Addresses will change as the ISP is changing. A new IP subnet will be allocated by the ISP and routed in BGP. Firewall configurations must change to accommodate the IP address change.
    - IPSEC site-to-site VPNs at remote City locations: ExtraTeam will change/reconfigure upto 3 remote City owned devices to accommodate new IP addresses: ASA firewalls (5505 or similar) or SOHO Cisco Routers (IOS based).
    - The City will be responsible for DNS changes or changes needed outside of City owned Cisco network equipment to accommodate the IP address change.
  - EIGRP routing will be enabled on the “inside” interface to enable automatic failover of City Hall networks to backup 5515 or backup 100Mb ISP.
  - A new DMZ will be provisioned to provide Internet access to the Police Department, connected to a new 3850 IP-Services switch stack.
    - EIGRP routing will be enabled on this “Police Internet DMZ” to enable automatic failover of Police networks to backup 5515 or backup 100Mb ISP.
    - The 3850 IP-Services switch stack will make routing decisions and provide a new fiber connection to the PD for Internet.
  - 3 new DMZs will be provisioned to provide Internet access to remote locations who’s networks are currently trunked back to City Hall via fiber optic cable:
    - 2 separate wireless networks (connected as 1G Ethernet to the ASA firewalls).
    - The “library public” network (connect as 1G Ethernet to the ASA firewalls).
    - A new 2960-X switch stack will be provisioned to provide Layer-2 VLANs for the DMZs and 1G connectivity.
    - NOTE: VLANs are assumed trunked via fiber optic cables to the remote sites, shall exist as Layer-2 only VLANs on City Hall switching equipment, connected as 1G access ports to the ASA firewalls.
- BGP Planning:
  - Teleconference with ISPs (Internet Service Providers) to assist with the provisioning and related planning with turn-up of BGP routing.
  - The design will require the service providers to announce (via BGP) a single default route (0.0.0.0/0) for the entire Internet. The 10G provider’s 0.0.0.0/0 will always be preferred. NOTE: there are rare conditions such that a service provider may be having problems with their own network or peering connections, yet that provider still announces a route for 0.0.0.0/0 to us. In this case, we are unable to automatically failover to the backup provider because the primary provider must first stop announcing 0.0.0.0/0 route to indicate that their Internet is down. This caveat is commonly accepted by customers if they trust the reliability of their service provider’s network. The only “perfect failover” requires dedicated ASR routers to accept full Internet routing tables (nearly 1 million IP routes, which the ASA firewall cannot handle).
  - The primary 10G service provider will assign 1 or more IP Address blocks for use on the Internet. This IP address block will be shared by both providers, with the primary provider having a higher preference.

- Develop a testplan to include a handful of core test cases to validate like-to-like functionality as well configurations which have changed. Define simulated failure scenario with targeted hosts for validation of fail-over.
- Review and get approval from City of San Leandro IT team prior to actual migration.

### ***Phase 2: Configuration Staging and Preparation***

- Stage and prepare configurations of the following equipment prior to migration/cut-over:
  - (1) 5585-X primary firewall.
  - (1) 5515 backup firewall.
  - Upto (3) ASA firewalls (5505 or similar) or SOHO Cisco Routers (IOS based) at City locations which make a site-to-site IPSEC VPN connection back to the main City Hall firewall.
  - (2) 3850 12-Port 1GE and 4 Port 1G Fiber switches in single stack configuration to perform routing decisions in PD for the new internet connection.
  - (2) 2960-X 24-Port 1GE switches in a single stack configuration to provide Layer-2 VLANs and connectivity for the DMZs.
  - Configurations on existing switching/routing equipment needed to support the new Internet connectivity and failover at City Hall, Police Department, and other affected locations.

### ***Phase 3: Cutover***

- Provide onsite engineering for cutover:
  - New 10Gig Primary Internet.
  - BGP routing with 10G primary and 100Mb backup link.
  - New 5585-X primary firewall.
  - New 5515 backup firewall.
  - New 3850 switch stack at PD.
  - New 2960-X switch stack for DMZ at City Hall.
  - As required, changes to existing network equipment on the City network.
- Provide remote post go-live support.

### ***Training***

- There is no formal training for end users or administrators included in this proposal. ExtraTeam will include knowledge transfer to Exhibit A: City of San Leandro IT staff throughout the project.

### ***Documentation***

- ExtraTeam will provide as-built configuration files for devices which have changed as part of this project.
- ExtraTeam will provide updates to the existing Visio diagram of the City network for changes that were made as part of this project. The existing City network Visio diagram which has been provided to ExtraTeam.

## Project Coordination

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The ExtraTeam Project Coordinator shall work with the customer to manage the project timeline and all ExtraTeam resources. The Project Coordinator shall be the single point of contact for all non-technical communications including changes in project scope, timelines, and deliverables.

### ***Project Management (additional services, not included)***

ExtraTeam offers PMP-certified project management services “above and beyond” the project coordination services included in this proposal. These services are offered for an additional fee, and may include deliverables such as:

- Onsite project meetings
- Project Plan that includes customer resource allocation
- Equipment inventory and facilities readiness inventory, if appropriate
- Third-party vendor coordination
- End User Communication (may include Communication Plan, Adoption Plan, and Training Plan)

### ***Project Change Management***

During the course of the project, Exhibit A: City of San Leandro may request significant feature or functionality changes that are beyond the scope of the original Statement of Work, and/or are not specified in the customer-approved Design Documentation. In the event that Exhibit A: City of San Leandro requests such a change, the ExtraTeam Project Coordinator will submit a Change Order for this request. No work will commence on the change until the Change Order is approved by both ExtraTeam and Exhibit A: City of San Leandro.

## Project Completion

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ExtraTeam will make commercially reasonable efforts to complete the activities described in the Project Proposal section as limited by the assumptions described in this document and the Customer’s performance of responsibilities pursuant to the *Customer Responsibilities* section below.

Exhibit A: City of San Leandro will be responsible for acknowledging delivery of the project by signing a Project Acceptance document at the conclusion of this engagement. If ExtraTeam is not notified of any problems with the work within 30 days of the completion of the engagement, the services delivered will be deemed accepted.

## Assumptions

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This proposal assumes the following:

- All work will be scheduled in advance. This consulting engagement does not include on-call or emergency support services. ExtraTeam provides a separate 24x7 priority support contract for emergency service.
- Desktop level configuration changes and software deployments by ExtraTeam engineers are out of scope for this engagement. This includes software client installations, GPO, and registry settings. These changes must be implemented by Exhibit A: City of San Leandro staff with direction and assistance from the Project Team.

## Customer Sites

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This engagement will involve the following customer sites: City of San Leandro

ExtraTeam will deliver engineering services for this project onsite at City of San Leandro and via remote access, such as secure VPN.

## Customer Responsibilities

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Exhibit A: City of San Leandro or its designated partners shall perform the following:

- Exhibit A: City of San Leandro will designate a person to whom ExtraTeam can address all communications and who has the authority to act on all aspects of the Services. Such person shall be identified as the Customer Project Manager.
- Exhibit A: City of San Leandro will designate a back up to the primary Customer Project Manager who has the same authority when the primary Customer Project Manager is not available.
- Exhibit A: City of San Leandro will provide access to Customer facilities associated with this engagement, including equipment rooms and data centers. For all onsite service engagements, Exhibit A: City of San Leandro will provide ExtraTeam with a dedicated and suitable workspace such as a dedicated desk, cubicle, or office.
- Exhibit A: City of San Leandro will provide ExtraTeam with remote access to networks and systems associated with this project using VPN or other technologies agreed upon by both parties.
- Exhibit A: City of San Leandro will provide full administrative-level account access privileges when recommended or required by vendor documentation for all devices and domains directly related to the project. Any additional costs incurred by Exhibit A: City of San Leandro or ExtraTeam as a result of delays or inability to provide such access will be the sole responsibility of the Exhibit A: City of San Leandro.

- Unless otherwise noted in the *Project Proposal* section above, Exhibit A: City of San Leandro is responsible for the installation, configuration, and testing of all external communication equipment and materials not provided by ExtraTeam. This includes, but is not limited to, circuits provided by telecommunications service providers. Likewise, Exhibit A: City of San Leandro is responsible for all physical equipment installations, including: rack mounts, cabling, station-area wiring, and connectivity to power.
- If requested, Exhibit A: City of San Leandro will provide comprehensive documentation for existing network and system deployments not installed or maintained by ExtraTeam, including physical and logical schematics, prior to service commencement.
- Unless otherwise agreed to by the parties, Exhibit A: City of San Leandro will respond within two business days of ExtraTeam's request for documentation or information needed for the project.
- Delays caused by the lack of site readiness or the Customer's failure to meet any responsibilities specified in this Statement of Work shall be billed at ExtraTeam time-and-materials rates, including travel and other expenses. Any additional costs incurred by Exhibit A: City of San Leandro as a result of delays shall be the sole responsibility of the Exhibit A: City of San Leandro.
- Once a project timeline is agreed upon by both parties, Exhibit A: City of San Leandro will provide ExtraTeam with written advanced notice of schedule changes. Unless otherwise agreed to by both parties, failure to notify ExtraTeam of schedule changes in writing (email, fax, etc) within 2 business days will result in a project change order. Delays necessitated by Exhibit A: City of San Leandro totaling more than 30 business days may result in a project change order.

## Summary

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ExtraTeam sincerely appreciates the opportunity to work with Exhibit A: City of San Leandro. Our technical expertise, proven track record, and our unwavering commitment to customer success will ensure we meet and exceed your expectations in all areas.

## Acceptance

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If the terms of this engagement are acceptable to Exhibit A: City of San Leandro, please initial all pages, sign below, and email this document along with a company purchase order to [orders@extrateam.com](mailto:orders@extrateam.com). Alternatively, you may fax the documents to (925) 398-4450.

---


Name/Title

Date



## ABOUT EXTRATEAM

### **WE DON'T USE THE WORD "TEAM" LIGHTLY**



Let's face it, the team concept is often spoken and seldom executed. Not here. We honor your vision with our experience – from planning through support. The result is a successful outcome worthy of the word "team."

### **(YOUR) EXTRATEAM**

We live to serve. You. It's no wonder we're excited. There has never been a greater time to bring the powerful gift of advanced technologies to the world at large. They move the universes of business, culture and humanity forward. Which is exactly why we feel honored to be a critical part of this reality. Day to day. Project to project. Success to success.

# The State of Minnesota



## REQUEST FOR PROPOSAL

### MINNESOTA WSCA-NASPO Master Agreement

for:

**Computer Equipment**

**(Desktops, Laptops, Tablets,**

**Servers, Storage and Ruggedized Devices including**

**Related Peripherals & Services)**





Materials Management Division  
112 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155  
Voice: 651.296.2600  
Fax: 651.297.3996

**STATE OF MINNESOTA**

**REQUEST FOR PROPOSAL (RFP)**

**COMPUTER EQUIPMENT: (DESKTOPS, LAPTOPS, TABLETS, SERVERS, STORAGE,  
RUGGEDIZED DEVICES INCLUDING RELATED PERIPHERALS & SERVICES)**

***DUE DATE:***

***ORIGINAL DUE DATE: November 18, 2013***

***REVISED DUE DATE: January 29, 2014***

**TIME: 3:00 P.M., CENTRAL TIME**

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## SECTION 1: SCOPE OF WORK

### A. INTRODUCTION

The State of Minnesota, Department of Administration, Materials Management Division is requesting proposals on behalf of the State of Minnesota and WSCA-NASPO Cooperative Procurement Program (“WSCA-NASPO”). The purpose of this Request For Proposal (hereafter called the RFP) is to establish Minnesota WSCA-NASPO Master Agreement(s) with qualified manufacturers for **Computer Equipment (Desktops, Laptops, Tablets, Servers, Storage and Ruggedized Devices including related Peripherals & Services)**.

This RFP describes a relationship to be established between the Lead State and a responder and also specifies contractual conditions and details the basis for the responses, the subsequent review, and the final selection process. Detailed Contract obligations and measures of performance may be further defined in the final negotiated Contracts. The RFP shall not be construed to limit the Lead State’s right to issue or not issue any Contract, to reject all proposals, or to negotiate with more than one responder.

Sealed responses must be received in the office of the Director of the Materials Management Division and time-stamped no later than the date and time specified, at which time the names of the vendors responding to this RFP will be read. Late responses cannot be considered. The laws of Minn. Stat. Ch. 16C apply to this RFP.

For the purpose of this RFP, there are six product bands identified below which may be awarded. Responders must only respond to Bands in which they manufacture the defined product. The State of Minnesota intends to establish multiple awards per band. The State of Minnesota reserves the right to eliminate any bands from the final award.

- Band 1: Desktop
- Band 2: Laptop
- Band 3: Tablet
- Band 4: Server
- Band 5: Storage
- Band 6: Ruggedized Devices

The Master Agreement(s) resulting from this RFP will replace the current State of Minnesota WSCA/NAPSO PC Contracts awarded in 2009. Information on these contracts is available at [http://www.mmd.admin.state.mn.us/wsca/2009-2014\\_contracts.asp](http://www.mmd.admin.state.mn.us/wsca/2009-2014_contracts.asp).

All authorized governmental entities in any State are welcome to use the resulting Master Agreements through WSCA-NASPO with the approval of the State Chief Procurement Official. Upon final award of the overarching Master Agreements, Contract Vendors are able to sign Participating Addendums (PA) at the option of Participating States. Participating States reserve the right to add State specific terms and conditions and modify the scope of the contract in their Participating Addendum as allowed by the Master Agreement.

This RFP will result in a Master Agreement. The Master Agreement contract terms will begin on the date of contract execution, to 24 months after the date of contract execution, with the option to extend up to 36 months, upon agreement by both parties. Participating States will have the option to participate and further refine their Terms and Conditions through a Participating Addendum.

## B. OBJECTIVE

The objectives of this RFP are to:

- Obtain greater volume-based price discounts for quantity one purchases by leveraging the purchasing power of multiple states and their political subdivisions.
- Obtain competitive pricing for specific standard configurations through a Premium Saving Package (PSP) program
- Reduce contracting costs for each participating state through a cooperative competitive procurement process

Proposers will provide an initial discount for a quantity of one unit. Proposers are to base discounts on the collective volume of potential purchases by the numerous state and local government entities. The objective of the procurement is to consolidate spend for participating entities to receive highly competitive pricing at the quantity one unit. In Calendar Year 2012, there was approximately \$2,249,935,555.39 of spend. Further bulk/quantity savings are obtained when additional quantities are requested. Participating States and political subdivisions are encouraged to continually re-compete and obtain quotes for further quantity discounts among the awarded vendors to obtain the lowest price.

The awarded Contract Vendors should realize significant savings by managing a single comprehensive Master Agreement establishing common terms, conditions, pricing and administrative structure.

## C. WSCA-NASPO BACKGROUND INFORMATION

Since 1993, the Western States Contracting Alliance (WSCA) served as the primary cooperative purchasing arm of The National Association of State Procurement Officials (NASPO) and encouraged, fostered, and guided participating members to work collaboratively in an effort to create true procurement cooperatives.

NASPO has formed a subsidiary entity, the WSCA-NASPO Cooperative Purchasing Organization (WSCA-NASPO), LLC to manage its WSCA-NASPO national cooperative purchasing program. The LLC was formed in October of 2012 and began operating officially on January 1, 2013. A 21-member Management Board has been appointed to oversee the operations and activities of the new organization.

WSCA-NASPO represents a unified, nationally-focused cooperative purchasing program that will leverage the collective expertise and experience of WSCA and NASPO, aggregate the demand of all 50 states, the District of Columbia and the five organized territories, and their political subdivisions and other eligible entities, and help spur innovation and competition in the marketplace.

## D. PARTICIPATING STATES

Apart from the Lead State conducting the solicitation, the states listed below have signified their intent to participate in the Master Agreement(s) resulting from this RFP. These States are considered Participating States for the purposes of this solicitation and its resulting contracts(s). WSCA-NASPO experience has shown states that have participated in previous WSCA-NASPO solicitations will continue to participate in subsequent solicitations. WSCA-NASPO is still in the process of gathering Intent to Participates from the current participating states for this Solicitation and will be added through an addendum process. Additional states may decide to participate during the course of this solicitation or after the Master Agreements have been awarded.

Some State specific Terms and Conditions are provided in Section 6. These are **for informational purposes only** and will be negotiated with individual States after award of the Master Agreement. All States reserve the right to add additional terms and conditions to a participating addendums.

**Intent to Participate Notices have been received to date from the following States:**

Alaska  
Arkansas  
California  
Colorado  
Connecticut  
Delaware  
Georgia  
Hawaii  
Idaho  
Indiana  
Iowa  
Kansas  
Louisiana  
Maine  
Massachusetts  
Minnesota  
Missouri  
Montana  
Nebraska  
Nevada  
New Hampshire  
New Jersey  
New Mexico  
North Dakota  
Oklahoma  
Oregon  
Rhode Island  
South Carolina  
South Dakota  
Tennessee  
Utah  
Vermont  
Washington  
Wyoming

## Current States Participating Sales Volumes for Calendar Year 2012:

### WSCA-NASPO Computer Equipment, Peripherals & Related Services (MN)

AL	\$ 1,991.58
AK	\$ 24,884,137.39
AZ	\$ 122,381,318.74
AR	\$ 62,658,846.17
CA	\$ 404,480,102.37
CO	\$ 75,872,058.49
CT	\$ 28,836,220.63
DE	\$ 23,509,996.64
FL	\$ 132,505,135.81
GA	\$ 130,038,621.09
HI	\$ 28,997,688.94
ID	\$ 31,482,975.19
IL	\$ 19,257,318.80
IN	\$ 179,972.91
IA	\$ 40,306,892.81
KS	\$ 45,893,491.19
KY	\$ 23,441,498.83
LA	\$ 85,333,419.12
ME	\$ 849,845.49
MD	\$ 4,487,490.52
MA	\$ 71,782,524.97
MI	\$ 16,171,200.29
MN	\$ 120,195,299.91
MS	\$ 933.00
MO	\$ 22,025,159.85
MT	\$ 13,309,651.01
NE	\$ 29,261,413.77
NV	\$ 47,743,617.59
NH	\$ 9,098,920.23
NJ	\$ 272,610,471.34
NM	\$ 38,547,219.37
NY	\$ 133,791.94
NC	\$ 13,974,511.45
ND	\$ 10,568,665.27
OH	\$ 47,619,206.76
OK	\$ 41,259,365.85
OR	\$ 47,675,346.81
PA	\$ 2,881,183.44
RI	\$ 10,995,869.42

SC	\$ 127,553,244.51
SD	\$ 18,202,443.15
TN	\$ 2,926,492.79
WY	\$ 14,746,570.36
AS	\$ -
DC	\$ 3,269,745.16
GU	\$ 13,780.52
MP	\$ -
PR	\$ -
VI	\$ -
TOTAL	\$ 2,249,935,555.39

## E. PRODUCT BAND DEFINITIONS

This RFP is divided into six (6) hardware product bands. Each band includes related peripherals and services. All products and services offered within each band are subject to the restrictions provided in the Product Restrictions Section of this RFP. With the evolution of technology bands will be flexible and may be redefined during the course of the contract.

**BAND 1: DESKTOP.** A desktop computer is a personal computer intended for regular use at a single location. A desktop computer typically comes in several units connected together during installation: (1) the processor, 2) display monitor and 3) input devices usually a keyboard and a mouse. All operating systems for tablets are allowed. Zero Clients, Thin clients, all in ones and workstations will also be included under desktops. Ruggedized equipment may also be included in the Product and Service schedule for this band

**BAND 2: LAPTOP.** A laptop computer is a personal computer for mobile use. A laptop includes a display, keyboard, point device such as a touchpad and speakers into a single unit. A laptop can be used away from an outlet using a rechargeable battery. All operating systems for tablets are allowed. Laptops will include notebooks, ultrabook, mobile thin clients, chromebooks and netbooks. Computers with mobile operating systems will also be included under laptops. Tablets that have the option to be utilized with a keyboard can be sold in this band. Ruggedized equipment may also be included in the Product and Service Schedule for this band

**BAND 3: TABLET.** A tablet is a mobile computer that provides a touchscreen which acts as the primary means of control. All operating systems for tablets are allowed. Ruggedized equipment may also be included as a category in the Product and Service Schedule for this band.

**BAND 4: SERVER.** A server is a physical computer dedicated to run one or more services or applications (as a host) to serve the needs of the users of other computers on a network. This band also includes server appliances. Server appliances have their hardware and software preconfigured by the manufacturer. It also includes embedded networking components such as those found in blade chassis systems. Ruggedized equipment may also be included in the Product and Service Schedule for this band.

**BAND 5: STORAGE.** Storage is hardware with the ability to store large amounts of data. This band includes SAN switching necessary for the proper functioning of the storage environment. Ruggedized equipment may also be included in the Product and Service Schedule for this band.

**BAND 6: RUGGEDIZED DEVICES** Ruggedized refers to devices specifically designed to operate reliably in harsh usage environments and conditions, such as strong vibrations, extreme temperatures and wet or dusty conditions. Ruggedized Devices may also be offered under bands 1-5 of the Master Agreement.

**Examples of peripherals/accessories/options:** Include but are not limited to: printers, monitors, multifunction printers, audiovisual equipment, instructional equipment, cabling, modems, networking to support server, storage and client applications such as routers, switches. Software is an option which must be related to the purchase of equipment and subject to configuration limits. **Third party products are allowed to be offered as peripherals/accessories/options and may be offered in any related band.**

## F. CONFIGURATION DOLLAR LIMITS

**1. CONFIGURATION DOLLAR LIMITS.** The following configuration limits apply to the Master Agreement. Participating States may define their configuration limits in their participating addendum. The Participating State's Chief Procurement Official may increase or decrease the configuration limits, as defined in their Participating Addendum. The Participating State will determine with the Contract Vendor how to approve these modifications to the State's Product and Service Schedule.

The dollar limits identified below are based on a **SINGLE** computer configuration. This is **NOT** a restriction on the purchase of multiple configurations (e.g. an entity could purchase 10 laptops @ \$10,000 for a total purchase price of \$100,000).

ITEM	CONFIGURATION*
Server	\$500,000
Storage	\$500,000
Desktops	\$ 10,000
Laptops	\$ 10,000
Tablets	\$ 5,000
Peripherals	\$ 5,000
Services	Addressed by each State in participating addendum

\* Configuration is defined as the combination of hardware and software components that make up the total functioning system. Software purchases are considered a part of the configuration limit of the equipment.



## G. RESTRICTIONS

The following restrictions apply to the Master Agreement. A Participating State may set further restrictions of products in their Participating Addendum. The Participating State will determine with the Contract Vendor how to approve these modifications to the State's Product and Service Schedule.

### **a. Software**

1. Software is restricted to operating systems and commercial off-the-shelf (COTS) software and is subject to equipment configuration limits.
2. Software is an option which must be related to the procurement of equipment.
3. Software must be pre-loaded or provided as an electronic link with the initial purchase of equipment.
4. Software such as middleware which is not always installed on the equipment, but is related to storage and server equipment (band 4&5) purchased, is allowed and may be procured after the initial purchase of equipment.

### **b. Services**

1. Services must be related to the procurement of equipment.
2. Service limits will be addressed by each State.
3. Wireless phone and internet service is not allowed.
4. Cloud Services including acquisitions structured as managed on-site services are not allowed.
5. Managed Print Services are not allowed.

### **c. Third Party Products.**

1. Contract Vendors can only offer Third Party Products in the bands they have been awarded.
2. Contract Vendor cannot offer products manufactured by another Contract Vendor holding a Minnesota WSCA-NASPO Master Agreement unless approved by the Lead State.

### **d. Additional Product/Services**

1. Hardware and software required **to solely support** wide area network (WAN) operation and management are not allowed.
2. Lease/Rentals of equipment may be allowed and will be addressed by each State.
3. Cellular Phone Equipment is not allowed.
4. EPEAT Bronze requirement may be waived, on a State case by case basis, if approved by the State's Chief Procurement Officer.

## H. DEFINITIONS

**Acceptance.** See Section 2B28 for Terms regarding Acceptance and Acceptance Testing.

**Accessory.** Accessories do not extend the functionality of the computer, but enhances the user experience i.e. mouse pad, monitor stand. For the purposes of this proposal, accessories are considered peripherals.

**Bands:** For the purpose of this solicitation, there are six product bands which may be awarded. Each product band includes related peripherals and services. Responders must only respond to Bands in which they manufacture the defined product. Responder may receive an award in one or more bands for which they manufacture a product based on the evaluation.

**Cloud Services.** Delivery of computing as a service rather than a product, whereby shared resources, software and information are provided to computers and other devices as a utility over a network, such as the Internet. (Cloud Services including acquisitions structured as managed on-site services are not allowed.)

**Contract Vendor or Contractor.** The manufacturer responsible for delivering products or performing services under the terms and conditions set forth in the Master Agreement. The Contract Vendor must ensure partners utilized in the performance of this contract adhere to all the terms and conditions. For the purposes of this RFP, the term Partner will be utilized in naming the relationship a manufacturer has with another company to market and sell the contract. Participating States will have final determination/approval if a Partner may be approved for that state in the role identified by the Contract Vendor.

**Components.** Parts that make up a computer configuration.

**Configuration.** The combination of hardware and software components that make up the total functioning system.

**Desktop.** This is Band 1 of this solicitation. A desktop computer is a personal computer intended for regular use at a single location. A desktop computer typically comes in several units connected together during installation: (1) the processor, 2) display monitor and 3) input devices usually a keyboard and a mouse. Desktop virtualization endpoints such as zero and thin clients will also be included under the Desktop Band.

**Energy Star®.** A voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.

**EPEAT.** A system for identifying more environmentally preferable computer desktops, laptops, and monitors. It includes an ANSI standard - the IEEE 1680 EPEAT standard – and website [www.epeat.net](http://www.epeat.net) to identify products manufacturers have declared as meeting the standard. EPEAT provides a clear and consistent set of performance criteria for the design of products. It is not a third-party certification program. Instead, Manufacturers self-certify that their products are in conformance with the environmental performance standard for electronic products.

**Finalist.** A respondent who is found to be responsive under Phases I and II of the evaluation process and will be considered in Phase III.

**FOB Destination.** Shipping charges are included in the price of the item and the shipped item becomes the legal property and responsibility of the receiver when it reaches its destination unless there is acceptance testing required.

**FOB Inside Delivery.** Special Shipping arrangements, such as inside delivery, may include additional fees payable by the Purchasing Entity. Any FOB inside delivery must be annotated on the Purchasing Entity ordering document.

**General Consulting.** Services related to advising agencies on how best to use information technology to meet business objectives. Examples of such services would include management and administration of IT systems. Each State will have varying laws, rules, policies and procedures surrounding general consulting which need adherence. Minnesota Statute

section 16C.08 defines general consulting for the State of Minnesota. See link:  
<https://www.revisor.mn.gov/statutes/?id=16C.08>

**Laptop.** This is Band 2 of this solicitation. A laptop computer is a personal computer for mobile use. A laptop includes a display, keyboard, point device such as a touchpad and speakers into a single unit. A laptop can be used away from an outlet using a rechargeable battery. Laptop Band may include notebooks, ultrabooks, and netbooks. Computers with mobile operating systems will also be included under the Laptop Band.

**Lead State.** The State conducting this cooperative solicitation and centrally administering any resulting Master Agreement with the permission of the Signatory States. Minnesota is the Lead State for this procurement and the laws of Minnesota Statute Chapter 16C apply to this procurement.

**Mandatory.** Within the requirements, the terms “must” and “shall” identify a mandatory item or factor. **Failure to meet a mandatory requirement results in the rejection of the Responder’s proposal unless all responders are unable to meet the mandatory requirement.** Any objections to requirements should be identified by proposers in the Question and Answer period.

**Manufacturer.** A company that, as one of its primary business function, designs, assembles owns the trademark/patent and markets branded computer equipment.

**Master Agreement.** The underlying agreement executed by and between the Lead State and the Contract Vendor.

**Middleware.** Middleware is the software “glue” that helps programs and databases (which may be on different computers) work together. Its most basic function is to enable communication between different pieces of software.

**Options.** An item of equipment or a feature that may be chosen as an addition to or replacement for standard equipment and features.

**Order.** A purchase order, sales order, or other document used by a Purchasing Entity to order the Equipment.

**Participating Addendum.** A written statement of agreement signed by the Contract Vendor and a Participating State or other Participating Entity that clarifies the operation of this Master Agreement for the Participating Entity (e.g., ordering procedures specific to a Participating State) and may add other state-specific language or other requirements. A Participating Addendum evidences the Participant’s willingness to purchase and the Contract Vendor’s willingness to provide equipment under the terms and conditions of this Master Agreement with any and all exceptions noted and agreed upon.

**Participating States.** States that utilize the Master Agreement established by the RFP and enter into a Participating Addendum which further defines their participation.

**Participating Entity.** A Participating State, or other legal entity, properly authorized by a Participating State to enter into the Master Agreement through a Participating Addendum and that authorizes orders from the Master Agreement by Purchasing Entities. Under the WSCA-NASPO program, in some cases, local governments, political subdivisions or other entities in a State may be authorized by the chief procurement official to execute its own Participating Addendum where a Participating Addendum is not executed by the chief procurement official for that state that covers local governments, political subdivisions, or other government entities in the state.

**Partner.** A company, authorized by the Contract Vendor and approved by the Participating State, to provide marketing, support, or other authorized contract services on behalf of the Contract Vendor in accordance with the terms and conditions of the Contract Vendor’s Master Agreement. In the RFP, Partner is the term that will be used to call out the many different relationships a manufacturer may have with another company to market their product including, but not limited to agents, subcontractors, partners, fulfillment partners, channel partners, business partners, servicing subcontractor, etc.

**Peripherals.** A peripheral means any hardware product that can be attached to, added within or networked with personal computers, servers and storage. Peripherals extend the functionality of a computer without modifying the core components of the system. For the purposes of this proposal, peripherals are defined as including accessories. Peripherals may be manufactured by a third party, however, Contract Vendor shall not offer any peripherals manufactured by another Contract Vendor holding a Master Agreement. The Contract Vendors shall provide the warranty service and maintenance for all peripherals on the Master Agreement.

**Per Transaction Multiple Unit Discount.** A contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Participating Entity or multiple entities conducting a cooperative purchase.

**Premium Savings Packages.** Deeply discounted standard configurations available to Purchasing Entities using the Master Agreement. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals. WSCA-NASPO reserves the right to expand and modify the PSP throughout the life of the contract. For more information see: <http://www.wnpsp.com/index.html>.

**Purchasing Entity** – means a state, city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues an order against the Master Agreement and becomes financially committed to the purchase.

**Ruggedized.** This is band 6 of this solicitation. Ruggedized refers to equipment specifically designed to operate reliably in harsh usage environments and conditions, such as strong vibrations, extreme temperatures and wet or dusty conditions.

**Services.** Broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied. Contract Vendors may offer, but participating States and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the resulting contracts. EACH PARTICIPATING STATE DETERMINES RESTRICTIONS AND NEGOTIATES TERMS FOR SERVICES.

**Server.** This is Band 4 of this solicitation. A server is a physical computer dedicated to run one or more services or applications (as a host) to serve the needs of the users of other computers on a network. This band also includes server appliances. Server appliances have their hardware and software preconfigured by the manufacturer. It also includes embedded networking components such as those found in blade chassis systems. Ruggedized equipment may also be included in the Product and Service Schedule for this band.

**Storage.** This is Band 5 of this solicitation. Storage is hardware with the ability to store large amounts of data. This band includes SAN switching necessary for the proper functioning of the storage environment. Ruggedized equipment may also be included in the Product and Service Schedule for this band.

**Storage Area Network.** A storage area network (SAN) is a high-speed special-purpose network (or subnetwork) that interconnects different kinds of data storage devices with associated data servers on behalf of a larger network of users.

**Storage as a Service (STaaS).** An architecture model by which a provider allows a customer to rent or lease storage space on the provider's hardware infrastructure on a subscription basis. E.g., manage onsite or cloud services.

**Software.** For the purposes of this proposal, software is commercial operating off the shelf machine-readable object code instructions including microcode, firmware and operating system software that are preloaded on equipment. The term "Software" applies to all parts of software and documentation, including new releases, updates, and modifications of software.

**Tablet.** This is Band 3 of this solicitation. A tablet is a mobile computer that provides a touchscreen which acts as the primary means of control. Tablet band may include notebooks, ultrabooks, and netbooks that are touchscreen capable.

**Takeback Program.** The Contract Vendor's process for accepting the return of the equipment or other products at the end of life.

**Third Party Products.** Products sold by the Contract Vendor which are manufactured by another company.

**Upgrade.** Refers to replacement of existing software, hardware or hardware component with a newer version.

**Warranty.** The Manufacturers general warranty tied to the product at the time of purchase

**Wide Area Network or WAN.** A data network that serves users across a broad geographic area and often uses transmission devices provided by common carriers.

**WSCA-NASPO.** The WSCA-NASPO cooperative purchasing program, facilitated by the WSCA-NASPO Cooperative Purchasing Organization LLC, a 501(c)(3) limited liability company that is a subsidiary organization of the National Association of State Procurement Officials (NASPO). The WSCA-NASPO Cooperative Purchasing Organization facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia. The WSCA-NASPO Cooperative Development Team is identified in the Master Agreement as the recipient of reports and may be performing contract administration functions as assigned by the Lead State Contract Administrator.

## **SECTION 2: MASTER AGREEMENT TERMS AND CONDITIONS**

### **ALL TERMS AND CONDITIONS A-D APPLY TO THE MASTER AGREEMENT CONTRACT**

A statement of acceptance of the proposed Master Agreement Terms and Conditions, unless taken exception to, as specified in the RFP must be included in the response. Any suggestions for alternate language shall be presented.

A. GENERAL TERMS, CONDITIONS & INSTRUCTIONS

B. WSCA-NASPO TERMS & CONDITIONS

C. MINNESOTA TERMS AND CONDITIONS

D. FORMS

## SECTION 2: MASTER AGREEMENT TERMS AND CONDITIONS

### A. GENERAL TERMS, CONDITIONS & INSTRUCTIONS

1. **ACCEPTANCE OF TERMS AND CONDITIONS** The contents of the RFP and the response of the successful responder will become Master Agreement contractual obligations, along with the final Master Agreement, if acquisition action ensues. A statement of acceptance of the proposed Contract Terms and Conditions, unless taken exception to, as specified in the RFP must be included in the response. Any suggestions for alternate language shall be presented. The Lead State is under no obligation to accept wording changes submitted by the responder. The Lead State is solely responsible for rendering decisions in matters of interpretation on all terms and conditions. Any response which fails to comply with this requirement may be disqualified as nonresponsive.

All general proposal terms, specifications and WSCA-NASPO Terms & Conditions form a part of this RFP and will apply to any Master Agreements entered into as a result thereof.

2. **CONFLICT OF TERMS/ORDER OF PRECEDENCE:**

1. A Participating Entity's Participating Addendum ("PA");
2. Minnesota WSCA-NASPO Master Agreement (includes negotiated Terms & Conditions)
3. The Solicitation; and
4. Accepted portions of Contract Vendor's response to the Solicitation, as modified in any proposal revisions (if permitted)

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

3. **ADDENDA TO THE RFP.** Any addendum issued will become a part of the RFP. The Lead State may modify or clarify the RFP by issuing one or more addenda to all parties who have received the RFP. Each responder must follow the directions on the addendum. Addenda will be numbered consecutively in the order they are issued.
4. **AWARD.** The award of this solicitation will be based upon the total accumulated points as established in the RFP, for separate items, by grouping items, or by total lot, and where at its sole discretion the Lead State believes it will receive the best value. The Lead State reserves the right to award this solicitation to a single responder, or to multiple responders, whichever is in the best interest of the Lead State. It is the State's intent to award to multiple responders. The Lead State reserves the right to accept all or part of an offer, to reject all offers, to cancel the solicitation, or to re-issue the solicitation, whichever is in the best interest of the Lead State.

The Sourcing Team will make a recommendation on the award of this RFP. The commissioner of Administration or designee may accept or reject the recommendation of the Sourcing Team. The final award decision will be made by the Commissioner of Administration and the WSCA-NASPO Management Board.

5. **CLARIFICATION.** If a responder discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the RFP, the responder shall immediately notify the Acquisition Management Specialist in writing, as specified in the introduction, of such error and request modification or clarification of the document. This notification is due no later than seven calendar days prior to the proposal due date and time.

Responders are cautioned that any activity or communication with a State employee or officer, or a member of the Evaluation Team, regarding this Solicitation's contents or process, is strictly prohibited and may, as a result, have its response rejected. Any communication regarding this Solicitation, its content or process, must be directed to the Acquisition Management Specialist listed in the Solicitation documents.

6. **COMPLETION OF RESPONSES.** A response may be rejected if it is conditional or incomplete. Responses that contain conflicting, false, or misleading statements or that provide references that contradict or do not support an attribute or condition stated by the responder, may be rejected.
7. **MASTER AGREEMENT ADMINISTRATOR.** The Master Agreement Administrator designated by WSCA-NASPO and the State of Minnesota, Department of Administration is: Susan Kahle. Direct all correspondence and inquiries, legal questions, general issues, or technical issues regarding this RFP to:

Susan Kahle

Acquisition Management Specialist  
Department of Administration  
Materials Management Division  
50 Sherburne Avenue  
112 Administration Building  
St. Paul, MN 55155

Fax: 651.297.3996

E-mail: [susan.kahle@state.mn.us](mailto:susan.kahle@state.mn.us)

8. **DISPOSITION OF RESPONSES.** All materials submitted in response to this RFP will become property of the Lead State and will become public record after the evaluation process is completed. The evaluation process is complete when negotiations with the selected vendors are final. If the responder submits information in response to this RFP that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, the responder must:
- clearly mark all trade secret materials in its response at the time the response is submitted;
  - include a statement with its response justifying the trade secret designation for each item; and,
  - defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the Lead State, its agents and employees, from any judgments awarded against the Lead State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the Lead State's award of a Master Agreement. In submitting a response to the RFP, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of the Lead State. The Lead State will not consider the prices submitted by the responder to be trade secret materials.
9. **DISPUTE RESOLUTION PROCEDURES.** Any issue a responder has with the RFP document, which includes, but is not limited to, the terms, conditions, and specifications, must be submitted in writing to and received by the Master Agreement Administrator prior to the opening due date and time. Any issue a responder has with the Master Agreement award must be submitted in writing to the Master Agreement Administrator within five working days from the time the notice of the intent to award is issued. This notice may be made by any of the following methods: notification by letter, fax or email, or posted on the Materials Management website, [www.mmd.admin.state.mn.us](http://www.mmd.admin.state.mn.us). The Lead State will respond to any protest received that follows the above procedure. For those protests that meet the above submission requirements, the appeal process is, in sequence: The responsible Master Agreement Administrator, the Materials Management Division (MMD) Assistant Director, and the MMD Director.
10. **ELECTRONIC FILES TO DOWNLOAD, COMPLETE, AND RETURN.** Responders must download a Word/Excel document. To download the document, you must type or copy and paste the URL address listed below into your browser address line. When the document file opens, use the "Save As..." feature to save the document to your computer hard drive or other media. If you use the URL address listed below as a link, you will be unable to save the document to your hard drive or other media.

Please type or copy and paste the following URL address into your browser:

9/16/13 Version: <http://www.mmd.admin.state.mn.us/process/admin/documents/19512ComputerRFP.doc>

Version dated 01/22/2014 provided via addendum 12 includes revisions resulting from addenda.

If you need assistance please contact our HelpLine at 651.296.2600.

11. **ENTIRE AGREEMENT.** A written Master Agreement (including the contents of this RFP and selected portions of Contract Vendor's response incorporated therein by reference) and any written addenda thereto constitute the entire agreement of the parties to the Master Agreement.



12. **IRREVOCABLE OFFER.** In accordance with this Request for Proposal, and subject to all conditions thereof, the undersigned agrees that its response to this RFP, or any part thereof, is an irrevocable offer for 180 days following the submission deadline date unless stated otherwise in the RFP. It is understood and agreed that the response, or any part thereof, when accepted by the appropriate department and State officials in writing, may become part of a legal and binding Master Agreement between the undersigned vendor and the State of Minnesota.

13. **MATERIAL DEVIATION.** A responder shall be presumed to be in agreement with these terms and conditions unless it takes specific exception to one or more of the conditions. Submission by the responder of its proposed language shall not be viewed as an exception unless the responder specifically states in the response that its proposed changes are intended to supersede the terms and conditions.

RESPONDERS ARE CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE REQUEST FOR PROPOSAL. IF A RESPONDER MATERIALLY DEVIATES FROM THE GENERAL TERMS, CONDITIONS AND INSTRUCTIONS OR THE WSCA-NASPO TERMS AND CONDITIONS AND/OR SPECIFICATIONS, ITS RESPONSE MAY BE REJECTED.

A material deviation is an exception to the Request for Proposal general or WSCA-NASPO terms and conditions and/or specifications that:

- a. gives the responder taking the exception a competitive advantage over other vendors; or,
- b. gives the Lead State something significantly different from that which the Lead State requested.

14. **NONRESPONSIVE RESPONSES.** Responses that do not comply with the provisions in the RFP may be considered nonresponsive and may be rejected.

15. **NOTICES.** If one party is required to give notice to the other under the Master Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices to the Lead State shall be addressed as follows:

Susan Kahle  
Acquisition Management Specialist  
50 Sherburne Avenue  
112 Administration Bldg.  
St. Paul, MN 55155

[susan.kahle@state.mn.us](mailto:susan.kahle@state.mn.us)

16. **PRE-PROPOSAL MEETING.** A pre-proposal meeting will be held for all interested responders to review any concerns regarding this Request for Proposal. Attendance at this meeting is **NOT** MANDATORY, but is strongly recommended. See Schedule of events for date and time. To register for webinar:

<https://amrmsevents.webex.com/amrmsevents/onstage/g.php?d=663850855&t=a>

17. **PROPOSAL PREPARATION.** Responses are to be prepared and presented in the same sequential order as the questions are presented in this document. Responses deviating from the request for proposal format and organization may be removed from further consideration. Responses are expected to provide a straightforward and concise description of the responder's ability to meet the requirements. **MARKETING MATERIALS WILL NOT BE ACCEPTED AS A RESPONSE.**

The response to this Request for Proposal (RFP) must be returned sealed. Sealed responses must be received in the office of the Director of the Materials Management Division and time-stamped no later than the date and time specified in the schedule of events, at which time the names of the vendors responding to this RFP will be read. **Late responses** cannot be considered. The laws of Minn. Stat. Ch. 16C and all other applicable laws apply to this Request for Proposal.

#### **NARRATIVE RESPONSE**

- UTILIZE DOUBLE SIDED PRINTING - DO NOT INCLUDE UNNECESSARY BINDERS

- CLEARLY TAB AND MARK EACH DOCUMENT ACCORDING TO SECTIONS 1-6 AS NOTED IN THE TABLE OF CONTENTS.

Submit **1 ORIGINAL** and **3 COPIES** of the narrative response. Submit an electronic version in a searchable .pdf and also an unlocked word document.

The original copy of the response must be signed by an authorized member of the firm and marked Original.

**Do not include the COST PROPOSAL in the narrative response. The Cost proposal are to be submitted sealed and separately.**

## **COST PROPOSAL**

- SUBMIT SEPARATELY FROM NARRATIVE IN SEALED ENVELOP CLEARLY MARKED COST PROPOSAL

Submit **1 ORIGINAL** PRINTED COST PROPOSAL in a separate sealed envelope marked **Cost Proposal**. Submit an electronic version in a searchable .pdf, word and an unlocked EXCEL document.

Responses are to be sealed in mailing envelopes or packages with the responder's name and address clearly written on the outside. Once the RFP is awarded, the original copies will be kept, but all other copies and the electronic copies may be destroyed.

Costs for developing a response to this RFP are entirely the responder's responsibility and shall not be chargeable to the State of Minnesota or to any agency thereof.

This Request for Proposal does not commit the Lead State to award any Master Agreement or to pay any costs incurred by the vendors responding. Any materials submitted may be incorporated by reference in the final Master Agreement.

The Lead State reserves the right to accept or reject any or all responses or parts of responses and to waive informalities therein.

All responses must be prepared as stated herein and properly signed. Address all correspondence and inquiries regarding this RFP to the Master Agreement Administrator. THIS IS A **REQUEST FOR PROPOSAL**; NOT A PURCHASE ORDER.

- a. **ALTERATIONS.** Any alteration, particularly in the price used to determine the successful response, may be rejected unless the alteration is initialed by the person authorized to contractually obligate the responder. Proof of authorization shall be provided upon request.
- b. An **AUTHORIZED SIGNATURE** is required. The response must be in the legal name of the firm or business, and must be fully and properly executed and signed by an officer or other authorized representative who shall state his/her title.

Proof of authority of the person signing the response shall be furnished upon request. If the responder is a corporation, a secretarial certificate of an excerpt of the corporate minutes showing that the signing officer has authority to contractually obligate the corporation shall be furnished. Where the corporation has designated an attorney-in-fact, the ordinary power of attorney should be furnished. If the responder is a partnership, a letter of authorization shall be furnished, signed by one of the general partners. If the responder is a proprietor, and the person signing the response is other than the owner, a letter of authorization signed by the owner shall be furnished.

**FORMS MUST BE COMPLETED AND RETURNED WITH YOUR RESPONSE OR THE RESPONSE MAY BE REJECTED.**

18. **QUESTIONS.** Questions must be submitted in writing to Master Agreement Administrator. All questions received by the cutoff date and time will be responded to via an addendum to official solicitation holders. Be specific and cite the section, item and page number to which the question refers. Contact regarding this RFP with any State personnel other than the Master Agreement Administrator may result in rejection of the response. See schedule of events for date and time.

Responses to questions released via addendum 3: [MN WSCA-NASPO COMPUTER RESPONSES. RESPONSES TO QUESTIONS DUE NOV 22](#) released via addendum 5.

19. **SCHEDULE OF EVENTS.** This section provides a tentative schedule of the critical project dates. Responders should carefully examine and make certain they have a clear understanding of the requirements of the specified project milestones and the associated dates.

Date/Time	ACTION
September 16, 2013	Publish RFP
October 1, 2013 1:00 p.m. – 3:30 p.m. Central Time	Optional Pre-Proposal Webinar To register for webinar: <a href="https://amrmsevents.webex.com/amrmsevents/onstage/g.php?d=663850855&amp;t=a">https://amrmsevents.webex.com/amrmsevents/onstage/g.php?d=663850855&amp;t=a</a>
October 7, 2013 Due 3:00 P.M. CT	Questions Due Clearly reference the section and item to which question pertains. Accepted via email to <a href="mailto:susan.kahle@state.mn.us">susan.kahle@state.mn.us</a>
<b>ORIGINAL: NOVEMBER 18, 2013</b>	<b>Proposal Due Date/Proposal Opening 3:00 P.M. CT</b>
<b>REVISED: JANUARY 21, 2014</b>	<b>Proposal Due Date/Proposal Opening 3:00 P.M. CT</b>

20. **TAXPAYER IDENTIFICATION:** The Contract Vendor shall be registered as a vendor to the Lead State in the SWIFT Procurement System. Registration must be done online at <http://www.mmb.state.mn.us/vendorresources>.

## CHECKLIST.

This list may not be comprehensive, read the RFP thoroughly for information required in this solicitation.

- One original and three copies of the NARRATIVE proposal. One electronic searchable pdf and one editable word/ excel document on flash drive or CD. DO NOT INCLUDE COST PROPOSAL WITH THE NARRATIVE
- One original PRINTED COST proposal SEALED including the cost evaluation forms. Also include one electronic flash drive or CD as searchable .pdf and word document in **sealed in separate envelope**
- Cost Proposal includes:
  - 1. Responses to Section 4
  - 2. Baseline Price List 3. Proposed Product and Services Schedule 4. Price Workbooks for applicable Bands – include all tabs. Pricing based on Nov 15<sup>th</sup>
- Signed Addendums (if applicable)
- Response to Master Agreement Terms & Conditions (A-D) in order presented in the RFP, clearly marked and tabbed. Acceptance of Terms of condition must be noted and alternative language presented. Utilize Exception form provided
- Response to Requirements in order presented in the RFP, clearly marked and tabbed. Describe HOW the requirement will be met. **NOTE: Requirements need to be checked yes or no. If checked no, response may be rejected. Vendors should express concerns regarding requirements during the question and answer period. If ALL vendors are unable to meet the requirement, the Lead State reserves the right to waive the requirement.**
- Forms included in RFP
  - \_\_\_ Signature Page
  - \_\_\_ Affirmative Action Certification
  - \_\_\_ Trade Secret Information

**NOTE: Trade secret information must be redacted from proposal and submitted in separate sealed envelope clearly marked with the Trade Secret Form.**

  - \_\_\_ Affidavit of Non-Collusion
  - \_\_\_ Service & Delivery
  - \_\_\_ Savings
  - \_\_\_ Taxpayer Identification
  - \_\_\_ Veterans Preference
  - \_\_\_ Question Form
  - \_\_\_ T&C Exception Form
  - \_\_\_ VPAT WCAG Accessibility Form (for the proposed website supporting the contract)
- Insurance - Does not need to be provided with proposal, but evidence must be provided prior to award. Review and confirm company can meet these requirements.

## SECTION 2: MASTER AGREEMENT TERMS AND CONDITIONS

### B. WSCA-NASPO TERMS AND CONDITIONS

**1. ADMINISTRATIVE FEES.** The Contract Vendor shall pay a WSCA-NASPO Administrative Fee of one-tenth of one percent (0.1% or 0.001) in accordance with the Terms and Conditions of the Master Agreement no later than 60 days following the end of each calendar quarter. The WSCA-NASPO Administrative Fee shall be submitted quarterly and is based on sales of products and services (less any charges for taxes or shipping). The WSCA-NASPO Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

Additionally, some states may require an additional fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contract Vendor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements may not affect the WSCA-NASPO Administrative Fee or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

**2. AGREEMENT ORDER OF PRECEDENCE.** The Master Agreement shall consist of the following documents:

1. A Participating Entity's Participating Addendum ("PA");
2. Minnesota WSCA-NASPO Master Agreement (includes negotiated Terms and Conditions)
3. The Solicitation; and
4. Accepted portions of the Contract Vendor's response to the Solicitation, as modified in any proposal revisions (if permitted)

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

**3. AMENDMENTS.** The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA-NASPO Master Agreement Administrator.

**4. ASSIGNMENT OF ANTITRUST RIGHTS.** Contract Vendor irrevocably assigns to a Participating Entity any claim for relief or cause of action which the Contract Vendor now has or which may accrue to the Contract Vendor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the Contract Vendor for the purpose of carrying out the Contract Vendor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

**5. ASSIGNMENT/SUBCONTRACT.** Contract Vendor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the WSCA-NASPO Master Agreement Administrator.

**6. CANCELLATION.** Unless otherwise stated in the terms and conditions, any Master Agreement may be canceled by either party upon 60 days' notice, in writing, prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation or in the applicable Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Participating Entity to indemnification by the Contract Vendor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in

association with any order. Cancellation of the Master Agreement due to Contract Vendor default may be immediate if defaults cannot be reasonably cured as allowed per Default and Remedies term.

## **7. CONFIDENTIALITY, NON-DISCLOSURE AND INJUNCTIVE RELIEF.**

**7.1 Confidentiality.** Contract Vendor acknowledges that it and its employees or agents may, in the course of providing the Product under this Master Agreement, be exposed to or acquire information that is confidential to Participating Entity or Participating Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contract Vendor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (a) any Participating Entity records, (b) personnel records, and (c) information concerning individuals, is confidential information of Participating Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contract Vendor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by Contract Vendor) publicly known; (b) is furnished by Participating Entity to others without restrictions similar to those imposed by this Master Agreement; (c) is rightfully in Contract Vendor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (d) is obtained from a source other than Participating Entity without the obligation of confidentiality, (e) is disclosed with the written consent of Participating Entity or; (f) is independently developed by employees, agents or subcontractor of Contract Vendor who can be shown to have had no access to the Confidential Information

**7.2 Non-Disclosure.** Contract Vendor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the performance of this Master Agreement to Participating Entity hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contract Vendor shall use commercially reasonable efforts to assist Participating Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contract Vendor shall advise Participating Entity immediately if Contract Vendor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement and Contract Vendor shall at its expense cooperate with Participating Entity in seeking injunctive or other equitable relief in the name of Participating Entity or Contract Vendor against any such person. Except as directed by Participating Entity, Contract Vendor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Participating Entity's request, Contract Vendor shall turn over to Participating Entity all documents, papers, and other matter in Contract Vendor's possession that embody Confidential Information. Notwithstanding the foregoing, Contract Vendor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

**7.3 Injunctive Relief.** Contract Vendor acknowledges that breach of this Section, including disclosure of any Confidential Information, will cause irreparable injury to Participating Entity that is inadequately compensable in damages. Accordingly, Participating Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contract Vendor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Participating Entity and are reasonable in scope and content.

**7.4 Participating Entity** is agreeing to the above language to the extent is not in conflict with Participating Entities public disclosure laws.

**8. DEBARMENT.** The Contract Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Master Agreement) by any governmental department or agency. If the Contract Vendor cannot certify this statement, attach a written explanation for review by WSCA-NASPO.

In any order against this Master Agreement for a requirement established by a Purchasing Entity that discloses the use of federal funding, to the extent another form of certification is not required by a Participating Addendum or the order of the Purchasing Entity, the Contractor's quote represents a recertification consistent with the terms of paragraph 8, Section 2D, Minnesota Terms and Conditions

## **9. DEFAULTS & REMEDIES.**

- a. The occurrence of any of the following events shall be an event of default under this Master Agreement:
- i. Nonperformance of contractual requirements; or
  - ii. A material breach of any term or condition of this Master Agreement; or

- iii. Any representation or warranty by Contract Vendor in response to the solicitation or in this Master Agreement proves to be untrue or materially misleading; or
  - iv. Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contract Vendor, or the appointment of a receiver or similar officer for Contract Vendor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
  - v. Any default specified in another section of this Master Agreement.
- b. Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 30 calendar days in which Contract Vendor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contract Vendor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.
- c. If Contract Vendor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contract Vendor shall be in breach of its obligations under this Master Agreement and Lead State shall have the right to exercise any or all of the following remedies:
- i. Exercise any remedy provided by law; and
  - ii. Terminate this Master Agreement and any related Master Agreements or portions thereof; and
  - iii. Impose liquidated damages as provided in this Master Agreement; and
  - iv. Suspend Contract Vendor from receiving future bid solicitations; and
  - v. Suspend Contract Vendor's performance; and
  - vi. Withhold payment until the default is remedied.
- d. In the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

**10. DELIVERY.** Unless otherwise indicated in the Master Agreement, the prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contract Vendor. Additional delivery charges will not be allowed for back orders.

**11. FORCE MAJEURE.** Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The WSCA-NASPO Master Agreement Administrator may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

**12. GOVERNING LAW.** This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the Master Agreements shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the Master Agreements or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

**13. INDEMNIFICATION. DELETED SEE SECTION 2C17** **14. INDEMNIFICATION – INTELLECTUAL PROPERTY. DELETED SEE SECTION 2C17**

**15. INDEPENDENT CONTRACT VENDOR.** The Contract Vendor shall be an independent Contract Vendor, and as such shall have no authorization, express or implied to bind WSCA-NASPO or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA-NASPO or the states, except as expressly set forth herein.

**16. INDIVIDUAL CUSTOMER.** Except to the extent modified by a Participating Addendum, each Participating Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or to recover any costs allowed in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities.

The Contract Vendor will apply the charges and invoice each Purchasing Entity individually.

**17. INSURANCE.** Except to the extent modified by a Participating Addendum, Contract Vendor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contract Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or at a Participating Entity's option, result in termination of its Participating Addendum.

Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b) Contract Vendor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

Contract Vendor shall pay premiums on all insurance policies. Such policies shall also reference this Master Agreement and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to Participating Entity by the Contract Vendor.

Prior to commencement of the work, Contract Vendor shall provide to the Participating Entity a written endorsement to the Contract Vendor's general liability insurance policy that (i) names the Participating Entity as an additional insured, (ii) provides that no material alteration, cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating Entity has been given at least thirty (30) days prior written notice, and (iii) provides that the Contract Vendor's liability insurance policy shall be primary, with any liability insurance of the Participating Entity as secondary and noncontributory.

Contract Vendor shall furnish to Participating Entity copies of certificates of all required insurance within thirty (30) calendar days of the Participating Addendum's effective date and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at the Lead State Master Agreement Administrator's sole option, result in this Master Agreement's termination.

Coverage and limits shall not limit Contract Vendor's liability and obligations under this Master Agreement.

**18. LAWS AND REGULATIONS.** Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

**19. LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY. DELETED – SEE SECTION 2B30 FOR REVISED TERM ADDRESSING TITLE OF PRODUCT.**

**20. NO WAIVER OF SOVEREIGN IMMUNITY.** The Lead State, Participating Entity or Purchasing Entity to the extent it applies does not waive its sovereign immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any action based on this Contract.

If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court of the Participating Entity's State.

**21. ORDER NUMBERS.** Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels (if possible), packing slips, invoices, and on all correspondence.

**22. PARTICIPANTS.** WSCA-NASPO Cooperative Purchasing Organization LLC is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the WSCA/NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states and the District of Columbia. Obligations under this Master Agreement are limited to those Participating States who have signed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial



obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award will be permissive.

**23. PARTICIPATION OF ENTITIES.** Use of specific WSCA-NASPO cooperative Master Agreements by state agencies, political subdivisions and other entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

**24. PAYMENT.** Payment for completion of an order under this Master Agreement is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contract Vendor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

**25. PUBLIC INFORMATION.** The Master Agreement and all related documents are subject to disclosure pursuant to the Participating Entity's public information laws.

**26. RECORDS ADMINISTRATION AND AUDIT.** The disclosure of records in Participating States relating to Participating addenda and orders placed against the Master Agreement shall be governed by the laws of the Participating State and entity who placed the order.

The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder.

Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for an overpayments inconsistent with the terms of the Master Agreement or orders or underpayment of fees found as a result of the examination of the Contractor's records.

The rights and obligations herein right exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State Master Agreement Administrator to review compliance with those obligations.

Records will be retained longer if required by Participating Entity's law.

**27. REPORTS - SUMMARY AND DETAILED USAGE.** In addition to other reports that may be required by this solicitation, the Contract Vendor shall provide the following WSCA-NASPO reports.

A. Summary Sales Data. The Contractor shall submit quarterly sales reports directly to WSCA-NASPO using the WSCA-NASPO Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under the contract shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than the last day of the month following the end of the calendar quarter (as specified in the reporting tool).

B. Detailed Sales Data. Contract Vendor shall also report detailed sales data by: state; entity/customer type, e.g., local government, higher education, K12, non-profit; Purchasing Entity name; Purchasing Entity bill-to and ship-to locations; Purchasing Entity and Contract Vendor Purchase Order identifier/number(s); Purchase Order Type (e.g., sales order, credit, return, upgrade, determined by industry practices); Purchase Order date; Ship Date; and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State no later than the last day of the month

following the end of the reporting period. Reports shall be delivered to the Lead State and to the WSCA-NASPO Cooperative Development Team electronically through email; CD-Rom, jump drive or other electronic matter as determined by the Lead State.

Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in Section 6, Attachment H.

C. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the Participating Addendum. Specific data in relation to sales to employees for personal use to be defined in the final contract award to ensure only public information is reported.

D. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and WSCA-NASPO shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

## **28. ACCEPTANCE AND ACCEPTANCE TESTING**

**A. Acceptance.** Purchasing Entity (the entity authorized under the terms of any Participating Addendum to place orders under this Master Agreement) shall determine whether all Products and Services delivered meet the Contractor's published specifications (a.k.a. "Specifications"). No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within thirty (30) calendar days following delivery of non-acceptance of a Product or completion of Service. In the event that the Contractor has not been notified within 30 calendar days from delivery of Product or completion of Service, the Product and Services will be deemed accepted on the 31<sup>st</sup> day after delivery of Product or completion of Services. This clause shall not be applicable, if acceptance testing and corresponding terms have been mutually agreed to by both parties in writing.

**B. Acceptance Testing.** The Purchasing Entity (the entity authorized under the terms of any Participating Addendum to place orders under this Master Agreement) and the Contract Vendor shall determine if Acceptance Testing is applicable and/or required for the purchase. The terms in regards to acceptance testing will be negotiated, in writing, as mutually agreed. If Acceptance Testing is NOT applicable, the terms regarding Acceptance in the Contract shall prevail.

**29. SYSTEM FAILURE OR DAMAGE.** In the event of system failure or damage caused by the Contract Vendor or its Product, the Contract Vendor agrees to use its commercially reasonable efforts to restore or assist in restoring the system to operational capacity. The Contract Vendor shall be responsible under this provision to the extent a 'system' is defined at the time of the Order; otherwise the rights of the Purchasing Entity shall be governed by the Warranty.

## **30. TITLE OF PRODUCT.**

### OWNERSHIP

- a. Ownership of Documents/Copyright. Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contract Vendor in the performance of its obligations under the Master Agreement and paid for by the Purchasing Entity shall be the exclusive property of the Purchasing Entity and all such material shall be remitted to the Purchasing Entity by the Contract Vendor upon completion, termination or cancellation of the Master Agreement. The Contract Vendor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contract Vendor's obligations under this Master Agreement without the prior written consent of the Purchasing Entity.
- b. Rights, Title and Interest. All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contract Vendor conceives or originates, either individually or jointly with others, which arises out of the performance of the Master Agreement, will be the property of the Purchasing Entity and are, by the Master Agreement, assigned to the Purchasing Entity along with ownership of any and all copyrights in the copyrightable material. The Contract Vendor also agrees, upon the request of the Purchasing Entity, to execute all papers and perform all other acts necessary to assist the Purchasing Entity to obtain and register copyrights on such materials. Where applicable, works of authorship created by the Contract Vendor for the Purchasing Entity in performance of the Master Agreement shall be considered "works for hire" as defined in the U.S. Copyright Act.

- c. Notwithstanding the above, the Purchasing Entity will not own any of the Contract Vendor's pre-existing intellectual property that was created prior to the Master Agreement and which the Purchasing Entity did not pay the Contract Vendor to create. The Contract Vendor grants the Purchasing Entity a perpetual, irrevocable, non-exclusive, royalty free license for Contract Vendor's pre-existing intellectual property that is contained in the products, materials, equipment or services that are purchased through this Master Agreement.

**31. WAIVER OF BREACH.** Failure of Lead State Master Agreement Administrator, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State or Participating Entity must be in writing. Waiver by the Lead State Master Agreement Administrator, Participating Entity, or Purchasing Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or breach of any terms or requirements shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, a Participating Addendum, or order.

**32. WARRANTY.** The warranty provided must be the manufacturers written warranty tied to the product at the time of purchase and must include the following: (a) the Product performs according to the specifications (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is designed and manufactured in a commercially reasonable manner, and (d) the Product is free of defects.

For third party products sold by the Contract Vendor, the Contract Vendor will assign the manufacturer or publisher's warranty and maintenance. The Contract Vendor will provide warranty and maintenance call numbers and assist the customer in engaging the manufacturer on warranty and maintenance issues.

Upon breach of the warranty, the Contract Vendor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contract Vendor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contract Vendor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or so ordered by the court.

## SECTION 2: MASTER AGREEMENT TERMS AND CONDITIONS

### C. MINNESOTA TERMS AND CONDITIONS

- 1. ACCEPTANCE OF PROPOSAL CONTENT.** The contents of this RFP and selected portions of response of the successful Proposer will become contractual obligations, along with the final Master Agreement, if acquisition action ensues. The Lead State is solely responsible for rendering the decision in matters of interpretation of all terms and conditions.
- 2. ACCESSIBILITY STANDARDS.** The State of Minnesota has developed IT Accessibility Standards effective September 1, 2010, which entails, in part, the Web Content Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 Subparts A-D which can be viewed at [http://www.mmd.admin.state.mn.us/pdf/accessibility\\_standard.pdf](http://www.mmd.admin.state.mn.us/pdf/accessibility_standard.pdf)

Responders must complete the WCAG VPAT form included in the FORMS section of the RFP. The completed VPAT form will be scored based on its compliance with the Accessibility Standards. The requested WCAG VPAT applies to the responder's website to be offered under the Contract. For products offered, VPATS are only to be provided upon request by the participating entity.

Upon request by the participating entity, the responder must make best efforts to provide Voluntary Product Accessibility Templates (VPATS) for all products offered in its response. Click here for link to VPATS for both Section 508 VPAT and WCAG 2.0 VPAT <http://mn.gov/oet/policies-and-standards/accessibility/#>.

- 3. ADMINISTRATIVE PERSONNEL CHANGES.** The Contract Vendor must notify the Contract Administrator of changes in the Contract Vendor's key administrative personnel, in advance and in writing. Any employee of the Contract Vendor who, in the opinion of the State of Minnesota, is unacceptable, shall be removed from the project upon written notice to the Contract Vendor. In the event that an employee is removed pursuant to a written request from the Acquisition Management Specialist, the Contract Vendor shall have 10 working days in which to fill the vacancy with an acceptable employee.
- 4. AMENDMENT(S).** Master Agreement amendments shall be negotiated by the Lead State with the Contract Vendor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. An approved Master Agreement amendment means one approved by the authorized signatories of the Contract Vendor and the Lead State as required by law.
- 5. AMERICANS WITH DISABILITIES ACT (ADA).** Products provided under the Master Agreement must comply with the requirements of the Americans with Disabilities Act (ADA). The Contract Vendor's catalog and other marketing materials utilized to offer products under the Master Agreement must state when a product is not in compliance. If any descriptive marketing materials are silent as to these requirements, the Contract Vendor agrees that the customer can assume the product meets or exceeds the ADA requirements.
- 6. AWARD OF RELATED CONTRACTS.** In the event the Lead State undertakes or awards supplemental Contracts for work related to the Master Agreement or any portion thereof, the Contract Vendor shall cooperate fully with all other Contract Vendors and the State in all such cases. All Master Agreements between subcontractors and the Contract Vendor shall include a provision requiring compliance with this section.
- 7. AWARD OF SUCCESSOR CONTRACTS.** In the event the State undertakes or awards a successor for work related to the Contract or any portion thereof, the current Contract Vendor shall cooperate fully during the transition with all other Contract Vendors and the State in all such cases. All Master Agreements between subcontractors and the Contract Vendor shall include a provision requiring compliance with this section.
- 8. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**
  - a. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.**

Instructions for certification:

    1. By signing and submitting this proposal, the prospective lower tier participant [responder] is providing the certification set out below.
    2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly

rendered an erroneous certification, in addition to other remedies available to the federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal [response] is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages section of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction [subcontract equal to or exceeding \$25,000] with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of parties excluded from federal procurement and nonprocurement programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**b. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

- 9. CHANGE REQUESTS.** The Lead State reserves the right to request, during the term of the Master Agreement, changes to the products offered. Products introduced during the term of the Master Agreement shall go through a formal review process. A formal process of changing the Master Agreement shall be developed during the negotiation of the Master Agreement. The Contract Vendor shall evaluate and recommend products for which agencies have an expressed need. The Lead State shall require the Contract Vendor to provide a summary of its research of those

products being recommended for inclusion in the Master Agreement as well as defining how adding the product will enhance the Master Agreement. The Lead State may request that products, other than those recommended, are added to the Master Agreement.

In the event that the Lead State desires to add new products and services that are not included in the original Master Agreement, the Lead State requires that independent manufacturers and resellers cooperate with the already established Contract Vendor in order to meet the Lead State's requirements. Evidence of the need to add products or services should be demonstrated to the Lead State. The Master Agreement shall be modified via supplement or amendment. The Lead State will negotiate the inclusion of the products and services with the Contract Vendor. No products or services will be added to the Master Agreement without the Lead State's prior approval.

- 10. CONFLICT MINERALS.** Contract Vendor agrees to provide information upon request regarding adherence to the Federal Conflict Minerals Trade Act. See: <http://beta.congress.gov/111/bills/hr4173/111hr4173enr.pdf#page=838>  
<http://www.sec.gov/news/press/2012/2012-163.htm>
- 11. COPYRIGHTED MATERIAL WAIVER.** The Lead State reserves the right to use, reproduce and publish proposals in any manner necessary for State agencies and local units of government to access the responses, including but not limited to photocopying, State Intranet/Internet postings, broadcast faxing, and direct mailing. In the event that the response contains copyrighted or trademarked materials, it is the responder's responsibility to obtain permission for the Lead State to reproduce and publish the information, regardless of whether the responder is the manufacturer or reseller of the products listed in the materials. By signing its response, the responder certifies that it has obtained all necessary approvals for the reproduction and/or distribution of the contents of its response and agrees to indemnify, protect, save and hold the Lead State, its representatives and employees harmless from any and all claims arising from the violation of this section and agrees to pay all legal fees incurred by the Lead State in the defense of any such action.
- 12. EFFECTIVE DATE.** Pursuant to Minnesota law, the Master Agreement arising from this RFP shall be effective upon the date of final execution by the Lead State, unless a later date is specified in the Master Agreement.
- 13. FOREIGN OUTSOURCING OF WORK.** Upon request, the Contract Vendor is required to provide information regarding the location of where services, data storage and/or location of data processing under the Master Agreement will be performed.
- 14. GOVERNMENT DATA PRACTICES.** The Contract Vendor and the Lead State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (and where applicable, if the Lead State contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the Lead State to the Contract Vendor and all data provided to the Lead State by the Contract Vendor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contract Vendor in accordance with the Master Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

In the event the Contract Vendor receives a request to release the data referred to in this article, the Contract Vendor must immediately notify the Lead State. The Lead State will give the Contract Vendor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contract Vendor or the Lead State.

The Contract Vendor agrees to indemnify, save, and hold the State of Minnesota, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Master Agreement. In the event that the Contract Vendor subcontracts any or all of the work to be performed under the Master Agreement, the Contract Vendor shall retain responsibility under the terms of this article for such work.

- 15. HAZARDOUS SUBSTANCES.** To the extent that the goods to be supplied by the Contract Vendor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contract Vendor must provide Material Safety Data Sheets regarding those substances. A copy must be included with each delivery.

**16. HUMAN RIGHTS/AFFIRMATIVE ACTION.** The Lead State requires affirmative action compliance by its Contract Vendors in accordance with Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600.

- a. Covered contracts and Contract Vendors. One-time acquisitions, or a contract for a predetermined amount of goods and/or services, where the amount of your response is in excess of \$100,000 requires completion of the Affirmative Action Certification page. If the solicitation is for a contract for an indeterminate amount of goods and/or services, and the State estimated total value of the contract exceeds \$100,000 whether it will be a multiple award contract or not, you must complete the Affirmative Action Certification page. If the contract dollar amount or the State estimated total contract amount exceeds \$100,000 and the Contract Vendor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, the Contract Vendor must comply with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600. A Contract Vendor covered by Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600 that had more than 40 full-time employees within Minnesota on a single working day during the previous 12 months must have a certificate of compliance issued by the commissioner of the Department of Human Rights (certificate of compliance). A Contract Vendor covered by Minn. Stat. § 363A.36, subd. 1 that did not have more than 40 full-time employees on a single working day during the previous 12 months within Minnesota but that did have more than 40 full-time employees in the state where it has its principal place of business and that does not have a certificate of compliance must certify that it is in compliance with federal affirmative action requirements.
- b. Minn. Stat. § 363A.36, subd. 1 requires the Contract Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the commissioner of the Department of Human Rights (commissioner) as indicated by a certificate of compliance. Minn. Stat. § 363A.36 addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.
- c. Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Contract Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for noncompliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and parts 5000.3552-5000.3559.
- d. Disabled Workers. Minn. R. 5000.3550 provides the Contract Vendor must comply with the following affirmative action requirements for disabled workers.

#### AFFIRMATIVE ACTION FOR DISABLED WORKERS

- (a) The Contract Vendor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contract Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (b) The Contract Vendor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (c) In the event of the Contract Vendor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (d) The Contract Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contract Vendor's obligation under the law to take affirmative action to

employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.

(e) The Contract Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contract Vendor is bound by the terms of Minn. Stat. § 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

e. Consequences. The consequences of a Contract Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the commissioner, refusal by the commissioner to approve subsequent plans, and termination of all or part of the Contract by the commissioner or the State.

f. Certification. The Contract Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance. It is agreed between the parties that Minn. Stat. 363.36 and Minn. R. 5000.3400 to 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600 are available upon request from the contracting agency.

**17. INDEMNIFICATION** The Contract Vendor shall indemnify, protect, save and hold harmless the Lead State and the Participating Entity, its representatives and employees, from any and all claims or causes of action, including all legal fees incurred by the Lead State and the Participating Entity arising from the performance of the Master Agreement by the Contract Vendor or its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contract Vendor may have with the Lead State's and Participating Entity's failure to fulfill its obligations pursuant to the Master Agreement.

If the Participating Entity's laws require approval of a third party to defend Participating Entity, Participating Entity will seek such approval and if approval is not received, Contract Vendor is not required to defend that Participating Entity.

**INTELLECTUAL PROPERTY INDEMNIFICATION.** The Contract Vendor warrants that any materials or products provided or produced by the Contract Vendor or utilized by the Contract Vendor in the performance of this Master Agreement will not infringe upon or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any such claim by any third party against the Participating Entity, the Participating Entity shall promptly notify the Contract Vendor. The Contract Vendor, at its own expense, shall indemnify; defend to the extent permitted by the Participating Entity's laws, and hold harmless the Participating Entity against any loss, cost, expense, or liability (including legal fees) arising out of such a claim, whether or not such claim is successful against the Participating Entity.

If such a claim has occurred, or in the Contract Vendor's opinion is likely to occur, the Contract Vendor shall either procure for the Participating Entity the right to continue using the materials or products or replacement or modified materials or products. If an option satisfactory to the Participating Entity is not reasonably available, the Participating Entity shall return the materials or products to the Contract Vendor, upon written request of the Contract Vendor and at the Contract Vendor's expense. This remedy is in addition to any other remedy provided by law

**18. JURISDICTION AND VENUE.** This RFP and any ensuing Master Agreement, its amendments and supplements thereto, shall be governed by the laws of the State of Minnesota, USA. Venue for all legal proceedings arising out of the Master Agreement, or breach thereof, shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota. By submitting a response to this Request for Proposal, a Responder voluntarily agrees to be subject to the jurisdiction of Minnesota for all proceedings arising out of this RFP, any ensuing Master Agreement, or any breach thereof.

**19. LAWS AND REGULATIONS.** Any and all services, articles or equipment offered and furnished must comply fully with all local, State and federal laws and regulations, including Minn. Stat. § 181.59 prohibiting discrimination and business registration requirements of the Office of the Minnesota Secretary of State.

**20. NONVISUAL ACCESS STANDARDS.** Pursuant to Minn. Stat. § 16C.145, the Contract Vendor shall comply with the following nonvisual technology access standards :



- a. That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- b. That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- c. That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- d. That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

**21. NOTICE TO RESPONDERS.** Pursuant to Minn. Stat. § 270C.65, subd. 3, Contract Vendors are required to provide their Federal Employer Identification Number or Social Security Number. This information may be used in the enforcement of federal and State tax laws. Supplying these numbers could result in action to require a Contract Vendor to file tax returns and pay delinquent tax liabilities. These numbers will be available to federal and State tax authorities and State personnel involved in the payment of State obligations.

**22. ORGANIZATIONAL CONFLICTS OF INTEREST.** The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:

- a Contract Vendor is unable or potentially unable to render impartial assistance or advice to the State;
- the Contract Vendor's objectivity in performing the work is or might be otherwise impaired; or
- the Contract Vendor has an unfair competitive advantage.

The Contract Vendor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contract Vendor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Master Agreement. In the event the Contract Vendor was aware of an organizational conflict of interest prior to the award of the Master Agreement and did not disclose the conflict to the Master Agreement Administrator, the State may terminate the Master Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contract Vendor," "Master Agreement", "Master Agreement Administrator" and "Contract Administrator" modified appropriately to preserve the State's rights.

**23. PAYMENT CARD INDUSTRY DATA SECURITY STANDARD AND CARDHOLDER INFORMATION SECURITY.**

Contract Vendor assures all of its Network Components, Applications, Servers, and Subcontractors (if any) comply with the Payment Card Industry Data Security Standard ("PCIDSS"). "Network Components" shall include, but are not limited to, Contract Vendor's firewalls, switches, routers, wireless access points, network appliances, and other security appliances; "Applications" shall include, but are not limited to, all purchased and custom external (web) applications. "Servers" shall include, but are not limited to, all of Contract Vendor's web, database, authentication, DNS, mail, proxy, and NTP servers. "Cardholder Data" shall mean any personally identifiable data associated with a cardholder, including, by way of example and without limitation, a cardholder's account number, expiration date, name, address, social security number, or telephone number.

Subcontractors (if any) must be responsible for the security of all Cardholder Data in its possession; and will only use Cardholder Data for assisting cardholders in completing a transaction, providing fraud control services, or for other uses specifically required by law. Contract Vendor must have a business continuity program which conforms to PCIDSS to protect Cardholder Data in the event of a major disruption in its operations or in the event of any other disaster or system failure which may occur to operations; will continue to safeguard Cardholder Data in the event this Agreement terminates or expires; and ensure that a representative or agent of the payment card industry and a representative or agent of the State shall be provided with full cooperation and access to conduct a thorough security

review of Contract Vendor's operations, systems, records, procedures, rules, and practices in the event of a security intrusion in order to validate compliance with PCIDSS.

**24. PERFORMANCE WHILE DISPUTE IS PENDING.** Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under the Master Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under the Master Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

**25. PREFERENCE.**

**Targeted/Economically Disadvantaged.** In accordance with Minn. Stat. § 16C.16, subds. 6 and 7, eligible certified targeted group (TG) businesses and certified economically disadvantaged (ED) businesses will receive a 6 percent preference on the basis of award for this RFP. The preference is applied only to the first \$500,000 of the response to the RFP. Eligible TG businesses must be currently certified by the Materials Management Division prior to the bid opening date and time.

To verify TG/ED certification, refer to the Materials Management Division's web site at [www.mmd.admin.state.mn.us](http://www.mmd.admin.state.mn.us) under "Vendor Information, Directory of Certified TG/ED Vendors."

To verify TG eligibility for preference, refer to the Materials Management Division's web site under "Vendor Information, Targeted Groups Eligible for Preference in State Purchasing" or call the Division's HelpLine at 651.296.2600.

**Reciprocal Preference.** In accordance with Minn. Stat. §16C.06, subd 7, the acquisition of goods or services shall be allowed a preference over a non-resident vendor from a state that gives or requires a preference to vendors from that state, the preference shall be equal to the preference given or required by the state of the non-resident vendor. If you wish to be considered a Minnesota Resident vendor you must claim that by filling out the Resident Vendor Form included in this solicitation and include it in your response.

**Veteran.** In accordance with Minn. Stat. § 16C.16, subd. 6a, (a) Except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a six percent preference in the amount bid on state procurement to **certified small businesses** that are **majority-owned and operated by:**

- (1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs;
- (2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs; or
- (3) any other veteran-owned small businesses certified under section 16C.19, paragraph (d).

In accordance with Minn. Stat. § 16C.19 (d), a veteran-owned small business, the principal place of business of which is in Minnesota, is certified if it has been verified by the United States Department of Veterans Affairs as being either a veteran-owned small business or a service disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

To receive a preference the veteran-owned small business must meet the statutory requirements above by the solicitation opening date and time. The preference is applied only to the first \$500,000 of the response.

If responder is claiming the veteran-owned preference, attach documentation, sign and return form with response to the solicitation. Only eligible veteran-owned small businesses that meet the statutory requirements and provide adequate documentation will be given the preference.

**26. PUBLIC INFORMATION.** Once the information contained in the responses is deemed public information, interested parties may request to obtain the public information. You may call 651.201.2413 between the hours of 8:00 a.m. to 4:30 p.m. to arrange this.

**27. PUBLICITY.** Any publicity given to the program, publications or services provided resulting from a State contract for goods or services, including but not limited to notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contract Vendor, or its employees individually or jointly with others, or any subcontractors, shall identify the State as the sponsoring agency and shall not be released, unless

such release is a specific part of an approved work plan included in the Master Agreement prior to its approval by the State's Authorized Representative and the State's Assistant Director or designee of Materials Management Division.

The Contract Vendor shall make no representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of the Master Agreement without the prior written consent of the State's Assistant Director or designee of Materials Management Division. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

- 28. PURCHASE ORDERS.** The State requires that there will be no minimum order requirements or charges to process an individual purchase order. The Master Agreement number and the PO number must appear on all documents (e.g., invoices, packing slips, etc.). The Ordering Entity's purchase order constitutes a binding contract
- 29. RIGHTS RESERVED.** Notwithstanding anything to the contrary, the State reserves the right to:
- a. reject any and all responses received;
  - b. select, for Master Agreements or for negotiations, a response other than that with the lowest cost;
  - c. waive or modify any informalities, irregularities, or inconsistencies in the responses received;
  - d. negotiate any aspect of the proposal with any responder and negotiate with more than one responder;
  - e. request a BEST and FINAL OFFER, if the State deems it necessary and desirable; and
  - e. terminate negotiations and select the next response providing the best value for the State, prepare and release a new RFP, or take such other action as the State deems appropriate if negotiations fail to result in a successful Master Agreement.
- 30. RISK OF LOSS OR DAMAGE.** The State is relieved of all risks of loss or damage to the goods and/or equipment during periods of transportation, and installation by the Contract Vendor and in the possession of the Contract Vendor or their authorized agent.
- 31. SEVERABILITY.** If any provision of the Master Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both the State and the Contract Vendor shall be relieved of all obligations arising under such provisions. If the remainder of the Master Agreement is capable of performance it shall not be affected by such declaration or finding and shall be fully performed.
- 32. STATE AUDITS** (Minn. Stat. § 16C.05, subd. 5). The books, records, documents, and accounting procedures and practices of the Contract Vendor or other party, that are relevant to the Master Agreement or transaction are subject to examination by the contracting agency and either the Legislative Auditor or the State Auditor as appropriate for a minimum of six years after the end of the Master Agreement or transaction. The State reserves the right to authorize delegate(s) to audit this Master Agreement and transactions.
- 33. SURVIVABILITY.** The following rights and duties of the State and responder will survive the expiration or cancellation of the resulting Master Agreements. These rights and duties include, but are not limited to paragraphs: Indemnification, Hold Harmless and Limitation of Liability, State Audits, Government Data Practices, Governing Law, Jurisdiction and Venue, Publicity, Intellectual Property Indemnification, and Admin Fees.
- 34. TRADE SECRET/CONFIDENTIAL INFORMATION.** Any information submitted as Trade Secret must be identified and submitted per the Trade Secret Form and must meet Minnesota Trade Secret as defined in Minn. Stat. § 13.37.

## D. FORMS



Materials Management Division  
112 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155  
Voice: 651.296.2600  
Fax: 651.297.3996

**REQUEST FOR PROPOSAL  
SIGNATURE PAGE**

**Computer Equipment:  
(Desktops, Laptops, Tablets,  
Servers & Storage including  
Related Peripherals & Services)**

Name of Vendor: \_\_\_\_\_ Vendor E-Mail: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Date: \_\_\_\_\_

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

Typed name of signer: \_\_\_\_\_ Title: \_\_\_\_\_

*Signer must be authorized to contractually obligate the vendor.*

Type or print clearly the name of the person who prepared the response: \_\_\_\_\_

EMAIL/PHONE: \_\_\_\_\_

## State Of Minnesota – Affirmative Action Certification

If your response to this solicitation is or could be in excess of \$100,000, complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363A.36) certification requirement, and to provide documentation of compliance if necessary. It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract. The State of Minnesota is under no obligation to delay proceeding with a contract until a company receives Human Rights certification

### **BOX A – For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months. All other companies proceed to BOX B.**

Your response will be rejected unless your business:

- has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)
- ~~—or—~~
- has submitted an affirmative action plan to the MDHR, which the Department received prior to the date the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. Proceed to **BOX C**. Include a copy of your certificate with your response.
- We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on \_\_\_\_\_ (date). Proceed to **BOX C**.
- We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. We acknowledge that our response will be rejected. Proceed to **BOX C**. Contact the Minnesota Department of Human Rights for assistance. (See below for contact information.)

**Please note:** Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the Federal government, a county, or a municipality must still be received, reviewed, and approved by the Minnesota Department of Human Rights before a certificate can be issued.

### **BOX B – For those companies not described in BOX A**

Check below.

- We have not employed more than 40 full-time employees on any single working day in Minnesota within the previous 12 months. Proceed to **BOX C**.

### **BOX C – For all companies**

By signing this statement, you certify that the information provided is accurate and that you are authorized to sign on behalf of the responder. You also certify that you are in compliance with federal affirmative action requirements that may apply to your company. (These requirements are generally triggered only by participating as a prime or subcontractor on federal projects or contracts. Contractors are alerted to these requirements by the federal government.)

Name of Company: \_\_\_\_\_ Date: \_\_\_\_\_  
Authorized Signature: \_\_\_\_\_ Telephone number: \_\_\_\_\_  
Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

#### **For assistance with this form, contact:**

Minnesota Department of Human Rights, Compliance & Community Relations

Mail: The Freeman Building 625 Robert Street North, Saint Paul, MN 55155 TC Metro: (651) 296-5663 Toll Free: 800-657-3704

Web: [www.humanrights.state.mn.us](http://www.humanrights.state.mn.us) Fax: (651) 296-9042 TTY: (651) 296-1283

Email: [compliance.mdhr@state.mn.us](mailto:compliance.mdhr@state.mn.us)

## Trade Secret Information Form

Under Minnesota's Data Practices Act, data submitted in a response becomes public upon completion of the evaluation process and negotiations are complete, or upon completion of the selection process for a solicitation. However, "trade secret information" as defined in Minn. Stat. § 13.37, subd. 1(b), cannot be disclosed to the public. While the majority of data submitted in a response is not trade secret information, the following form is needed to assist the State in making appropriate determinations about the release of data provided in a response.

**All responders must select one of the following boxes:**

- My response **does not** contain "trade secret information." I understand that my entire response will become public record in accordance with Minn. Stat. § 13.591.
- My response **does** contain trade secret information because it contains data that:
  1. is a formula, pattern, compilation, program, device, method, technique or process; **AND**
  2. is the subject of efforts by myself or my organization that are reasonable under the circumstances to maintain its secrecy; **AND**
  3. derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.

**Complete only if trade secret status is asserted:**

I am claiming that aspects of my response contain trade secret information. I have completed the following:

- I have clearly marked and placed any data I claim to be "trade secret information" in a separate envelope **AND** I am attaching an explanation justifying the trade secret designation.

**Please note that failure to attach an explanation may result in a determination that the data does not meet the statutory trade secret definition. All data that does not meet the definition of trade secret as defined by Minn.Stat. § 13.591subd.1(b) will become public in accordance with Minn. Stat. § 13.591. The State reserves its right to make its own determination of Responder's Trade Secret Materials.**

By submitting this response, responder agrees to indemnify and hold the State, its agents and employees, harmless from any claims or causes of action relating to the State's withholding of data based upon reliance on the above representations, including the payment of all costs and attorney fees incurred by the State in defending such an action.

ONLY information properly identified utilizing this form will be eligible for Trade Secret designation. This form must accompany any documentation that is being submitted for Trade Secret. This includes but is not limited to any material that may be submitted as part of the solicitation response, or in relation to a subsequent Master Agreement. Information labeled "confidential", "proprietary", or labeled with similar tags with regard to limiting the State's disclosure will NOT be eligible for trade secret designation unless the form provided in the solicitation is properly completed and submitted as a cover page to the information, and it meets the statutory definition of a trade secret. By submitting a response you agree that the information submitted that does not follow the trade secret process defined herein and does not meet the statutory definition of trade secret may be released by the State without prior notification to the responder and/or the Contract Vendor.

**STATE OF MINNESOTA  
DEPARTMENT OF ADMINISTRATION  
MATERIALS MANAGEMENT DIVISION  
AFFIDAVIT OF NONCOLLUSION**

I hereby swear (or affirm) under the penalty of perjury:

1. That I am the responder (if the responder is an individual), a partner in the company (if the responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the responder is a corporation);
2. That the attached response has been arrived at by the responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with any other vendor designed to limit fair or open competition;
3. That the contents of the RFP response have not been communicated by the responder or its employees or agents to any person not an employee or agent of the responder and will not be communicated to any such persons prior to the official opening of the responses; and
4. I certify that the statements in this affidavit are true and accurate.

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

Date: \_\_\_\_\_

Firm Name: \_\_\_\_\_

Subscribed and sworn to me this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_



**STATE OF MINNESOTA  
DEPARTMENT OF ADMINISTRATION  
MATERIALS MANAGEMENT DIVISION**

**PRIMARY CONTACT PERSON FOR MASTER AGREEMENT:**

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_  
TOLL FREE NUMBER: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

**CONTACT PERSON TO EXPEDITE ORDERS** (if different from above):

NAME: \_\_\_\_\_ TITLE: \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_  
TOLL FREE NUMBER: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

**ORDER ADDRESS:**

STREET/PO BOX: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_ ZIPCODE: \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_  
TOLL FREE NUMBER: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

**REMIT-TO ADDRESS:**

STREET/PO BOX: \_\_\_\_\_  
CITY/STATE: \_\_\_\_\_ ZIPCODE: \_\_\_\_\_  
TELEPHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_  
TOLL FREE NUMBER: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

**STATE OF MINNESOTA  
DEPARTMENT OF ADMINISTRATION  
MATERIALS MANAGEMENT DIVISION**

**CONTRACT SAVINGS**

**SAVINGS REPORT.**

Responders are required to calculate the percentage savings the State will realize as a result of the Master Agreement and include the amount of the percentage savings in the response.

**Master Agreement Prices Average:** \_\_\_\_\_ % Less than the price quoted to the general public (for reporting purposes only).

**STATE OF MINNESOTA  
DEPARTMENT OF ADMINISTRATION  
MATERIALS MANAGEMENT DIVISION**

**TAXPAYER/VENDOR IDENTIFICATION**

The Contract Vendor consents to disclosure of its social security number, federal employer tax identification number, and/or Minnesota tax identification number to federal and State tax agencies and State personnel involved in the payment of State obligations. These identification numbers may be used in the enforcement of federal and State tax laws which could result in action requiring the Contract Vendor to file tax returns and pay delinquent tax liabilities, if any (Minn. Stat. § 270C.65).

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Minnesota SWIFT Vendor Registration Number: \_\_\_\_\_

If you are not registered as a vendor to the State in the SWIFT Procurement System, you must register online at <http://www.mmb.state.mn.us/vendorresources>.

(Note: If approved, you will receive your vendor number approximately two business days after you register.)

Are you a sole proprietorship?     Yes     No

Are you an independent contractor?     Yes     No

## STATE OF MINNESOTA RESIDENT VENDOR FORM

In accordance with Laws of Minnesota 2013, Chapter 142, Article 3, Section 16, amending Minn. Stat. § 16C.02, subd. 13, a "Resident Vendor" means a person, firm, or corporation that:

- (1) is authorized to conduct business in the state of Minnesota on the date a solicitation for a contract is first advertised or announced. It includes a foreign corporation duly authorized to engage in business in Minnesota;
- (2) has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought;
- (3) has a business address in the state; and
- (4) has affirmatively claimed that status in the bid or proposal submission.

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To receive recognition as a Minnesota Resident Vendor ("Resident Vendor"), your company must meet each element of the statutory definition above by the solicitation opening date and time. If you wish to affirmatively claim Resident Vendor status, you should do so by submitting this form with your bid or proposal.

Resident Vendor status may be considered for purposes of resolving tied low bids or the application of a reciprocal preference.

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### I HEREBY CERTIFY THAT THE COMPANY LISTED BELOW:

1. Is authorized to conduct business in the State of Minnesota on the date a solicitation for a contract is first advertised or announced. *(This includes a foreign corporation duly authorized to engage in business in Minnesota.)*  
 Yes  No (must check yes or no)
2. Has paid unemployment taxes or income taxes in the State of Minnesota during the 12 calendar months immediately preceding submission of the bid or proposal for which any preference is sought.  
 Yes  No (must check yes or no)
3. Has a business address in the State of Minnesota.  
 Yes  No (must check yes or no)
4. Agrees to submit documentation, if requested, as part of the bid or proposal process, to verify compliance with the above statutory requirements.  
 Yes  No (must check yes or no)

**BY SIGNING BELOW**, you are certifying your compliance with the requirements set forth herein and claiming Resident Vendor status in your bid or proposal submission.

Name of Company: \_\_\_\_\_  
Date: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Telephone: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

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**IF YOU ARE CLAIMING RESIDENT VENDOR STATUS, SIGN AND RETURN THIS FORM WITH YOUR BID OR PROPOSAL SUBMISSION.**

**STATE OF MINNESOTA  
VETERAN-OWNED PREFERENCE FORM**

In accordance with Minn. Stat. § 16C.16, subd. 6a, (a) Except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a six percent preference in the amount bid on state procurement to **certified small businesses** that are **majority-owned and operated by**:

(1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs;

(2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs; or

(3) any other veteran-owned small businesses certified under section 16C.19, paragraph (d).

In accordance with Minn. Stat. § 16C.19 (d), a veteran-owned small business, the principal place of business of which is in Minnesota, is certified if it has been verified by the United States Department of Veterans Affairs as being either a veteran-owned small business or a service disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

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To receive a preference the veteran-owned small business must meet the statutory requirements above by the solicitation opening date and time. The preference is applied only to the first \$500,000 of the response.

If you are claiming the veteran-owned preference, **attach documentation, sign and return this form with your response to the solicitation.** Only eligible veteran-owned small businesses that meet the statutory requirements and provide adequate documentation will be given the preference.

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**I HEREBY CERTIFY THAT THE FIRM LISTED BELOW:**

My firm is a certified small business and it is majority-owned and operated by an eligible person as defined by Minn. Stat. § 16C.16, subd. 6a.

**Yes**    **No** (must check yes or no) **State the type of documentation attached:** \_\_\_\_\_

**DOCUMENTATION MUST BE PROVIDED FOR ONE OF THE FOLLOWING REQUIREMENTS:**

(1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs;

**State the type of documentation attached:** \_\_\_\_\_

(2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs;

**State the type of documentation attached:** \_\_\_\_\_

(3) any other veteran-owned small businesses certified under Minnesota Statute Section 16C.19, paragraph (d).

**State the type of documentation attached:** \_\_\_\_\_

Name of Company: \_\_\_\_\_ Date: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Telephone: \_\_\_\_\_

Printed Name: \_\_\_\_\_ Title: \_\_\_\_\_

**IF YOU ARE CLAIMING THE VETERAN-OWNED PREFERENCE, ATTACH DOCUMENTATION, SIGN AND RETURN THIS FORM WITH YOUR RESPONSE TO THE SOLICITATION.**



# TERMS, CONDITIONS AND SPECIFICATIONS EXCEPTION FORM

## WSCA-NASPO COMPUTER EQUIPMENT

RESPONDERS ARE CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE REQUEST FOR PROPOSAL. IF A RESPONDER MATERIALLY DEVIATES FROM THE GENERAL TERMS, CONDITIONS AND INSTRUCTIONS OR THE WSCA-NASPO TERMS AND CONDITIONS AND/OR SPECIFICATIONS, ITS RESPONSE MAY BE REJECTED.

**The State reserves the right to reject an exception or the entire proposal if exceptions are not provided on this form.**

VENDOR NAME: \_\_\_\_\_

**INSTRUCTIONS:**

Clearly identify the Section and item number of the exception e.g. Section 2. A. 5 and provide original term and alternate language suggestion

SECTION REFERENCE	ORIGINAL TERM	ALTERNATE LANGUAGE SUGGESTION

VPAT  
**Web Content Accessibility Guidelines 2.0 level AA**

The requested WCAG VPAT applies to the responder’s website to be offered under the Contract. For products offered, VPATS are only to be provided upon request by the participating entity. It is strongly recommended Technical Staff who are trained in Accessibility complete this form.

The comments portion must be filled in to further define how accessibility is or is not met. The quality of the comments impacts the reviewers’ understanding of the accessibility of your product/service. NOTE: MN only adopted the standards that are level A and level AA. This list includes level AAA standards, which are optional and highlighted in yellow. Comments are not required for level AAA.

**Principle 1: Perceivable – information and user interface components must be presentable to users in ways they can perceive.**

Standard	Description	Apply Yes/No	Meets Yes/No	Comments (mandatory)
<i>Guideline 1.1 Text Alternatives: Provide text alternatives for any non-text content so that it can be changed into other forms people need, such as large print, braille, speech, symbols or simpler language.</i>				
1.1.1	<p>Non-text Content: All non-text content that is presented to the user has a text alternative that serves the equivalent purpose, except for the situations listed below (Level A).</p> <ul style="list-style-type: none"> <li>• Controls, Input: If non-text content is a control or accepts user input, then it has a name that describes its purpose. (Refer to Guideline 4.1 for additional requirements for controls and content that accepts user input.)</li> <li>• Time-Based Media: If non-text content is time-based media, then text alternatives at least provide descriptive identification of the non-text content. (Refer to Guideline 1.2 for the additional requirements for media.)</li> <li>• Test: If non-text content is a test or exercise that would be invalid if presented in text, then text alternatives at least provide descriptive identification of the non-text content.</li> <li>• Sensory: If non-text content is primarily intended to create a specific sensory experience, then text alternatives at least provide descriptive identification of the non-text content.</li> <li>• CAPTCHA: If the purpose of non-text content is to confirm that content is being accessed by a person rather than a computer, then text alternatives that identify and describe the purpose of the non-text content are provided, and alternative forms of CAPTCHA using output modes for different types of sensory perception are provided to accommodate different disabilities.</li> <li>• Decorative, Formatting, Invisible: If non-text content is pure decoration, is used only for visual formatting, or is not presented to users, then it is implemented in a way that it can be ignored by assistive technology.</li> </ul>			



## VPAT

### Web Content Accessibility Guidelines 2.0 level AA

<i>Guideline 1.2 Time-based Media: Provide alternatives for time-based media.</i>				
1.2.1	Audio-only and Video-only (Prerecorded): For prerecorded audio-only and prerecorded video-only media, the following are true, except when the audio or video is a media alternative for text and is clearly labeled as such (Level A): <ul style="list-style-type: none"> <li>• Prerecorded Audio-only: An alternative for time-based media is provided that presents equivalent information for prerecorded audio-only content.</li> <li>• Prerecorded Video-only: Either an alternative for time-based media or an audio track is provided that presents equivalent information for prerecorded video-only content.</li> </ul>			
1.2.2	Captions (Prerecorded): Captions are provided for all prerecorded audio content in synchronized media, except when the media is a media alternative for text and is clearly labeled as such. (Level A)			
1.2.3	Audio Description or Media Alternative (Prerecorded): An alternative for time-based media or audio description of the prerecorded video content is provided for synchronized media, except when the media is a media alternative for text and is clearly labeled as such. (Level A)			
1.2.4	Captions (Live): Captions are provided for all live audio content in synchronized media. (Level AA)			
1.2.5	Audio Description (Prerecorded): Audio description is provided for all prerecorded video content in synchronized media. (Level AA)			
1.2.6	Sign Language (Prerecorded): Sign language interpretation is provided for all prerecorded audio content in synchronized media. (Level AAA)			
1.2.7	Extended Audio Description (Prerecorded): Where pauses in foreground audio are insufficient to allow audio descriptions to convey the sense of the video, extended audio description is provided for all prerecorded video content in synchronized media. (Level AAA)			
1.2.8	Media Alternative (Prerecorded): An alternative for time-based media is provided for all prerecorded synchronized media and for all prerecorded video-only media. (Level AAA)			
1.2.9	Audio-only (Live): An alternative for time-based media that presents equivalent information for live audio-only content is provided. (Level AAA)			

## VPAT

### Web Content Accessibility Guidelines 2.0 level AA

<i>Guideline 1.3 Adaptable: Create content that can be presented in different ways (for example simpler layout) without losing information or structure.</i>				
1.3.1	Info and Relationships: Information, structure, and relationships conveyed through presentation can be programmatically determined or are available in text. (Level A)			
1.3.2	Meaningful Sequence: When the sequence in which content is presented affects its meaning, a correct reading sequence can be programmatically determined. (Level A)			
1.3.3	Sensory Characteristics: Instructions provided for understanding and operating content do not rely solely on sensory characteristics of components such as shape, size, visual location, orientation, or sound. (Level A)			
<i>Guideline 1.4 Distinguishable: Make it easier for users to see and hear content including separating foreground from background.</i>				
1.4.1	Use of Color: Color is not used as the only visual means of conveying information, indicating an action, prompting a response, or distinguishing a visual element. (Level A)			
1.4.2	Audio Control: If any audio on a Web page plays automatically for more than 3 seconds, either a mechanism is available to pause or stop the audio, or a mechanism is available to control audio volume independently from the overall system volume level. (Level A)			
1.4.3	Contrast (Minimum): The visual presentation of text and images of text has a contrast ratio of at least 4.5:1, except for the following: (Level AA) <ul style="list-style-type: none"> <li>• Large Text: Large-scale text and images of large-scale text have a contrast ratio of at least 3:1;</li> <li>• Incidental: Text or images of text that are part of an inactive user interface component, that are pure decoration, that are not visible to anyone, or that are part of a picture that contains significant other visual content, have no contrast requirement.</li> <li>• Logotypes: Text that is part of a logo or brand name has no minimum contrast requirement.</li> </ul>			
1.4.4	Resize text: Except for captions and images of text, text can be resized without assistive technology up to 200 percent without loss of content or functionality. (Level AA)			
1.4.5	Images of Text: If the technologies being used can achieve the visual presentation, text is used to convey information rather than images of text except for the following: (Level AA) <ul style="list-style-type: none"> <li>• Customizable: The image of text can be visually customized to the user's requirements;</li> <li>• Essential: A particular presentation of text is essential to the information being conveyed.</li> </ul>			
1.4.6	Contrast (Enhanced): The visual presentation of text and images of text has a contrast ratio of at least 7:1, except for the following: (Level AAA) <ul style="list-style-type: none"> <li>• Large Text: Large-scale text and images of large-scale text have a contrast ratio of at least 4.5:1;</li> <li>• Incidental: Text or images of text that are part of an inactive user interface component, that are pure decoration, that are not visible to anyone, or that are part of a picture that contains significant other visual content, have no contrast requirement.</li> <li>• Logotypes: Text that is part of a logo or brand name has no minimum contrast requirement.</li> </ul>			

1.4.7	<p>Low or No Background Audio: For prerecorded audio-only content that (1) contains primarily speech in the foreground, (2) is not an audio CAPTCHA or audio logo, and (3) is not vocalization intended to be primarily musical expression such as singing or rapping, at least one of the following is true: (Level AAA)</p> <ul style="list-style-type: none"> <li>• No Background: The audio does not contain background sounds.</li> <li>• Turn Off: The background sounds can be turned off.</li> <li>• 20 dB: The background sounds are at least 20 decibels lower than the foreground speech content, with the exception of occasional sounds that last for only one or two seconds.</li> </ul>			
1.4.8	<p>Visual Presentation: For the visual presentation of blocks of text, a mechanism is available to achieve the following: (Level AAA)</p> <ul style="list-style-type: none"> <li>• Foreground and background colors can be selected by the user.</li> <li>• Width is no more than 80 characters or glyphs (40 if CJK).</li> <li>• Text is not justified (aligned to both the left and the right margins).</li> <li>• Line spacing (leading) is at least space-and-a-half within paragraphs, and paragraph spacing is at least 1.5 times larger than the line spacing.</li> <li>• Text can be resized without assistive technology up to 200 percent in a way that does not require the user to scroll horizontally to read a line of text on a full-screen window.</li> </ul>			
1.4.9	<p>Images of Text (No Exception): Images of text are only used for pure decoration or where a particular presentation of text is essential to the information being conveyed. (Level AAA)</p>			

# VPAT

## Web Content Accessibility Guidelines 2.0 level AA

Principle 2: Operable - User interface components and navigation must be operable.

Standard	Description	Apply Yes/No	Meets Yes/No	Comments
<i>Guideline 2.1 Keyboard Accessible: Make all functionality available from a keyboard.</i>				
2.1.1	Keyboard: All functionality of the content is operable through a keyboard interface without requiring specific timings for individual keystrokes, except where the underlying function requires input that depends on the path of the user's movement and not just the endpoints. (Level A)			
2.1.2	No Keyboard Trap: If keyboard focus can be moved to a component of the page using a keyboard interface, then focus can be moved away from that component using only a keyboard interface, and, if it requires more than unmodified arrow or tab keys or other standard exit methods, the user is advised of the method for moving focus away. (Level A)			
2.1.3	Keyboard (No Exception): All functionality of the content is operable through a keyboard interface without requiring specific timings for individual keystrokes. (Level AAA)			
<i>Guideline 2.2 Enough Time: Provide users enough time to read and use content.</i>				
2.2.1	Timing Adjustable: For each time limit that is set by the content, at least one of the following is true: (Level A) <ul style="list-style-type: none"> <li>• Turn off: The user is allowed to turn off the time limit before encountering it; or</li> <li>• Adjust: The user is allowed to adjust the time limit before encountering it over a wide range that is at least ten times the length of the default setting; or</li> <li>• Extend: The user is warned before time expires and given at least 20 seconds to extend the time limit with a simple action (for example, "press the space bar"), and the user is allowed to extend the time limit at least ten times; or</li> <li>• Real-time Exception: The time limit is a required part of a real-time event (for example, an auction), and no alternative to the time limit is possible; or</li> <li>• Essential Exception: The time limit is essential and extending it would invalidate the activity; or</li> <li>• 20 Hour Exception: The time limit is longer than 20 hours.</li> </ul>			
2.2.2	Pause, Stop, Hide: For moving, blinking, scrolling, or auto-updating information, all of the following are true: (Level A) <ul style="list-style-type: none"> <li>• Moving, blinking, scrolling: For any moving, blinking or scrolling information that (1) starts automatically, (2) lasts more than five seconds, and (3) is presented in parallel with other content, there is a mechanism for the user to pause, stop, or hide it unless the movement, blinking, or scrolling is part of an activity where it is essential; and</li> <li>• Auto-updating: For any auto-updating information that (1) starts automatically and (2) is presented in parallel with other content, there is a mechanism for the user to pause, stop, or hide it or to control the frequency of the update unless the auto-updating is part of an activity where it is essential.</li> </ul>			
2.2.3	No Timing: Timing is not an essential part of the event or activity presented by the content, except for non-interactive synchronized media and real-time events. (Level AAA)			
2.2.4	Interruptions: Interruptions can be postponed or suppressed by the user, except interruptions involving an emergency. (Level AAA)			
2.2.5	Interruptions: Interruptions can be postponed or suppressed by the user, except interruptions involving an emergency. (Level AAA)			
<i>Guideline 2.3 Seizures: Do not design content in a way that is known to cause seizures.</i>				
2.3.1	Three Flashes or Below Threshold: Web pages do not contain anything that flashes more than three times in any one second period, or the flash is below the general flash and red flash thresholds. (Level A)			

2.3.2	Three Flashes: Web pages do not contain anything that flashes more than three times in any one second period. (Level AAA)			
<i>Guideline 2.4 Navigable: Provide ways to help users navigate, find content, and determine where they are.</i>				
2.4.1	Bypass Blocks: A mechanism is available to bypass blocks of content that are repeated on multiple Web pages. (Level A)			
2.4.2	Page Titled: Web pages have titles that describe topic or purpose. (Level A)			
2.4.3	Focus Order: If a Web page can be navigated sequentially and the navigation sequences affect meaning or operation, focusable components receive focus in an order that preserves meaning and operability. (Level A)			
2.4.4	Link Purpose (In Context): The purpose of each link can be determined from the link text alone or from the link text together with its programmatically determined link context, except where the purpose of the link would be ambiguous to users in general. (Level A)			
2.4.5	Multiple Ways: More than one way is available to locate a Web page within a set of Web pages except where the Web Page is the result of, or a step in, a process. (Level AA)			
2.4.6	Headings and Labels: Headings and labels describe topic or purpose. (Level AA)			
2.4.7	Focus Visible: Any keyboard operable user interface has a mode of operation where the keyboard focus indicator is visible. (Level AA)			
2.4.8	Location: Information about the user's location within a set of Web pages is available. (Level AAA)			
2.4.9	Link Purpose (Link Only): A mechanism is available to allow the purpose of each link to be identified from link text alone, except where the purpose of the link would be ambiguous to users in general. (Level AAA)			
2.4.10	Section Headings: Section headings are used to organize the content. (Level AAA)			

**Principle 3: Understandable - Information and the operation of user interface must be understandable.**

Standard	Description	Apply Yes/No	Meets Yes/No	Comments
<i>Guideline 3.1 Readable: Make text content readable and understandable.</i>				
3.1.1	Language of Page: The default human language of each Web page can be programmatically determined. (Level A)			
3.1.2	Language of Parts: The human language of each passage or phrase in the content can be programmatically determined except for proper names, technical terms, words of indeterminate language, and words or phrases that have become part of the vernacular of the immediately surrounding text. (Level AA)			
3.1.3	Unusual Words: A mechanism is available for identifying specific definitions of words or phrases used in an unusual or restricted way, including idioms and jargon. (Level AAA)			
3.1.4	Abbreviations: A mechanism for identifying the expanded form or meaning of abbreviations is available. (Level AAA)			
3.1.5	Reading Level: When text requires reading ability more advanced than the lower secondary education level after removal of proper names and titles, supplemental content, or a version that does not require reading ability more advanced than the lower secondary education level, is available. (Level AAA)			
3.1.6	Pronunciation: A mechanism is available for identifying specific pronunciation of words where meaning of the words, in context, is ambiguous without knowing the pronunciation. (Level AAA)			
<i>Guideline 3.2 Predictable: Make Web pages appear and operate in predictable ways.</i>				
3.2.1	On Focus: When any component receives focus, it does not initiate a change of context. (Level A)			
3.2.2	On Input: Changing the setting of any user interface component does not automatically cause a change of context unless the user has been advised of the behavior before using the component. (Level A)			

3.2.3	Consistent Navigation: Navigational mechanisms that are repeated on multiple Web pages within a set of Web pages occur in the same relative order each time they are repeated, unless a change is initiated by the user. (Level AA)			
3.2.4	Consistent Identification: Components that have the same functionality within a set of Web pages are identified consistently. (Level AA)			
3.2.5	Change on Request: Changes of context are initiated only by user request or a mechanism is available to turn off such changes. (Level AAA)			
<i>Guideline 3.3 Input Assistance: Help users avoid and correct mistakes.</i>				
3.3.1	Error Identification: If an input error is automatically detected, the item that is in error is identified and the error is described to the user in text. (Level A)			
3.3.2	Labels or Instructions: Labels or instructions are provided when content requires user input. (Level A)			
3.3.3	Error Suggestion: If an input error is automatically detected and suggestions for correction are known, then the suggestions are provided to the user, unless it would jeopardize the security or purpose of the content. (Level AA)			
3.3.4	Error Prevention (Legal, Financial, Data): For Web pages that cause legal commitments or financial transactions for the user to occur, that modify or delete user-controllable data in data storage systems, or that submit user test responses, at least one of the following is true: (Level AA) <ul style="list-style-type: none"> <li>• Reversible: Submissions are reversible.</li> <li>• Checked: Data entered by the user is checked for input errors and the user is provided an opportunity to correct them.</li> <li>• Confirmed: A mechanism is available for reviewing, confirming, and correcting information before finalizing the submission.</li> </ul>			
3.3.5	Help: Context-sensitive help is available. (Level AAA)			
3.3.6	Error Prevention (All): For Web pages that require the user to submit information, at least one of the following is true: (Level AAA) <ul style="list-style-type: none"> <li>• Reversible: Submissions are reversible.</li> <li>• Checked: Data entered by the user is checked for input errors and the user is provided an opportunity to correct them.</li> <li>• Confirmed: A mechanism is available for reviewing, confirming, and correcting information before finalizing the submission.</li> </ul>			

## VPAT

### Web Content Accessibility Guidelines 2.0 level AA

Principle 4: Robust - Content must be robust enough that it can be interpreted reliably by a wide variety of user agents, including assistive technologies.

Standard	Description	Apply Yes/No	Meets Yes/No	Comments
<i>Guideline 4.1 Compatible: Maximize compatibility with current and future user agents, including assistive technologies.</i>				
4.1.1	Parsing: In content implemented using markup languages, elements have complete start and end tags, elements are nested according to their specifications, elements do not contain duplicate attributes, and any IDs are unique, except where the specifications allow these features. (Level A)			
4.1.2	Name, Role, Value: For all user interface components (including but not limited to: form elements, links and components generated by scripts), the name and role can be programmatically determined; states, properties, and values that can be set by the user can be programmatically set; and notification of changes to these items is available to user agents, including assistive technologies. (Level A)			

### **SECTION 3: RESPONSE REQUIREMENTS**

- A. Business
- B. Environmental
- C. Qualifications
- D. Customer Support



**A. RESPONSE REQUIREMENTS: BUSINESS**

**Confirm the responder meets, understands and will comply with the requirement by checking YES. Mandatory Requirements are indicated with “M” need to be checked yes. DESCRIBE FULLY AND PROVIDE DETAIL HOW THE PROPOSAL SATISFIES EACH ITEM.**

<b>A</b>	<b>RESPONSE REQUIREMENTS: BUSINESS</b>	<b>M = MANDATORY</b>	<b>MEETS UNDERSTAND &amp; WILL COMPLY?</b>
1	<p><b>PROPOSED BANDS.</b> Responders may respond to any or all bands. Responder must identify the bands they will be proposing (check all that apply):</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Band 1: Desktop</li> <li><input type="checkbox"/> Band 2: Laptop</li> <li><input type="checkbox"/> Band 3: Tablet</li> <li><input type="checkbox"/> Band 4: Server</li> <li><input type="checkbox"/> Band 5: Storage</li> <li><input type="checkbox"/> Band 6: Ruggedized Devices</li> </ul> <p>Responder must verify they are a manufacturer of each band proposed and describe their manufacturing process and facilities.</p>	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
2	<p><b>MANUFACTURER VERIFICATION.</b> The manufacturer’s name shall appear on the computer equipment. The Contract Vendors shall provide the warranty service and maintenance for equipment on a Master Agreement. Describe proposed warranty in Section 3A6 in accordance to WSCA-NASPO warranty term.</p>	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
3	<p><b>THIRD PARTY PRODUCTS.</b> Products offered may be manufactured by a third party; however, Contract Vendor must provide the warranty service and maintenance for all third party products on the Master Agreement. Contract Vendor may not offer another manufacture’s product holding a Master Agreement without prior approval. Warranty documents for Products manufactured by a third party are preferred to be delivered to the Participating Entity with the Products. Contract Vendor can only offer third party products in a band they have been awarded. Describe proposed warranty in Section 3A6 in accordance to WSCA-NASPO warranty term.</p>	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
4	<p><b>PRODUCT RESTRICTIONS.</b> Responder must agree to adhere to the restrictions in the Scope of Work throughout the life of the Master Agreement. Describe thoroughly how Contract Vendor will manage product restrictions for Participating States.</p>	M	YES <input type="checkbox"/> NO <input type="checkbox"/>

A	RESPONSE REQUIREMENTS: BUSINESS	M = MANDATORY	MEETS UNDERSTAND & WILL COMPLY?
5	<p><b>MAINTAINING THE PRODUCT AND SERVICE SCHEDULE (PSS).</b> Contract Vendors will develop and maintain an electronic Product and Service Schedule (PSS) which identifies a complete listing of all products and services included in the awarded Master Agreement as well as individual Participating State's PSS's. It is understood that manufacturer's pricing models will vary and final negotiation of how the PSS is presented will be finalized upon award. The PSS will be available for audit purposes and end users to verify pricing based on the minimum discounts with categorized exceptions provided off a designated base line price list. The minimum discounts with categorized exceptions and designated price list must be provided upon request. The PSS may contain the following information:</p> <ul style="list-style-type: none"> <li>• Band number</li> <li>• Category</li> <li>• Product Brand</li> <li>• Item number</li> <li>• Item description</li> <li>• List Price</li> <li>• Discount provided</li> <li>• Discounted price</li> </ul> <p>PSS is to be maintained as follows:</p> <ol style="list-style-type: none"> <li>1. The PSS prices for Products and services will conform to the guaranteed minimum discount with categorized exception levels</li> <li>2. The Contract Vendor may make model changes; add new Products, and Product upgrades or Services to the PSS.</li> <li>3. The Contract Vendor agrees to delete obsolete and discontinued Products from the PSS</li> <li>4. The Contract Vendor will work with each State to develop a satisfactory PSS reflecting the individual States restrictions.</li> </ol> <p>The state reserves the right to make PSS format changes throughout the life of the master agreement.</p> <p>Contract Vendor will request changes to the PSS utilizing an Action Request Form (ARF). A sample has been provided in the Section 6. This ARF will be finalized upon negotiations and reaffirms and tracks changes made to the Master Agreement. Changes may be made quarterly.</p>	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
6	<p><b>WARRANTY AND MAINTENANCE.</b> The Contract Vendor shall ensure warranty service and maintenance for all equipment, including third party products provided. Describe in detail how the responder will secure warranty for all products and services. The Contract vendor agrees to facilitate the Manufacturer or Publisher warranty and maintenance of third party products furnished through the Master Agreement. Describe in detail how the responder will secure warranty for all products and services.</p>	M	YES <input type="checkbox"/> NO <input type="checkbox"/>

A	RESPONSE REQUIREMENTS: BUSINESS	M = MANDATORY	MEETS UNDERSTAND & WILL COMPLY?
7	<b>LEASING.</b> Individual Participating States and Participating Entities may enter in to lease agreements for the products covered in the Master Agreements resulting from the RFP, if they have the legal authority to enter into these types of agreements. The Participating Addendum by each State will identify if and how leasing agreement terms will be conducted.		YES <input type="checkbox"/> NO <input type="checkbox"/>
8	<b>DELIVERY.</b> Delivery of ordered product should be completed within thirty (30) calendar days after receipt of an order, unless otherwise agreed to by the ordering agency.	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
9	<b>FREIGHT.</b> All prices shall be FOB Destination, prepaid and allowed (with freight included in the price), to the address, receiving dock or warehouse as specified on the ordering agency's purchase order, In those situations in which the "deliver-to" address has no receiving dock or agents, the Contract Vendor must be able to deliver to the person specified on the PO without additional cost. If there is a special case where inside delivery fee must be charged, the Contract Vendor will notify the customer in advance in order for the customer to determine if the additional cost will affect the decision to utilize the Contract Vendor.	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
10	<b>VENDOR PERFORMANCE MEETING.</b> An annual vendor performance meeting may be held each year with the WSCA-NASPO Sourcing Team. Participation by the Contract Vendor is mandatory. Historically vendor performance meetings have been held in the State of Minnesota.	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
11	<b>AUDITING.</b> Contract Vendors agree to audits, including but not limited to the Lead State or 3 <sup>rd</sup> party to ensure products sold, pricing and administrative fees are compliant with Master Agreement terms and conditions. Responders must describe: <ul style="list-style-type: none"> <li>• how the responder regularly self audits the Master Agreement to ensure compliance</li> <li>• how an end user will be able to self audit to ensure quotes provided are at the discount off list price</li> <li>• how often the web pricing and invoicing is audited to insure contractual compliance.</li> <li>• reporting mechanisms available such as Invoice reports which will assist in State's ability to audit the Master Agreement through vendor supplied reporting tools.</li> <li>• how the responder ensures that States with multiple Master Agreements are monitored to ensure purchases are correctly booked with the correct Master Agreement.</li> </ul>	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
12	<b>SELF AUDIT:</b> Vendors are required to conduct at a minimum a quarterly self-audit, unless approved by the Lead State. The audit will sample a minimum of one tenth of one percent (.001) of orders with a maximum of 100 audits per quarter conducted. For example: Up to 1,000 sales = 1 audit; 10,000 sales = 10 audits; Up to 100,000 sales = 100 audits. This will be a random sample of orders and invoices and must include documentation of pricing. Summary findings are to be reported to Lead State with actions to correct documented findings.	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
13	<b>PREFERENCE PROGRAMS.</b> Describe experience and capacity to meet minority and women business enterprises and other local purchasing preferences that vary among potential Participating Entities, including but not limited to the use of these businesses in their partner relationships.		YES <input type="checkbox"/> NO <input type="checkbox"/>

A	RESPONSE REQUIREMENTS: BUSINESS	M = MANDATORY	MEETS UNDERSTAND & WILL COMPLY?
14	<p><b>GEOGRAPHIC OFFERING.</b> While the primary purpose of this solicitation is to select a Responders who can offer all products and services within a band for all Participating States, to encourage small business participation Responders are permitted to submit a proposal on more limited geographical areas.</p> <p>Clearly describe the geographical limits (e.g. by State name) if proposing a geographical area less than that of all Participating States. <u>Identify at least one State.</u> If a Proposer elects to submit a Proposal for a single State then the Proposer will be willing to supply the entire State. The option to grow the business to other States may be allowed upon approval of the WSCA-NASPO Management Board.</p> <p>The proposer will be evaluated on the same criteria as all other vendors and referred to the identified State for consideration of a Master Agreement.</p>		YES <input type="checkbox"/> NO <input type="checkbox"/>
15	<p><b>MASTER AGREEMENT TERMINATION.</b> Upon termination or expiration of the Master Agreement awarded from this RFP the following will occur:</p> <ul style="list-style-type: none"> <li>• All websites, on-line offering systems and Electronic Catalog functions supported and/or available as part of the Master Agreement will cease and be removed from public viewing access without redirecting to another website.</li> <li>• If approved by the Lead State, Customer data/user accounts acquired during the term of the Master Agreement shall be destroyed or returned to the State at the request of the Participating State’s administrator unless required to maintain per audit.</li> <li>• No references to the Master Agreement shall be made on the Contract Vendor’s commercial website without permission by the Lead State.</li> <li>• If approved by the Lead State, hard copy catalogs and promotional literature shall be destroyed or returned to the Participating State at the end of the Master Agreement term upon the request of the Participating State.</li> </ul>		YES <input type="checkbox"/> NO <input type="checkbox"/>
16	<p><b>PREMIUM SAVINGS PACKAGE PROGRAM.</b> Contract Vendors who participate in the PSP program commit to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals, as determined by the Participating Entities. Provide marketing plan of the PSP Program including leading with PSP Program and displaying prominently on websites to market aggressively to all States.</p>		YES <input type="checkbox"/> NO <input type="checkbox"/> <input type="checkbox"/> n/a for server storage vendors
17	<p><b>PROMOTIONS.</b> Contract Vendors are allowed to provide promotions for deeply discounted products based on their inventory and sales. Promotions will also provide increased savings to States. The Contract Vendors will be responsible to market these offers. Describe what kind of promotions will be available and how marketing will be conducted.</p>		YES <input type="checkbox"/> NO <input type="checkbox"/>

**B. RESPONSE REQUIREMENTS: ENVIRONMENTAL**

**Confirm the responder meets, understands and will comply with the requirement by checking YES. Mandatory Requirements are indicated with “M” need to be checked yes. DESCRIBE FULLY AND PROVIDE DETAIL HOW THE PROPOSAL SATISFIES EACH ITEM.**

<b>B</b>	<b>RESPONSE REQUIREMENTS: ENVIRONMENTAL</b>	<b>M = MANDATORY</b>	<b>MEETS UNDERSTAND &amp; WILL COMPLY?</b>
1	<p><b>ENVIRONMENTALLY PREFERABLE PURCHASING COMMITMENT.</b> Explain commitment to environmentally preferable purchase specifically in the areas below.</p> <p><b>a. End of life management:</b> Include detailed information regarding takeback, recycling and trade in programs available</p> <p><b>b. Environmental solutions:</b> Provide detail on how additional value is provided regarding environmental solutions such as selling refurbished/remanufactured toner and equipment. Outline how your company is willing to work with the State and the manufacturers to minimize impact on the environment. Specifically address:            MATERIALS - manufacturer declaration on reduction / elimination of hazardous materials i.e.; mercury and lead.            PRODUCT – In general how does the responder identify product longevity, percent of packaging and packing materials that are recycled/reusable, availability of replacement parts for life extension, cost, and complication to upgrade.            CORPORATE – detail if company has in place regarding sell/procurement of refurbished/remanufactured products.</p> <p><b>c. Environmental certifications.</b> Describe how certifications/registrations are identified on the website; as well as labels on equipment and/or packing list.</p>		YES <input type="checkbox"/> NO <input type="checkbox"/>
2	<p><b>EPEAT REGISTRATION.</b> Responder agrees that applicable products offered that have EPEAT Standards provided under the Master Agreements resulting from this RFP are to have achieved a minimum EPEAT Bronze registration.</p>	M	YES <input type="checkbox"/> NO <input type="checkbox"/> n/a storage
3	<p><b>TOTAL COST OF OWNERSHIP.</b> Describe how your company can provide users information to assist in evaluating the Total Cost of Ownership in utilizing products. E.g. equipment that runs more efficiently, with less supplies, etc.</p>		YES <input type="checkbox"/> NO <input type="checkbox"/>
4	<p><b>ENERGY STAR COMPLIANT PRODUCTS.</b> Describe manufacturer commitment to EnergyStar Program.</p>		YES <input type="checkbox"/> NO <input type="checkbox"/>
5	<p><b>ENVIRONMENTAL IMPROVEMENT PROGRAM.</b> Describe Product environmental improvement program for products that have not yet received the applicable standards or certification. In addition, describe environmental efforts in each of the following areas: reduction/minimization/avoidance of the use of toxic and hazardous constituents (cadmium, chromium, mercury, and/or lead); compliance with international directives such as the European Union’s WEEE Directive on reduction of chlorinated plastics (PVC) and brominated flame retardants.</p>		YES <input type="checkbox"/> NO <input type="checkbox"/>

### C. RESPONSE REQUIREMENTS: QUALIFICATIONS

**Confirm the responder meets, understands and will comply with the requirement by checking YES. Mandatory Requirements are indicated with “M” need to be checked yes. DESCRIBE FULLY AND PROVIDE DETAIL HOW THE PROPOSAL SATISFIES EACH ITEM.**

C	RESPONSE REQUIREMENTS: QUALIFICATIONS	M = MANDATORY	MEETS UNDERSTAND & WILL COMPLY?
1	<p><b>COMPANY HISTORY.</b> Responders must provide a brief history and description of their company detailing how they will support this Master Agreement:</p> <p><b>Facilities.</b> Responders must indicate number and location of manufacturing plants, distribution outlets, and support centers, as appropriate. Provide information on facility production volume in Calendar Year 2012. Please indicate which facilities have been ISO 14001 certified.</p> <p><b>Personnel.</b> Responders must include a map or other documentation that indicates by state the number and type of sales, support personnel, or other resources that are employed to service purchase orders and/or equipment for non-federal governmental customers.</p> <p><b>Organization.</b> Responders must include an organization chart and a thorough narrative describing how the Master Agreement will be supported from senior management down to field technicians including the use of any wholly owned subsidiaries or subcontractors.</p>	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
2	<p><b>CONTRACT VENDOR RESPONSIBILITY.</b> Contract Vendors shall be responsible for successful performance of the Master Agreement and also for the successful performance of any and all of their partners.</p> <p>The Contract Vendor is to be the sole point of contact as applicable by Master Agreement with regard to contractual matters, payment of any and all charges resulting from the purchase of the equipment and maintenance of the equipment for the term of the Master Agreement unless otherwise specified by a Participating State in a Participating Addendum and/or the Master Agreement.</p> <p>The Contract Vendor must be able to receive, process, and invoice orders unless the Participating State has agreed to assign these functions to a partner. The Contract Vendors will be responsible for compliance with requirements under the Master Agreement, even if requirements are delegated to partners. The Contract Vendors and partners must not in any way represent themselves in the name of the Lead State, WSCA-NASPO or Participating States.</p>	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
3	<p><b>PARTNER UTILIZATION.</b> If utilizing partners, the Contract Vendor is responsible for the partners providing products and services, as well as warranty service and maintenance for equipment the partner provides.</p> <p>Each state represented by WSCA-NASPO that chooses to participate in this Master Agreement independently</p>		YES <input type="checkbox"/> NO <input type="checkbox"/>

C	RESPONSE REQUIREMENTS: QUALIFICATIONS	M = MANDATORY	MEETS UNDERSTAND & WILL COMPLY?
	<p>has the option of utilizing partners. Only partners approved by the Participating State may be deployed. The participating State will define the process to add and remove partners in their participating addendum.</p> <p>If partners are proposed, describe:</p> <ul style="list-style-type: none"> <li>• process to qualify partners and sales personnel to represent the product.</li> <li>• business relationship between partners and the manufacturer and services to be performed; for example, if partners will only be used for assistance in locating products/services; or if partners will be used to accept orders and payments (with the agreement of the Participating State).</li> <li>• how partners are certified</li> <li>• how partners are contractually bound to the Master Agreement terms and conditions; and</li> <li>• how partner sales will be accurately tracked and reported.</li> <li>• Remedy plan if the partner or sales personnel are not in compliance.</li> </ul>		
4	<p><b>EQUIPMENT AND SERVICES OVERVIEW.</b> Describe ability to provide computer equipment and the services related to supporting the equipment. Include an overview of how the equipment is delivered and serviced. Thoroughly describe offerings and the ability to provide these services (not all services may be applicable to each band):</p> <ul style="list-style-type: none"> <li>• Warranty - Break Fix – Non-Warranty</li> <li>• Standard non customized Training</li> <li>• Installation/de-installation</li> <li>• Support</li> <li>• Migration</li> <li>• Asset Tagging</li> <li>• Staging/Deployment</li> <li>• Image loading</li> <li>• Image Consulting</li> <li>• System and Server Configuration</li> <li>• Rack and Stack Configuration</li> <li>• Maintenance</li> <li>• Custom service solutions</li> <li>• Asset Management</li> <li>• Recycling/disposal</li> <li>• Training and Certification</li> <li>• Other services available as allowed in the solicitation</li> </ul>	M	YES <input type="checkbox"/> NO <input type="checkbox"/>

C	RESPONSE REQUIREMENTS: QUALIFICATIONS	M = MANDATORY	MEETS UNDERSTAND & WILL COMPLY?
5	<p><b>REFERENCES.</b> Submit five (5) examples of current or previous states or other larger governmental entities and/or large educational institutions that have or are currently receiving similar products and services to those proposed by the Responder for this solicitation. List any contracts where the responder has been awarded a statewide price agreement for computer equipment by a central purchasing authority. These must be for Contracts that have been in place during the past three years. The information required in response to this specification should include the name and telephone number of the Contract Administrator, the dollar value of the Contract, plus the effective dates of the contract(s). The State reserves the right to contact these entities.</p>	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
6	<p><b>CUSTOMER SATISFACTION.</b> Describe success in customer satisfaction. This could include current customer satisfaction statistics or survey results concerning the quality of the Products and services offered.</p>		YES <input type="checkbox"/> NO <input type="checkbox"/>



## D. RESPONSE REQUIREMENTS: CUSTOMER SUPPORT AND MASTER AGREEMENT MANAGEMENT

Confirm the responder meets, understands and will comply with the requirement by checking YES. Mandatory Requirements are indicated with “M” need to be checked yes. DESCRIBE FULLY AND PROVIDE DETAIL HOW THE PROPOSAL SATISFIES EACH ITEM.

D	RESPONSE REQUIREMENTS: CUSTOMER SUPPORT AND MASTER AGREEMENT MANAGEMENT	M = MANDATORY	MEETS UNDERSTAND & WILL COMPLY?						
1	<b>ORDERING AND PAYMENT PROCESS.</b> The ordering and payment process for Products or Services is to be defined in the Participating Addendum. This process may be unique to each State.		YES <input type="checkbox"/> NO <input type="checkbox"/>						
2	<b>SALES SUPPORT TRAINING.</b> Detail how the responder will train sales staff and partners to ensure they are well versed in the terms and conditions of the WSCA-NASPO Master Agreement. Detail a remedy plan for sales staff and partners who do not comply with Master Agreement terms and conditions.	M	YES <input type="checkbox"/> NO <input type="checkbox"/>						
3	<b>CONTRACTING PERSONNEL.</b> Responder must provide contracting personnel to assist states with the completing and processing Participating Addenda. Experience has shown that an adequate number of trained contracting personnel are key to the success of a Master Agreement. Detail how many personnel will be dedicated to provide support to States in securing Participating Addendums with contracting personnel who understand the cooperative purchasing concepts and challenges of signing participating addendums with States who have a variety of additional terms and conditions. Detail how the Contract personnel are chosen and provided training.	M	YES <input type="checkbox"/> NO <input type="checkbox"/>						
4	<p><b>PRIMARY ACCOUNT REPRESENTATIVE.</b> Responders must provide a Primary Account Representative to work with the WSCA-NASPO Master Agreement Administrator on all aspects of the Master Agreement. This account representative is responsible for the performance of the Master Agreement and must provide timely response to all requests from WSCA-NASPO Master Agreement Administrator and Participating State. Detail how the account representative is chosen and provided training.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">NAME:</td> <td></td> </tr> <tr> <td>TELEPHONE #:</td> <td></td> </tr> <tr> <td>EMAIL ADDRESS:</td> <td></td> </tr> </table>	NAME:		TELEPHONE #:		EMAIL ADDRESS:		M	YES <input type="checkbox"/> NO <input type="checkbox"/>
NAME:									
TELEPHONE #:									
EMAIL ADDRESS:									
5	<b>COMPLAINT RESOLUTION.</b> Responders must thoroughly describe their procedures for addressing and resolving customer problems and complaints regarding service, equipment, or billing. Include timelines and escalation process.	M	YES <input type="checkbox"/> NO <input type="checkbox"/>						
6	<p><b>REPORTING.</b> Describe how Contract Vendor adheres to reporting requirements as stated in the Terms and Conditions and ensure accurate reporting to each State. The goals of reporting include:</p> <p>1) Summary Reporting to calculate Administrative Fees to WSCA-NASPO and as required by Participating Entities                  2) Detailed Product Reporting to manage contract to WSCA-NASPO and as required by Participating Entities</p> <p>Participating States may require additional reporting requirements and will address through their Participating Addendum. Responders must identify below a primary contact responsible for providing the mandatory usage reports</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">NAME:</td> <td></td> </tr> </table>	NAME:		M	YES <input type="checkbox"/> NO <input type="checkbox"/>				
NAME:									

D	<b>RESPONSE REQUIREMENTS: CUSTOMER SUPPORT AND MASTER AGREEMENT MANAGEMENT</b>		<b>M = MANDATORY</b>	<b>MEETS UNDERSTAND &amp; WILL COMPLY?</b>
	TELEPHONE #:			
7	EMAIL ADDRESS:		<b>M</b>	YES <input type="checkbox"/> NO <input type="checkbox"/>
8	<p><b>COMMERCIAL OFF THE SHELF AND OPERATING SYSTEM SOFTWARE.</b> Upon request the Software License Agreement is to be presented to the ordering agency at the time of quote. Provide updated releases of licenses originally purchased through the entire contract term if applicable. Provide details regarding operating system and maintenance updates on products sold and detail process to communicate updates to users.</p> <p><b>WEBSITE.</b> Describe commitment to maintaining a website in adherence to the items provided below. Contract Vendors shall develop and maintain a URL to a web site specific to the awarded Master Agreement that MAY provide:</p> <ul style="list-style-type: none"> <li>• Copy of Solicitation &amp; Response</li> <li>• Signed Master Agreement</li> <li>• Signed Participating Addendums</li> <li>• Designated Baseline price list (MSRP, List, Education)</li> <li>• Product and Service Schedule (PSS)</li> <li>• Product specifications, pricing, and configuration aids for the major product categories proposed that can be used to obtain an on-line quote,</li> <li>• Online ordering capability with the ability to remember multiple ship to locations if applicable to product</li> <li>• Service options, service agreements</li> <li>• Contact information for order placement, service concerns (warranty and maintenance), problem reporting, and billing concerns</li> <li>• Sales representatives for participating entities</li> <li>• Purchase order tracking</li> <li>• Links to environmental certification, including but not limited to take-back/recycling programs, EPEAT, Energy Star, etc.</li> <li>• Information on accessibility and accessible products</li> </ul> <p>If elements of the website require a secure log-in, Responder to provide listing of item that would require a secure sign-in option e.g. reprinting of invoices, or purchase order tracking.</p> <p>THE REQUESTED WCAG VPAT APPLIES TO THE RESPONDER'S WEBSITE TO BE OFFERED UNDER THE CONTRACT. Responder to provide completed VPAT forms found in the FORMS section of the RFP.</p> <p>The Master Agreement website shall offer twenty-four (24) hours per day, seven (7) days per week availability, except for regularly scheduled maintenance times. The website must be separate from the Contract Vendor's commercially available (i.e., public) on-line catalog and ordering systems. No other items or pricing may be shown on the website without written approval from the Lead State</p>		<b>M</b>	YES <input type="checkbox"/> NO <input type="checkbox"/>

D	<b>RESPONSE REQUIREMENTS: CUSTOMER SUPPORT AND MASTER AGREEMENT MANAGEMENT</b>	<b>M = MANDATORY</b>	<b>MEETS UNDERSTAND &amp; WILL COMPLY?</b>
	Within 30 calendar days of Master Agreement award, the Contract Vendor must provide a sample URL of the Master Agreement webpage to the Lead State for review and approval. The Lead State will review and determine acceptability of the website format and data. If the information is determined to be unacceptable or incorrect, the Contract Vendor will have 15 calendar days to provide revisions to the Lead State. Once the website is approved, the Contract Vendor may not make material changes to the website without notifying the Lead State and receiving written approval of the changes.		
9	<b>EMARKETCENTER.</b> The Contractor agrees to cooperate with WSCA-NASPO and SciQuest (and any authorized agent or successor entity to SciQuest) with uploading a hosted catalog or integrating a punchout site. Review the eMarket Center requirements provided on next page and confirm adherence.	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
10	<b>IMPLEMENTATION PLAN AND MARKETING METHODOLOGY.</b> Describe a thorough implementation rollout plan for the first year as part of the proposal. At a minimum, the response should include a description of the methodology (mailings, meetings, seminars, press releases, personal contacts) proposed, estimated dates and location of activities, including tasks to be performed and the timeframe for the completion of each task. Include sample rollout and follow-up marketing materials with their proposals. Responders are reminded that once a statewide participating addendum is in place, nearly every governmental entity, public school and university within the state may use the Contract Vendor's Master Agreement.		YES <input type="checkbox"/> NO <input type="checkbox"/>
11	<b>ECOMMERCE.</b> Thoroughly describe the ability or commitment to accept and process purchase orders electronically, as well as online payment via a purchase card. The ability to provide electronic funds transfer and/or a seamless electronic interface to governmental accounting systems should be thoroughly described.		YES <input type="checkbox"/> NO <input type="checkbox"/>
12	<b>EMPLOYEE PURCHASE PROGRAM:</b> Employee purchase programs are within the scope of this procurement. If provided for by an Entity's Participating Addendum, the Contractor may offer discounted products, within the scope of the contract, to employees of that WSCA participating entity as Individual Liabe (IL) accounts ("Employee Purchase Program"). This may include, but not limited to Bring Your Own Devise (BYOD) programs. All terms and conditions, related to the Employee Purchase Program will be detailed in the entities Participating Addendum.		YES <input type="checkbox"/> NO <input type="checkbox"/>

## EMARKETCENTER REQUIREMENTS

In July 2011, WSCA-NASPO entered into a multi-year agreement with SciQuest, Inc. whereby SciQuest will provide certain electronic catalog hosting and management services to enable eligible WSCA-NASPO entity's customers to access a central online website to view and/or shop the goods and services available from existing WSCA-NASPO Cooperative Contracts. The central online website is referred to as the WSCA-NASPO eMarket Center Contractor shall either upload a hosted catalog into the eMarket Center or integrate a punchout site with the eMarket Center.

### Supplier's Interface with the eMarket Center

There is no cost charged by SciQuest to the Contractor for loading a hosted catalog or integrating a punchout site.

At a minimum, the Contractor agrees to the following:

1. **Implementation Timeline:** WSCA-NASPO eMarket Center Site Admin shall provide a written request to the Contractor to begin enablement process. The Contractor shall have fifteen (15) days from receipt of written request to work with WSCA-NASPO and SciQuest to set up an enablement schedule, at which time SciQuest's technical documentation shall be provided to the Contractor. The schedule will include future calls and milestone dates related to test and go live dates. The contractor shall have a total of Ninety (90) days to deliver either a (1) hosted catalog or (2) punch-out catalog, from date of receipt of written request.
2. **Definition of Hosted and Punchout:** WSCA-NASPO and SciQuest will work with the Contractor, to decide which of the catalog structures (either hosted or punch-out as further described below) shall be provided by the Contractor.  
**Whether hosted or punch-out, the catalog must be strictly limited to the Contractor's awarded contract offering (e.g. products and/or services not authorized through the resulting cooperative contract should not be viewable by WSCA-NASPO Participating Entity users).**
  - a. **Hosted Catalog.** By providing a hosted catalog, the Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to SciQuest, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data quarterly to the the eMarket Center for Lead State's approval to maintain the most up-to-date version of its product/service offering under the cooperative contract in the eMarket Center.
  - b. **Punch-Out Catalog.** By providing a punch-out catalog, the Contractor is providing its own online catalog, which must be capable of being integrated with the eMarket Center as a. Standard punch-in via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor shall validate that its online catalog is up-to-date by providing a written update quarterly to the Contract Administrator stating they have audited the offered products/services and pricing listed on its online catalog. The site must also return detailed UNSPSC codes (as outlined in line 3) for each line item. Contractor also agrees to provide e-Quote functionality to facilitate volume discounts.
3. **Revising Pricing and Product Offerings:** Any revisions (whether an increase or decrease) to pricing or product/service offerings (new products, altered SKUs, etc.) must be pre-approved by the Lead State and shall be subject to any other applicable restrictions with respect to the frequency or amount of such revisions. However, no cooperative contract enabled in the eMarket Center may include price changes on a more frequent basis than once per quarter. The following conditions apply with respect to hosted catalogs:
  - a. Updated pricing files are required by the 1<sup>st</sup> of the month and shall go into effect in the eMarket Center on the 1<sup>st</sup> day of the following month (i.e. file received on 1/01/13 would be effective in the eMarket Center on 2/01/13). Files received after the 1<sup>st</sup> of the month may be delayed up to a month (i.e. file received on 11/06/09 would be effect in the eMarket Center on 1/01/10).
  - b. Contract Administrator-approved price changes are not effective until implemented within the eMarket Center. Errors in the Contractor's submitted pricing files will delay the implementation of the price changes in eMarket Center.
4. **Supplier Network Requirements:** Contractor shall join the SciQuest Supplier Network (SQSN) and shall use the SciQuest's Supplier Portal to import the Contractor's catalog and pricing, into the SciQuest system, and view reports on catalog spend and product/pricing freshness. The Contractor can receive orders through electronic delivery (cXML) or through low-tech options such as fax. More information about the SQSN can be found at: [www.sciquest.com](http://www.sciquest.com) or call the SciQuest Supplier Network Services team at 800-233-1121.

5. Minimum Requirements: Whether the Contractor is providing a hosted catalog or a punch-out catalog, the Contractor agrees to meet the following requirements:
  - a. Catalog must contain the most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the cooperative contract; and
  - b. The accuracy of the catalog must be maintained by Contractor throughout the duration of the cooperative contract between the Contractor and the Contract Administrator; and
  - c. The Catalog must include a Lead State contract identification number; and
  - d. The Catalog must include detailed product line item descriptions; and
  - e. The Catalog must include pictures when possible; and
  - f. The Catalog must include any additional WSCA-NASPO and Participating Addendum requirements.\*
6. Order Acceptance Requirements: Contractor must be able to accept Purchase Orders via fax or cXML.
  - a. The Contractor shall provide positive confirmation via phone or email within 24 hours of the Contractor's receipt of the Purchase Order. If the Purchasing Order is received after 3pm EST on the day before a weekend or holiday, the Contractor must provide positive confirmation via phone or email on the next business day.
7. UNSPSC Requirements: Contractor shall support use of the United Nations Standard Product and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by SciQuest for the suppliers and are upgraded every year. WSCA-NASPO reserves the right to migrate to future versions of the UNSPSC and the Contractor shall be required to support the migration effort. All line items, goods or services provided under the resulting statewide contract must be associated to a UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity. More information about the UNSPSC is available at: <http://www.unspsc.com> and <http://www.unspsc.com/FAQs.asp#howdoesunspscwork>.
8. Applicability: Contractor agrees that WSCA-NASPO controls which contracts appear in the eMarket Center and that WSCA-NASPO may elect at any time to remove any supplier's offering from the eMarket Center.
9. The Lead State reserves the right to approve the pricing on the eMarket Center. This catalog review right is solely for the benefit of the WSCA-NASPO Contract Administrator and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices (and approved fees) required by the Master Agreement.

\* Although suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple contracts applicable to different WSCA-NASPO Participating Entities. For example, a supplier may have different pricing for state government agencies and Board of Regents institutions. Suppliers have the ability and responsibility to submit separate contract pricing for the same catalog if applicable. The system will deliver the appropriate contract pricing to the user viewing the catalog.

**Several WSCA-NASPO Participating Entities currently maintain separate SciQuest eMarketplaces, these Participating Entities do enable certain WSCA-NASPO Cooperative Contracts. In the event one of these entities elects to use this WSCA-NASPO Cooperative Contract (available through the eMarket Center) but publish to their own eMarketplace, the Contractor agrees to work in good faith with the entity and WSCA-NASPO to implement the catalog. WSCA-NASPO does not anticipate that this will require substantial additional efforts by the Contractor; however, the supplier agrees to take commercially reasonable efforts to enable such separate SciQuest catalogs.**

**SECTION 4: COST PROPOSAL**

**SUBMIT IN A SEPARATE SEALED ENVELOPE**

	<b>COST PROPOSAL</b>	<b>M = MANDATORY</b>	<b>MEETS UNDERSTAND &amp; WILL COMPLY?</b>
1	<p><b>PRICE STRUCTURE.</b> This RFP will employ a MINIMUM discount-off list price structure with categorized exceptions for each band. It is understood there may be categories within a band which carry a different discount than the minimum stated. For example, the minimum discount for the laptop band could be 50%. The responder may name an additional category of laptops “Laptop Brand X” at 45% and “Laptop Brand Y” at 60%. Responder may categorize these exceptions by naming as categories and identifying the associated discounts in the price workbook. These discounts must remain firm, or the discount may be increased, during the term of the Master Agreement. This minimum discount and categorized exceptions will be applied to all “quantity one” procurements. It will also serve as verification for the WSCA Master Agreement Administrator upon submittals of product additions. An end user will be able to verify pricing using the base line price list and the minimum discounts with the categorized exceptions provided. The responder must designate a “Base Line Price List e.g. MSRP, education price list. The price list submitted must be dated: November 15, 2013. A discount schedule is to be provided for each band in the Price Workbook. Responders may define additional categories within a band. The category discounts may be higher or lower than the than the band discount. Responder must describe all available options for pricing services in the Price Workbooks such as discount off list, hourly fees, per unit fees, etc. The worksheet allows for up to seven categories, however the responder may edit their submission to include additional categories if needed.</p>	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
2	<p><b>PRICE WORKBOOKS.</b> Price Workbooks will be used to evaluate. Responders will be evaluated on the Price Workbook which includes a market basket for each band. For each band proposed, the Responder must complete the Price Workbook which includes several worksheets.</p> <p>The market basket includes selected configurations, services, peripherals, third party products to fairly evaluate discounted pricing. In evaluation the State reserves the right to:</p> <ol style="list-style-type: none"> <li>a. Eliminate an item from consideration from all responses.</li> <li>b. Enter the highest price item of all responses received when an item has not been provided by a responder.</li> <li>c. Request additional pricing items for consideration.</li> <li>d. Clarify pricing responses with responder(s).</li> <li>e. Include options, quantity discounts and/or services for basis of calculating the cost utilized in evaluation.</li> </ol> <p>The Contract Vendor will maintain the discount structure as bid throughout the term of the Master Agreement.</p> <p>For the purpose of comparing pricing across a standard group of products, the prices provided by the responder in the</p>	M	YES <input type="checkbox"/> NO <input type="checkbox"/>

	<b>COST PROPOSAL</b>	<b>M = MANDATORY</b>	<b>MEETS UNDERSTAND &amp; WILL COMPLY?</b>
	<p>Price Workbooks will be utilized to calculate cost points. Vendors must use the minimum percentage discount stated from a published or base line price listing for a “<b>quantity one</b>” purchase in the Pricing Workbook.</p> <p>Minimum specifications are provided in the Price Workbooks.</p> <p>Manufacturer specific items may be substituted for the minimum specification if the manufacturer is able to provide an approved equal. The lead state reserves the right to reject any or all responses that are not an approved equal.</p> <p><del>SAMPLE Price Workbooks are located in Section 6: Attachments for responders review and comment.</del></p> <p><b>FINAL EXCEL PRICE WORKBOOKS WILL BE PUBLISHED VIA AN ADDENDUM.</b></p> <p>There are a total of six workbooks:</p> <p>Band 1: Desktop:</p> <p>Band 2: Laptop</p> <p>Band 3: Tablets</p> <p>Band 4: Server:</p> <p>Band 5: Storage</p> <p>Band 6: Ruggedized:</p> <p>INSTRUCTIONS:</p> <ol style="list-style-type: none"> <li>1. Each workbook contains several tabs. Responder is to fill in the yellow highlighted areas. Once filled in the yellow highlight disappears.</li> <li>2. The workbooks are locked, however there is not a password and responder may revise as needed ensuring they supply yellow highlighted fields.</li> <li>3. It is understood that different components may make up a total configuration for the market basket item. The responder may provide additional detail to how the discount provided in the market basket was calculated.</li> </ol> <p>The Lead State reserves the right to request additional pricing, if in the best interest of the state or to clarify pricing responses.</p>		
3	<p><b>BASELINE PRICING VERIFICATION.</b> The responder must designate a Base Line Price e.g. MSRP, education price list in the price workbook. The price list submitted is to be dated: November 15, 2013. Per Addendum 6: The Baseline Price List submitted may be dated an alternate date. However, the market basket pricing must be representative of the pricing for an</p>		YES <input type="checkbox"/> NO <input type="checkbox"/>

	<b>COST PROPOSAL</b>	<b>M = MANDATORY</b>	<b>MEETS UNDERSTAND &amp; WILL COMPLY?</b>
	order placed on November 15, 2013 for purposes of evaluation. Describe how the designated Base Line Price List will be accessed and verified by potential end users, contract administrators, etc. All historic versions of the Baseline Price List must be made available upon request pursuant to the audit provisions. The responder must provide ONE HARD COPY and ONE ELECTRONIC COPY (USB DRIVE OR CD) of the dated Baseline Price List with the response. The dated Baseline Price List provided shall be used for completing the price workbook when "List/MSRP" price is requested.	M	
4	<b>MINIMUM DISCOUNTS.</b> The Contract Vendor will provide a <b>MINIMUM</b> discount off base line price list for each band with categorized exceptions. It is understood there may be categories within a band which carry a different discount than the minimum stated. For example, the minimum discount for the laptop band could be 50%. The responder may name an additional category of laptops "Laptop Brand X" at 45% and "Laptop Brand Y" at 60%. Responder may categorize these exceptions by naming as categories and identifying the associated discounts in the price workbook. These discounts must remain firm, or the discount may be increased, during the term of the Master Agreement. This minimum discount and categorized exceptions will be applied to all "quantity one" procurements. It will also serve as verification for the WSCA Master Agreement Administrator upon submittals of product additions. An end user will be able to verify pricing using the base line price list and the minimum discounts with the categorized exceptions provided. The named category exception discounts may be higher or lower than the than the minimum band discount. These discounts must remain firm, or the discount may be increased, during the term of the Master Agreement. This minimum discount and categorized exceptions will be applied to all "quantity one" procurements. It will also serve as verification for the WSCA Master Agreement Administrator upon submittals of product additions. An end user will be able to verify pricing using the base line pricing and minimum discounts and categorized exceptions provided.	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
5	<b>THIRD PARTY PRODUCTS.</b> Third party products may be offered as peripherals and options in the Price Workbook. Third Party products will be approved upon finalization of the PSS. Contract Vendors are not able to offer another Contract Vendor's product as a third party without approval. If third party products are offered, a third party product minimum discount will be stated in the price workbook.		YES <input type="checkbox"/> NO <input type="checkbox"/>
6	<b>REFRESH STRATEGY.</b> Describe your recommended refresh strategy for your product line.		YES <input type="checkbox"/> NO <input type="checkbox"/>
7	<b>MAINTAINING COMPETITIVE PRICING.</b> Proposers will provide an initial <b>MINIMUM</b> discount with categorized exceptions off baseline price list for a quantity of one unit. Proposers are to base discounts on the collective volume of potential purchases by the participating entities. Further bulk/quantity savings may be obtained when additional quantities are requested. In order to maintain competitive pricing throughout the full life of the Master Agreement, Contract Vendor and Participating entities must understand it is the expectation to provide competitive pricing at the quantity one level. Additional savings are expected whenrecompeting the awarded vendors for volume pricing.	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
8	<b>PRODUCTS AND SERVICES SCHEDULE (PSS).</b> Responders must submit with their <b>COST</b> proposal a proposed <b>Product and Services Schedule including all the products and services offered within each band for this</b>		YES <input type="checkbox"/> NO <input type="checkbox"/>



	<b>COST PROPOSAL</b>	<b>M = MANDATORY</b>	<b>MEETS UNDERSTAND &amp; WILL COMPLY?</b>
	<b>solicitation.</b> The PSS should be submitted in Excel format. A sample has been provided in the attachments for reference, but is only an example. Other formats are acceptable. Submission of a product and/or service on the sample PSS does not guarantee that it will automatically be approved as being included in the resulting Master Agreement. The products, services and format for the final PSS will be finalized during negotiations.	M	
9	<p><b>BULK PRICING.</b> Utilize the Price Workbook to provide additional volume based pricing for consideration. These will allow for deeper discounts for per transaction and cumulative volume purchases. Examples of bulk pricing models are included in Section 6. Responders must propose how they will provide deeper discount including, but not limited to:</p> <p><b>1. Per Transaction Multiple Unit Discount.</b> Responders may propose a contractual volume discount program or plan based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Participating Entity or multiple entities conducting a cooperative purchase. Include a table indicating the additional discount percentage to be earned by volume purchased at one time.</p> <p><b>2. Cumulative.</b> Responders may propose a cumulative volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of their Master Agreement. Include a table indicating the additional discount percentage to be earned by cumulative volume purchased.</p> <p><b>3. Other Discounts</b> Describe additional discounts available to States or Participating Entities.</p>	M	YES <input type="checkbox"/> NO <input type="checkbox"/>
10	<p><b>PREMIUM SAVINGS PACKAGE PROGRAM.</b> Contract Vendors are encouraged to participate in the Premium Savings Package (PSP) Program. If intending to participate, propose and describe commitment to offer and maintain deeply discounted standard configurations. Participants in the PSP program will commit to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals, as determined by the Participating Entities. The standards currently are refreshed every six months (May and November). Refresh schedule is subject to change. See current configurations: <a href="http://www.wnpsp.com/index.html">http://www.wnpsp.com/index.html</a>. States and other Participating Entities can choose to purchase these packages without any signing additional documents.</p> <p>Contract Vendors may provide Premium Savings &amp; Packages in the bands awarded and comply with the following:</p> <ol style="list-style-type: none"> <li>Provide a WSCA-NASPO Premium Savings Packages-specific SKU for each proposed product. Discount must be provided on Contract Vendor related SKU as well.</li> <li>Standard configurations cannot change or be upgraded during the entire refresh period for any reason other than end-of-life issues (e.g., swapping of processor, motherboard, etc. is prohibited).</li> <li>Prices offered must be offered at a better than the quantity one Master Agreement discount.</li> <li>Pricing increases are generally not allowed unless there is documentation and justification provided.</li> <li>Provide marketing plan of the PSP Program including lead with PSP Program and display prominently on websites to market aggressively to all States.</li> </ol>		YES <input type="checkbox"/> NO <input type="checkbox"/> <input type="checkbox"/> n/a for server storage vendors

	<b>COST PROPOSAL</b>	<b>M = MANDATORY</b>	<b>MEETS UNDERSTAND &amp; WILL COMPLY?</b>
	f. Submit quarterly usage reports broken out by State to the WSCA-NASPO Premium Savings Packages team lead and to the WSCA-NASPO PC Master Agreement Administrator. Individual reports to each State may also be required. The format for the reports must follow the current WSCA-NASPO PC reporting format.		
11	<b>PROMOTIONAL OFFERS:</b> Contract Vendors will be allowed to provide promotions for deeply discounted products based on their inventory and sales. Promotions will also provide increased savings to States and other Participating Entities. The Contract Vendors will be responsible to market these offers. Describe what kind of promotions will be available and how marketing will be conducted.		YES <input type="checkbox"/> NO <input type="checkbox"/>
12	<b>Describe the Prompt Payment Terms (if available)</b> to be offered: <input type="checkbox"/> __% 30; <input type="checkbox"/> __% 15/Net 30; <input type="checkbox"/> __% 10/Net 30, <input type="checkbox"/> Other (specify): _____		YES <input type="checkbox"/> NO <input type="checkbox"/>
13	<b>ADDED VALUE.</b> Responders may propose suggestions on improvements and/or alternatives for doing business with your company that will make this contract more cost effective for your company and participating public agencies.		YES <input type="checkbox"/> NO <input type="checkbox"/>
14	<b>TRADE-IN.</b> The Participating Addendum by each State will identify if and how trade-in or takeback terms will be conducted. If trade in program will be offered, provide pricing.		YES <input type="checkbox"/> NO <input type="checkbox"/>
15	<b>SERVICES.</b> Services are at the option of the Participating Entity. The Participating Addendum by each State will address service agreement terms and related travel. Responder must describe all available options for pricing services in the Price Workbooks such as discount off list, hourly fees, per unit fees, etc.		YES <input type="checkbox"/> NO <input type="checkbox"/>
16	<b>LEASING.</b> Responders are not required to provide leasing. Individual Participating States and Participating Entities may enter in to lease agreements for the products covered in the Master Agreements resulting from the RFP, if they have the legal authority to enter into these types of agreements. The Participating Addendum by each State will identify if and how leasing agreement terms will be conducted. Leasing will be at the option of each participating addendum. If leasing will be offered, provide rates. Do not submit lease documents or corresponding lease terms as these documents should be addressed in a State's Participating addendum if applicable.		YES <input type="checkbox"/> NO <input type="checkbox"/>

## SECTION 5: EVALUATION PROCESS

**Except at the invitation of the Master Agreement Administrator, no activity or comments from responders regarding this RFP shall be discussed with any of the sourcing team during the solicitation and the evaluation of the responses. A responder who contacts a sourcing team member may, as a result, have its response rejected.**

Non-selection of any response will mean that either another response was determined to be more advantageous to the Lead State or that the Lead State exercised its right to reject all responses. At its discretion, the Lead State may perform an appropriate cost and pricing analysis of a vendor's response, including an audit of the reasonableness of any response. During the evaluation process, all information concerning the responses submitted will remain private and will not be disclosed to anyone whose official duties do not require such knowledge. At any time during the evaluation, the Lead State may request that a responder provide explicit written clarification to any part of its response.

Responses are private or nonpublic data until the completion of the evaluation process as defined by Minn. Stat. § 13.591. The completion of the evaluation process is defined as the Lead State having completed negotiating the Master Agreement with the selected vendor. If no award is made the responses are not made public. The State will notify all responders in writing of the evaluation results.

If only one response is submitted to the solicitation, the Lead State reserves the right to review the response submitted for compliance and to award without assigning points or to reject the offer and re-issue the solicitation, whatever is in the Lead State's best interest.

Per the contract terms and conditions: Notwithstanding anything to the contrary, the Lead State reserves the right to:

- a. reject any and all responses received;
- b. select, for Master Agreements or for negotiations, a response other than that with the lowest cost;
- c. waive or modify any informalities, irregularities, or inconsistencies in the responses received;
- d. negotiate any aspect of the proposal with any responder and negotiate with more than one responder;
- e. request a BEST and FINAL OFFER, if the Lead State deems it necessary and desirable; and
- f. Suspend and/or terminate negotiations for the State, prepare and release a new RFP, or take such other action as the State deems appropriate if negotiations fail to result in a successful Master Agreement.
- g. Eliminate an item from consideration from all responses.
- h. Enter the highest price item of all responses received when an item has not been provided by a responder.
- i. Request additional pricing items for consideration.
- j. Clarify pricing responses with responder(s).
- k. Include options, quantity discounts and/or services for basis of calculating the cost utilized in evaluation.

Preferences and prompt pay discount will be applied when evaluating cost as detailed in the Terms and Conditions or as otherwise specified in the solicitation

### PHASES.

The State shall conduct an evaluation of responses to this RFP. The evaluations will be conducted in four phases:

**Phase I** - Review and select responsive, compliant responses

**Phase II** - Evaluate responses

**Phase III** - Select finalists

**Phase IV** - Sign Master Agreements

**Phase I - Review and Select Responsive, Compliant Responses.** The purpose of this phase is to determine if each response complies with the mandatory terms, conditions, and specifications in the RFP. A pass/fail criteria will be used. A response must comply with all instructions listed in this RFP. The Lead State reserves the right to reject any and all responses, to modify these RFP specifications, or to waive any informalities in the RFP. Any response found to be non-responsive will be eliminated from further evaluation.

**Phase II - Evaluate Responses.** Only those responses found to be responsive under Phase I will be considered in Phase II. The Lead State may request clarification from one or more responders. The responses must be made in writing as the Lead State will only use what is in writing for evaluation purposes. The response to the request for clarification may be considered along with the original response for the evaluation.

However, the Lead State reserves the right to make an award without further clarification of the responses received. Therefore, it is important that each response be submitted in the most complete manner possible.

**Responses will be rated as follows:**

Acceptance of Terms & Conditions	50 Points
Accessibility	50 Points
Environmental	50 Points
Qualifications	75 Points
Business	125 Points
Customer Support	150 Points
Cost Component	<u>500 Points</u>
TOTAL	1000 Points

As indicated above, points will be awarded based on the level of acceptance of the Terms and Conditions as specified in this RFP. Acceptance of all terms and conditions will result in the award of the maximum points available.

Responders should note that the State reserves the right to pursue negotiations on any exception taken in Phase III. Responders should also note that the awarding of points does not automatically mean that the State has accepted the Responder's proposed language.

**Phase III - Select Finalists.** Only those responses that are found to be responsive under Phases I and II will be considered in Phase III.

The Lead State reserves the right to request oral presentations, and/or Best & Final offers by the responders and the opportunity to interview key personnel during Phase II and/or III. The Lead State reserves the right to select the number of responders for the Best & Final offer, oral presentations, and/or to enter into negotiations. The evaluation scores may be revised as a result of the responses to the oral presentations, Best & Final Offer, and/or negotiations.

The award of this solicitation will be based upon the total accumulated points as established in the RFP, for separate items, by grouping items, or by total lot, and where at its sole discretion the State believes it will receive the best value. The Lead State reserves the right to award this solicitation to a single responder, or to multiple responders, whichever is in the best interest of the Lead State. The Lead State reserves the right to accept all or part of an offer, to reject all offers, to cancel the solicitation, or to re-issue the solicitation, whichever is in the best interest of the Lead State.

The Sourcing Team will make recommendations on the award of this RFP. The commissioner of Administration or designee may accept or reject the recommendation of the Sourcing Team. The final award decision will be made by the Commissioner of Administration and provided to the WSCA-NASPO Management Board for approval.

**Phase IV.** Sign Master Agreement with Awarded Vendor.

## SECTION 6: ATTACHMENTS

- A. Participating States Terms & Conditions
- B. Model Participating Addendum
- C. Model Master Agreement
- D. Action Request Form Sample
- E. Product and Service Schedule Sample
- F. Bulk/Volume Pricing Examples
- G. Detail Sales Report Template
- H. Price Workbooks
- I. Solicitation Summary

**A. PARTICIPATING STATES**  
**SAMPLE TERMS & CONDITIONS**

Terms and Conditions will be negotiated with individual State after award of the Master Agreement. All States reserve the right to add additional terms and conditions to participating addendums.

The following States have provided samples:

1. Minnesota
2. California
3. Connecticut
4. Massachusetts
5. New Jersey
6. Oregon
7. Utah

**MINNESOTA**  
**SAMPLE**  
**PARTICIPATING ADDENDUM**

This SAMPLE is **for informational purposes only** and will be negotiated with individual State after award of the Master Agreement. All States reserve the right to add additional terms and conditions to a participating addendums.

1. **ADMINISTRATIVE FEE.** On a quarterly basis, the Contract Vendor shall return to the Department of Administration, Materials Management Division, a fee of 1% (.01 multiplication factor) of the total sales during that quarter, to assist with the cost of administering the Participating Addendum. The fee shall be remitted to the State within 30 days of the end of the quarter. The quarter periods are January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31 of any given year. The Contract Vendor must provide a report detailing the total sales to State agencies and CPV members. The report must be submitted with the check on or before the required 30 days after the end of the quarter.

The State reserves the right, at any time during the Participating Addendum period, to amend the Participating Addendum to change or add fees. This may include fees directed to the Department of Administration, Materials Management Division, Office of Enterprise Technology or other state entities. The reporting requirements and amount of the fee will be specified in the Participating Addendum amendment. The Contract Vendor will be allowed to adjust the Participating Addendum pricing up to the percentage of any additional fee(s).

2. **DATA SECURITY.** The Contract Vendor is required to recognize that on the performance of the Participating Addendum the Contract Vendor will become a holder of and have access to private data on individuals and nonpublic data as defined in the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13 and Minnesota Statutes Section 270B.02.

In performance of the contract, the Successful Vendor agrees that it will comply with the laws under Minnesota Statute Chapters 325E.64, 270B and 13, relating to confidentiality of information received as a result of the contract. The Contract Vendor agrees that it, its officers, employees and agents will be bound by the above confidentiality laws and that it will establish procedures for safeguarding the information.

The Contract Vendor agrees to notify its officers, employees and agents of the requirements of confidentiality and of the possible penalties imposed by violation of these laws. The Contract Vendor agrees that neither it, nor its officers, employees or agents will disclose or make public any information received by the Contract Vendor on behalf of the State of Minnesota.

The Contract Vendor shall recognize the State of Minnesota's sole and exclusive right to control the use of this information. The Contract Vendor further agrees that it shall make no use of any of the described information, for either internal or external purposes, other than that which is directly related to the performance of the Participating Addendum.

The Contract Vendor shall recognize that if it becomes aware of a privacy or security incident regarding the content of any State of Minnesota information, the Contract Vendor agrees to immediately report the event to the Minnesota Office of Enterprise Technology (OET) (d/b/a MN.IT).

The Contract Vendor agrees to indemnify and hold harmless the State of Minnesota from any and all liabilities and claims resulting from the unauthorized disclosure by the Contract Vendor, its officers, employees or agents of any information required to be held confidential under the provisions of the Participating Addendum. The Contract Vendor must return all source data to the State's project manager.

3. **BUYING "OFF" CONTRACT.** This Participating Addendum does not prohibit State agencies from using their delegated local purchasing authority to procure similar goods and services from other vendors.
4. **DEFAULT.** All commodities and services furnished will be subject to inspection and acceptance by the Ordering Entity after delivery. No substitutions or cancellations are permitted without written approval of the Ordering Entity. Back orders, failure to meet delivery requirements, or failures to meet specifications in the purchase

order and/or the Contract authorizes the Ordering Entity to cancel the purchase order, or any portion of it, purchase elsewhere, and charge the full increase in cost and administrative handling to the defaulting Contract Vendor. In the event of default, the State reserves the right to pursue any other remedy available by law. A Contract Vendor may be including but not limited to; removed from the vendor's list, suspended or debarred from receiving a Master Agreement for failure to comply with the terms and conditions of the Master Agreement, or for failure to pay the State for the cost incurred on the defaulted Master Agreement

5. **DEFINITIONS. CPV Members.** The Cooperative Purchasing Venture (CPV) program was established by Minn. Stat. § 16C.03, subd. 10, which authorizes the commissioner of the Minnesota Department of Administration (Commissioner of Administration) through its Materials Management Division (MMD) to enter into a cooperative purchasing agreement for the provision of goods, services, and utilities" with one or more governmental units and other entities as described in Minn. Stat. § 471.59, subd. 1 and Minn. Stat. § 16C.03, subd. 10. Based on this authority, the Commissioner of Administration enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental unit or other entity. Governmental units and other entities joining the program are given an access code which identifies them as CPV members and permits them to access the MMD website to get information about commodities and/or services available on the State of Minnesota (State) contracts. Governmental units and other entities who are not members of the CPV program are not authorized to use the contract prices. The Contract Vendor agrees to provide the contract to CPV members at the same prices, terms, conditions, and specifications. For additional information, visit the MMD website at [www.mmd.admin.state.mn.us](http://www.mmd.admin.state.mn.us).
  - a. **State Agencies.** This term applies only to State agencies and departments, as defined in Minn. Stat. §§ 15.01 and 15.021.
  - b. **Ordering Entity.** This term applies to any State Agency or CPV Member when allowed in the Participating Addendum.
  - c. **State and State of Minnesota.** These two terms apply to the Minnesota Department of Administration, Materials Management Division (MMD), representing the State of Minnesota as the contracting agency for the Participating Addendum.
  - d. **Contract Vendor and Contractor.** These two terms apply to the awarded vendor from the WSCA-NASPO Master Price Agreement that MMD selects to receive a Participating Addendum.
  - e. **Contract.** Contract is defined as the WSCA-NASPO Master Price Agreement and the Minnesota Participating Addendum.
6. **EFFECTIVE DATE and CONTRACT PERIOD.** The Contract shall be effective upon the date of final execution by the State of Minnesota. The Contract term will begin on the date of Participating Addendum execution, to [Enter Specific Date], with the option to extend up to [Enter Numeric #] months, upon agreement by all parties.
7. **ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT METHOD AND STRUCTURE.** In accordance with Minn. Stat. § 16A.40 the Contract Vendor is required to provide their bank routing information to the Minnesota Department of Finance to enable payments to be made through EFT.
8. **E-VERIFY CERTIFICATION.** For services in excess of \$50,000, the Contract Vendor certifies that as of the date of services performed on behalf of the State, the Contract Vendor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. This is required by Minnesota Statutes Section 16C.075. The Contract Vendor shall be responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available on MMD website [www.mmd.admin.state.mn.us](http://www.mmd.admin.state.mn.us).

All subcontractor certifications must be kept on file with the Contract Vendor and made available to the State upon request.
9. **FUNDING OUT CLAUSE.** Notwithstanding any other cancellation clauses, the State may immediately terminate this Contract if it does not obtain funding from the Minnesota Legislature beyond June 30, or from another funding source, or if funding cannot be continued at a level sufficient to allow for the payment of the goods or services in the Contract, whether due to a lack of direct funding or agency reallocation of funding, or if operations



of any paying entity are being discontinued. The State must provide the Contract Vendor with notice within a reasonable time after the decision is made to terminate the Contract. Termination will be by written or fax notice to the Contract Vendor. The State is not obligated to pay for any goods or service accepted or provided after notice and effective date of termination. However, the Contract Vendor will be entitled to payment for goods or services accepted or satisfactorily performed up until the effective date of the termination. The State will not be assessed any penalty if the Contract is terminated in accordance with this section.

- 10. GENERAL INSURANCE REQUIREMENTS.** The Contractor/Contract Vendor (Contract Vendor) shall maintain insurance to cover claims which may arise from operations under this Contract, The Contract Vendor shall not commence work under the Contract until they have obtained all the insurance described below and the State of Minnesota has approved such insurance. The Contract Vendor shall maintain such insurance in force and effect throughout the term of the Contract.

All coverages and limits shall remain in force and effect throughout the term of the Contract.

**NOTICE TO THE CONTRACT VENDOR:** The failure of the State of Minnesota to obtain a Certificate of Insurance, for the policies required under this Contract or renewals thereof, or failure of the insurance company to notify the State of the cancellation of policies required under this Contract shall not constitute a waiver by the Owner to the Contract Vendor to provide such insurance.

The Owner reserves the right to immediately terminate the Contract if the Contract Vendor is not in compliance with the insurance requirements and the Owner retains all rights to pursue any legal remedies against the Contract Vendor. All insurance policies must be open to inspection by the State, and copies of policies must be submitted to the State's authorized representative upon written request.

**NOTICE TO INSURER:** The Contract Vendor's insurance company(ies) waives its right to assert the immunity of the State as a defense to any claims made under said insurance.

**REQUIREMENTS FOR THE CONTRACT VENDOR:** The Contract Vendor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to the State of Minnesota with respect to any claim arising out of Contract Vendor's performance under this Contract.

If Contract Vendor receives a cancellation notice from an insurance carrier affording coverage herein, Contract Vendor agrees to notify the State of Minnesota within five (5) business days with a copy of the cancellation notice, unless Contract Vendor's policy(ies) contain a provision that coverage afforded under the policy(ies) will not be cancelled without at least thirty (30) days advance written notice to the State of Minnesota.

The Contract Vendor is responsible for payment of Contract related insurance premiums and deductibles.

If the Contract Vendor is self-insured, a Certificate of Self-Insurance must be attached.

Insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in the State of Minnesota or (2) be domiciled in the State of Minnesota and have a Certificate of Authority/Compliance from the MN Department of Commerce if they are not rated by AM Best.

The Contract Vendor's Umbrella or Excess Liability insurance policy may be used to supplement the Contract Vendor's policy limits to satisfy the full policy limits required by the Contract.

**POLICY REQUIREMENTS:**

- 1. Workers' Compensation Insurance:** Statutory Compensation Coverage. Except as provided below, Contract Vendor must provide Workers' Compensation insurance for all its employees and in case any work is subcontracted, Contract Vendor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota, including Coverage B, Employer's Liability. Minimum limits of liability:

Coverage B – Employer's Liability  
\$100,000 Bodily Injury by Disease per Employee  
\$500,000 Bodily Injury by Disease Aggregate

\$100,000 Bodily Injury by Accident

If Minn. Stat. § 176.041 exempts the Contract Vendor from Workers' Compensation insurance or if the Contract Vendor has no employees in the State of Minnesota, the Contract Vendor must provide a written statement, signed by the authorized signer of the Contract, stating the qualifying exemption that excludes the Contract Vendor from MN Workers' Compensation requirements.

If during the course of the Contract the Contract Vendor becomes eligible for Workers' Compensation, the Contract Vendor must comply with the Workers' Compensation Insurance requirements included herein and provide the State of Minnesota with a certificate of insurance.

Evidence of Subcontractor insurance shall be filed with the Contract Vendor.

**2. Automobile Liability Insurance:** The Contract Vendor shall maintain insurance to cover liability arising out of the ownership, operation, use or maintenance of all owned, hired and non-owned autos, and in case any work is subcontracted the Contract Vendor will require the subcontractor to maintain Automobile Liability insurance.

- A. Minimum Limits of Liability:  
\$2,000,000 - Per Occurrence – Bodily Injury and Property Damage Combined Single Limit
- B. Coverages:  
 Owned Automobile  
 Non-owned Automobile  
 Hired Automobile

Evidence of Subcontractor insurance shall be filed with the Contract Vendor.

**3. General Liability Insurance:** The Contract Vendor shall maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as from claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the Contract Vendor or by a subcontractor or by anyone directly or indirectly employed by the Contract Vendor under the Contract.

- A. Minimum Limits of Liability:  
\$2,000,000 - Per Occurrence  
\$2,000,000 - Annual Aggregate  
\$2,000,000 - Annual Aggregate applying to Products/Completed Operations
- B. Coverages  
 Premises and Operations Bodily Injury and Property Damage  
 Personal & Advertising Injury  
 Blanket Contractual  
 Products and Completed Operations  
 **State of Minnesota named as an Additional Insured**

**4. Professional/Technical, Errors and Omissions, including Network Security and Privacy Liability Insurance (or equivalent Network Security and Privacy Liability coverage endorsed on another form of liability coverage or written as a standalone policy):** This policy will provide coverage for all claims the contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the contract. Contractor is required to carry the following **minimum** limits:

- \$2,000,000 – per claim or event
- \$2,000,000 – annual aggregate

Any deductible will be the sole responsibility of the Contractor and may not exceed \$50,000 without the written approval of the State. If the Contractor desires authority from the State to have a deductible in a higher amount, the Contractor shall so request in writing, specifying the amount of the desired deductible and providing financial

documentation by submitting the most current audited financial statements so that the State can ascertain the ability of the Contractor to cover the deductible from its own resources.

The retroactive or prior acts date of such coverage shall not be after the effective date of this Contract and Contractor shall maintain such insurance for a period of at least three (3) years, following completion of the work. If such insurance is discontinued, extended reporting period coverage must be obtained by Contractor to fulfill this requirement.

Upon notification of award, and within seven (7) days of notification, the awarded vendor(s) must provide a Certificate of Insurance with the coverage and amounts called for in the solicitation. Any Contract awarded will not be executed until the Certificate of Insurance has been received and approved by the State. The State reserves the right to rescind the Contract award if the vendor does not provide the Certificate of Insurance within the required time.

11. **IDEMNIFICATION.** For clarification and not as a limitation, the Contract Vendor hereby expressly extends, in addition to the other terms, conditions and specifications of the Contract, the foregoing defense and indemnification obligations to Cooperative Purchasing Venture (CPV) Members, including Board of Trustees of the Minnesota State Colleges and Universities, in addition to Agency as defined in Minn. Stat. 16.C.02, in addition to the legislative and judicial branches and constitutional offices of state government.
12. **PAYMENT.** Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise or service, whichever is later. Terms requesting payment in less than 30 days will be changed to read "Net 30 days." The Ordering Entity is not required to pay the Contract Vendor for any goods and/or services provided without a written purchase order or other approved ordering document from the appropriate Ordering Entity. In addition, all goods and/or services provided must meet all terms, conditions and specifications of the Contract and the ordering document and be accepted as satisfactory by the Ordering Entity before payment will be issued.  
  
**Conditions of Payment.** The Contract Vendor under the Contract must be in accordance with the Contract as determined by the sole discretion of the State's Authorized Representative and be in accordance with all applicable federal, state, and local laws, ordinances, rules, and regulations including business registration requirements of the Office of the Minnesota Secretary of State.
13. **PRODUCTS CONTAINING CERTAIN TYPES OF POLYBROMINATED DIPHENYL ETHER BANNED.** By signing the Contract, Contract Vendor certifies that they have read and will comply with Minn. Stat. §§ 325E.385-325E.388.
14. **PURCHASING CARDS.** Contract Vendor will accept a purchasing card for order placement in addition to accepting a purchase order, without adding a surcharge or passing the processing fees or for the purchasing card back to the State. The State's per transaction limit is currently \$2,500 and is subject to change.
15. **PROFESSIONAL/TECHNICAL (P/T) SERVICES.** For **state agencies**, Professional/Technical Services **must** be related to the equipment and/or software purchased from this Contract and **is limited** to \$50,000 per project and must be in the scope of the Master Agreement and the Participating Agreement. Based on the size, scope and complexity of the project, the State (Department of Administration, Materials Management Division) reserves the right, on a case by case basis, to approve dollar limits exceeding \$50,000 per project. Professional/Technical Services above the \$50,000 dollar limit **must** be related to said project. State agencies **must** request, in writing, and obtain prior written approval from the MMD - Professional/Technical Contracts Section, before proceeding with projects exceeding the \$50,000 limit.
16. **PRINTERS AND MULTI-FUNCTIONAL DEVICES.** The Contract Vendor must indicate in the catalog or other marketing materials if the product will not operate, is not intended to operate, or will not operate under full manufacturer's warranty, using paper with a post-consumer recycled content. If any descriptive marketing materials are silent as to functions utilizing recycled content paper, the Contract Vendor agrees that the customer can assume the product meets or exceeds the State requirements.
17. **RETAINAGE.** For Professional/Technical Services ten percent (10%) of the cost of each deliverable will be withheld by the State. The retainage will be held by the State until the deliverable has been reviewed by the head

of the agency entering into the Contract and the head of the agency has certified that the Contract Vendor has satisfactorily fulfilled the terms of the Contract.

18. **SUBCONTRACTOR PAYMENT (When Applicable).** In accordance with Minn. Stat. § 16A.1245, the Contract Vendor shall, within 10 days of receipt of payment from the State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. The Contract Vendor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of \$100 or more will be \$10. For an unpaid balance of less than \$100, the amount will be the actual penalty due. A subcontractor that takes civil action against the Contract Vendor to collect interest penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action.

The Contract Vendor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under the Contract. In the event the Contract Vendor fails to make timely payments to a subcontractor or supplier, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contract Vendor and deduct said payment from any remaining amounts due the Contract Vendor. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contract Vendor written notice that payment will be made directly to a subcontractor or supplier for undisputed services. If there are no remaining outstanding payments to the Contract Vendor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

19. **SUPPLY CHAIN SECURITY.** The Contract Vendor must ensure that the Contract Vendor and any subcontractors or third parties involved in assembling, manufacturing, packaging, distributing, handling, warehousing, transporting or shipping State of Minnesota goods, including goods intended to be but not yet delivered to the State of Minnesota, meet all applicable security standards and all applicable local, state, federal, and international laws, rules and regulations (hereinafter "supply chain security").

Contract Vendor must maintain certification in an official supply chain security program (ISO 28000, Customs-Trade Partnership Against Terrorism (C-TPAT), Authorized Economic Operator (AEO), or other program accepted in writing by the State of Minnesota, Office of Enterprise Technology (OET d/b/a MN.IT Services or MN.IT and the State of Minnesota, Department of Administration's Materials Management Division (MMD)) and comply with the program's security standards for all orders sourced from the Contract/Agreement. To demonstrate certification, Contract Vendor must provide to MMD and OET within one month following the effective date of this Contract/Agreement or amendment adding this Section, whichever is later, a letter verifying its certification status in an official supply chain security program and, if available, supporting documentation of its certification. Contract Vendor must immediately notify MMD and OET of any change to its certification status.

Alternatively, if Contract Vendor is not certified or loses certification, Contract Vendor must complete an OET security form to confirm that it complies with supply chain security. The form will require supporting documentation of any responses and must be completed to OET's satisfaction.

Notification of Supply Chain Security Breach. Contract Vendor and its subcontractors must immediately notify MMD, OET, and the Purchasing Entity, if different from OET, of any breach of supply chain security involving State of Minnesota goods, including goods intended to be but not yet delivered to the State of Minnesota. Breach of supply chain security includes, but is not limited to, cargo theft, tampering, unauthorized access, or other activities that involve suspicious actions or circumstances. Goods received with viruses, malware or similar security deficiencies constitute breach of supply chain security.

Return/Rejection of Goods. If a breach of supply chain security has occurred or the State of Minnesota in good faith suspects a breach may have occurred, including evidence that packaging or goods were tampered with or damaged, the State may reject delivery of those goods and/or return any goods already delivered. Breach of supply chain security has the meaning described in the preceding Subsection "Notification of Supply Chain Security Breach." Rejection of delivery or return of goods shall be solely at the expense and responsibility of the Contract Vendor.

The State of Minnesota may instruct Contract Vendor, at Contract Vendor's expense, to sanitize or destroy returned goods and, upon completing sanitization or destruction, Contract Vendor must provide a Certificate of Data Destruction that meets the requirements of the then current version of NIST Special Publication 800-

88. The Certificate of Data Destruction must be provided to OET within one month following the completion of sanitization or destruction.

At no additional expense to the State of Minnesota, Contract Vendor must provide within a reasonable time frame replacement goods for any goods that were rejected at delivery or returned due to a supply chain security breach.

20. **TAXES.** State Agencies are subject to paying Minnesota sales and use taxes. Taxes will be paid directly to the Department of Revenue using Direct Pay Permit #1114, unless otherwise instructed in the Contract. If orders are issued by CPV Members, the Contract Vendor should confirm all of the tax requirements with the Ordering Entity.
21. **TERMINATION OF THE PARTICIPATING ADDENDUM.** The Participating Addendum may be canceled by the State or the Commissioner of Administration at any time, with or without cause, upon 30 days written notice to the Contract Vendor. In the event the Contract Vendor is in default, the Participating Addendum is subject to immediate cancellation to the extent allowable by applicable law. In the event of such a cancellation, the Contract Vendor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted. The Contract Vendor may request to cancel the Participating Addendum but must receive written approval from the State.
22. **ACCEPTANCE TESTING.** The Parties may agree upon an Acceptance Test that demonstrates to the satisfaction of the State that the product meets the representations set forth in the Responder's Contract. The State shall have the right to add to, modify, or replace the Contract Vendor's proposed Acceptance Test with equivalent tests which, in the State's opinion, more adequately demonstrate system capabilities for proposed State applications. The Acceptance Test will be performed at the site using the actual products, software, and interfaces stated as necessary for performance. No payment for deliverables will be authorized by the State until this Acceptance Test is satisfactorily completed and the State notifies the Contract Vendor of such acceptance in writing. Product shall be required to pass acceptance testing and system performance testing before final acceptance. Acceptance testing will take place over a period of 30 days starting with the first day of actual service, unless otherwise mutually agreed. Contract Vendor shall be available to assist with operation of the installed product during the Acceptance Test period. The Contract Vendor and the State shall work together to develop the final testing criteria.

## **CALIFORNIA ADDITIONAL TERMS**

### **A. California Participating Addendum Eligibility Requirements (for use by State Departments)**

The State of California will only consider entering into a Participating Addendum with a successful Responder for a specific band when the following conditions are met:

1. At least three Responders were awarded Master Agreements for the band; and
2. Responder's point total in Phase II of the RFP Evaluation was within 25% of the highest point total for the Band.

Note: California will only be able to execute Participating Addenda for bands where at least three (3) successful Responders, meeting the criteria outlined above, sign Participating Addenda.

### **B. California Participating Addendum Eligibility Requirements (for use by Political Subdivisions)**

The State of California reserves the right to decide on Participating Addendum eligibility requirements after award of Master Agreement(s).

### **C. Terms and Conditions**

Terms and conditions listed below will be incorporated and made a part of California Participating Addenda:

1. State Information Technology (IT) General Provisions – GSPD401IT, effective 06/08/10. The ten page document can be viewed at: <http://www.documents.dgs.ca.gov/pd/modellang/GPIT060810.pdf>.
2. State Information Technology (IT) Purchase Special Provisions, effective 02/08/07.  
The two page document can be viewed at:  
<http://www.documents.dgs.ca.gov/pd/modellang/Purchasespecial020807.pdf>.
3. State Information Technology (IT) Maintenance Special Provisions, effective 1/21/03. The five page document can be viewed at:  
<http://www.documents.dgs.ca.gov/pd/modellang/maintenancespecial12103.pdf>.
4. State Information Technology (IT) Software License Special Provisions, effective 1/21/03. The three page document can be viewed at:  
<http://www.documents.dgs.ca.gov/pd/modellang/softwarespecial012103.pdf>.
5. American Recovery and Reinvestment Act (ARRA) Supplemental Terms and Conditions, revised 08/10/09. The two page document can be viewed at:  
<http://www.documents.dgs.ca.gov/pd/poliproc/ARRATand%20C081009final.pdf>.

The State of California reserves the right to add additional terms and conditions to the Participating Addendum.

## CONNECTICUT

### Terms and Conditions

#### **Whistleblowing.**

This Contract may be subject to the provisions of Section 4-61dd of the Connecticut General Statutes. In accordance with this statute, if an officer, employee or appointing authority of the Contractor takes or threatens to take any personnel action against any employee of the Contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of subsection (a) of such statute, the Contractor shall be liable for a civil penalty of not more than five thousand dollars for each offense, up to a maximum of twenty per cent of the value of this Contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation, each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The State may request that the Attorney General bring a civil action in the Superior Court for the Judicial District of Hartford to seek imposition and recovery of such civil penalty. In accordance with subsection (f) of such statute, each large state contractor, as defined in the statute, shall post a notice of the provisions of the statute relating to large state contractors in a conspicuous place which is readily available for viewing by the employees of the Contractor.

#### **Forum and Choice of Law.**

The parties deem the Contract to have been made in the City of Hartford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Contract to be, and it shall be, governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that any immunities provided by Federal law or the laws of the State of Connecticut do not bar an action against the State, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Hartford only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court, provided, however, that nothing here constitutes a waiver or compromise of the sovereign immunity of the State of Connecticut. The Contractor waives any objection which it may now have or will have to the laying of venue of any Claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.

#### **Sovereign Immunity.**

The parties acknowledge and agree that nothing in the solicitation or the Contract shall be construed as a modification, compromise or waiver by the State of any rights or defenses of any immunities provided by Federal law or the laws of the State of Connecticut to the State or any of its officers and employees, which they may have had, now have or will have with respect to all matters arising out of the Contract. To the extent that this section conflicts with any other section, this section shall govern.

#### **Summary of State Ethics Laws.**

Pursuant to the requirements of section 1-101qq of the Connecticut General Statutes, the summary of State ethics laws developed by the State Ethics Commission pursuant to section 1-81b of the Connecticut General Statutes is incorporated by reference into and made a part of the Contract as if the summary had been fully set forth in the Contract.

#### **Campaign Contribution Restriction.**

For all State contracts, defined in Conn. Gen. Stat. §9-612(g)(1) as having a value in a calendar year of \$50,000 or more, or a combination or series of such agreements or contracts having a value of \$100,000 or more, the authorized signatory to this Contract expressly acknowledges receipt of the State Elections Enforcement Commission's notice advising state contractors of state campaign contribution and solicitation prohibitions, and will inform its principals of the contents of the notice, as set forth in "Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations," attached to this Participating Addendum.

### **Executive Orders.**

This Contract is subject to the provisions of Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices, Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings and Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace, all of which are incorporated into and are made a part of the Contract as if they had been fully set forth in it. The Contract may also be subject to the applicable parts of Executive Order No. 7C of Governor M. Jodi Rell, promulgated July 13, 2006, concerning contracting reforms and Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17, 2006, concerning procurement of cleaning products and services, in accordance with their respective terms and conditions. If Executive Orders 7C and 14 are applicable, they are deemed to be incorporated into and are made a part of the Contract as if they had been fully set forth in it. At the Contractor's request, the Department shall provide a copy of these orders to the Contractor.

### **Nondiscrimination**

(a) For purposes of this Section, the following terms are defined as follows:

- i. "Commission" means the Commission on Human Rights and Opportunities;
- ii. "Contract" and "contract" include any extension or modification of the Contract or contract;
- iii. "Contractor" and "contractor" include any successors or assigns of the Contractor or contractor;
- iv. "Gender identity or expression" means a person's gender-related identity, appearance or behavior, whether or not that gender-related identity, appearance or behavior is different from that traditionally associated with the person's physiology or assigned sex at birth, which gender-related identity can be shown by providing evidence including, but not limited to, medical history, care or treatment of the gender-related identity, consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, part of a person's core identity or not being asserted for an improper purpose;
- v. "good faith" means that degree of diligence which a reasonable person would exercise in the performance of legal duties and obligations;
- vi. "good faith efforts" shall include, but not be limited to, those reasonable initial efforts necessary to comply with statutory or regulatory requirements and additional or substituted efforts when it is determined that such initial efforts will not be sufficient to comply with such requirements;
- vii. "marital status" means being single, married as recognized by the state of Connecticut, widowed, separated or divorced;
- viii. "mental disability" means one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's "Diagnostic and Statistical Manual of Mental Disorders", or a record of or regarding a person as having one or more such disorders;
- ix. "minority business enterprise" means any small contractor or supplier of materials fifty-one percent or more of the capital stock, if any, or assets of which is owned by a person or persons: (1) who are active in the daily affairs of the enterprise, (2) who have the power to direct the management and policies of the enterprise, and (3) who are members of a minority, as such term is defined in subsection (a) of Connecticut General Statutes § 32-9n; and
- x. "public works contract" means any agreement between any individual, firm or corporation and the State or any political subdivision of the State other than a municipality for construction, rehabilitation, conversion, extension, demolition or repair of a public building, highway or other changes or improvements in real property, or which is financed in whole or in part by the State, including, but not limited to, matching expenditures, grants, loans, insurance or guarantees.

For purposes of this Section, the terms "Contract" and "contract" do not include a contract where each contractor is (1) a political subdivision of the state, including, but not limited to, a municipality, (2) a quasi-public agency, as defined in Conn. Gen. Stat. Section 1-120, (3) any other state, including but not limited to any federally recognized Indian tribal governments, as defined in Conn. Gen. Stat. Section 1-267, (4) the federal government, (5) a foreign government, or (6) an agency of a subdivision, agency, state or government described in the immediately preceding enumerated items (1), (2), (3), (4) or (5).

(b) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by such Contractor that such disability prevents performance of the work involved, in any manner prohibited by the laws of the United States or of the State of Connecticut; and the Contractor further agrees to take affirmative action to insure that applicants with job-related qualifications are employed and that employees are treated when employed without



regard to their race, color, religious creed, age, marital status, national origin, ancestry, sex, gender identity or expression, mental retardation, mental disability or physical disability, including, but not limited to, blindness, unless it is shown by the Contractor that such disability prevents performance of the work involved; (2) the Contractor agrees, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, to state that it is an "affirmative action-equal opportunity employer" in accordance with regulations adopted by the Commission; (3) the Contractor agrees to provide each labor union or representative of workers with which the Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which the Contractor has a contract or understanding, a notice to be provided by the Commission, advising the labor union or workers' representative of the Contractor's commitments under this section and to post copies of the notice in conspicuous places available to employees and applicants for employment; (4) the Contractor agrees to comply with each provision of this Section and Connecticut General Statutes §§ 46a-68e and 46a-68f and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes §§ 46a-56, 46a-68e and 46a-68f; and (5) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor as relate to the provisions of this Section and Connecticut General Statutes § 46a-56. If the contract is a public works contract, the Contractor agrees and warrants that he will make good faith efforts to employ minority business enterprises as subcontractors and suppliers of materials on such public works projects.

- (c) Determination of the Contractor's good faith efforts shall include, but shall not be limited to, the following factors: The Contractor's employment and subcontracting policies, patterns and practices; affirmative advertising, recruitment and training; technical assistance activities and such other reasonable activities or efforts as the Commission may prescribe that are designed to ensure the participation of minority business enterprises in public works projects.
- (d) The Contractor shall develop and maintain adequate documentation, in a manner prescribed by the Commission, of its good faith efforts.
- (e) The Contractor shall include the provisions of subsection (b) of this Section in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes §46a-56; provided if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.
- (f) The Contractor agrees to comply with the regulations referred to in this Section as they exist on the date of this Contract and as they may be adopted or amended from time to time during the term of this Contract and any amendments thereto.
- (g) (1) The Contractor agrees and warrants that in the performance of the Contract such Contractor will not discriminate or permit discrimination against any person or group of persons on the grounds of sexual orientation, in any manner prohibited by the laws of the United States or the State of Connecticut, and that employees are treated when employed without regard to their sexual orientation; (2) the Contractor agrees to provide each labor union or representative of workers with which such Contractor has a collective bargaining Agreement or other contract or understanding and each vendor with which such Contractor has a contract or understanding, a notice to be provided by the Commission on Human Rights and Opportunities advising the labor union or workers' representative of the Contractor's commitments under this section, and to post copies of the notice in conspicuous places available to employees and applicants for employment; (3) the Contractor agrees to comply with each provision of this section and with each regulation or relevant order issued by said Commission pursuant to Connecticut General Statutes § 46a-56; and (4) the Contractor agrees to provide the Commission on Human Rights and Opportunities with such information requested by the Commission, and permit access to pertinent books, records and accounts, concerning the employment practices and procedures of the Contractor which relate to the provisions of this Section and Connecticut General Statutes § 46a-56.
- (h) The Contractor shall include the provisions of the foregoing paragraph in every subcontract or purchase order entered into in order to fulfill any obligation of a contract with the State and such provisions shall be binding on a subcontractor, vendor or manufacturer unless exempted by regulations or orders of the Commission. The Contractor shall take such action with respect to any such subcontract or purchase order as the Commission may direct as a means of enforcing such provisions including sanctions for noncompliance in accordance with Connecticut General Statutes § 46a-56; provided, if such Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Commission, the Contractor may request the State of Connecticut to enter into any such litigation or negotiation prior thereto to protect the interests of the State and the State may so enter.

## **Tangible Personal Property**

- (a) The Contractor on its behalf and on behalf of its Affiliates, as defined below, shall comply with the provisions of Conn. Gen. Stat. §12-411b, as follows:
- (1) For the term of the Contract, the Contractor and its Affiliates shall collect and remit to the State of Connecticut, Department of Revenue Services, any Connecticut use tax due under the provisions of Chapter 219 of the Connecticut General Statutes for items of tangible personal property sold by the Contractor or by any of its Affiliates in the same manner as if the Contractor and such Affiliates were engaged in the business of selling tangible personal property for use in Connecticut and had sufficient nexus under the provisions of Chapter 219 to be required to collect Connecticut use tax;
  - (2) A customer's payment of a use tax to the Contractor or its Affiliates relieves the customer of liability for the use tax;
  - (3) The Contractor and its Affiliates shall remit all use taxes they collect from customers on or before the due date specified in the Contract, which may not be later than the last day of the month next succeeding the end of a calendar quarter or other tax collection period during which the tax was collected;
  - (4) The Contractor and its Affiliates are not liable for use tax billed by them but not paid to them by a customer; and
  - (5) Any Contractor or Affiliate who fails to remit use taxes collected on behalf of its customers by the due date specified in the Contract shall be subject to the interest and penalties provided for persons required to collect sales tax under chapter 219 of the general statutes.
- (b) For purposes of this section of the Contract, the word "Affiliate" means any person, as defined in section 12-1 of the general statutes, that controls, is controlled by, or is under common control with another person. A person controls another person if the person owns, directly or indirectly, more than ten per cent of the voting securities of the other person. The word "voting security" means a security that confers upon the holder the right to vote for the election of members of the board of directors or similar governing body of the business, or that is convertible into, or entitles the holder to receive, upon its exercise, a security that confers such a right to vote. "Voting security" includes a general partnership interest.
- (c) The Contractor represents and warrants that each of its Affiliates has vested in the Contractor plenary authority to so bind the Affiliates in any agreement with the State of Connecticut. The Contractor on its own behalf and on behalf of its Affiliates shall also provide, no later than 30 days after receiving a request by the State's contracting authority, such information as the State may require to ensure, in the State's sole determination, compliance with the provisions of Chapter 219 of the Connecticut General Statutes, including, but not limited to, §12-411b.

## **Audit and Inspection of Plants, Places of Business and Records**

- (a) The State and its agents, including, but not limited to, the Connecticut Auditors of Public Accounts, Attorney General and State's Attorney and their respective agents, may, at reasonable hours, inspect and examine all of the parts of the Contractor's and Contractor Parties' plants and places of business which, in any way, are related to, or involved in, the performance of this Contract.
- (b) The Contractor shall maintain, and shall require each of the Contractor Parties to maintain, accurate and complete Records. The Contractor shall make all of its and the Contractor Parties' Records available at all reasonable hours for audit and inspection by the State and its agents.
- (c) The State shall make all requests for any audit or inspection in writing and shall provide the Contractor with at least twenty-four (24) hours' notice prior to the requested audit and inspection date. If the State suspects fraud or other abuse, or in the event of an emergency, the State is not obligated to provide any prior notice.
- (d) All audits and inspections shall be at the State's expense.
- (e) The Contractor shall keep and preserve or cause to be kept and preserved all of its and Contractor Parties' Records until three (3) years after the latter of (i) final payment under this Contract, or (ii) the expiration or earlier termination of this Contract, as the same may be modified for any reason. The State may request an audit or inspection at any time during this period. If

any Claim or audit is started before the expiration of this period, the Contractor shall retain or cause to be retained all Records until all Claims or audit findings have been resolved.

- (f) The Contractor shall cooperate fully with the State and its agents in connection with an audit or inspection. Following any audit or inspection, the State may conduct and the Contractor shall cooperate with an exit conference.
- (g) The Contractor shall incorporate this entire Section verbatim into any contract or other agreement that it enters into with any Contractor Party.

### **Protection of Confidential Information**

- (a) Contractor and Contractor Parties, at their own expense, have a duty to and shall protect from a Confidential Information Breach any and all Confidential Information which they come to possess or control, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards.
- (b) Each Contractor or Contractor Party shall develop, implement and maintain a comprehensive data - security program for the protection of Confidential Information. The safeguards contained in such program shall be consistent with and comply with the safeguards for protection of Confidential Information, and information of a similar character, as set forth in all applicable federal and state law and written policy of the Department or State concerning the confidentiality of Confidential Information. Such data-security program shall include, but not be limited to, the following:
  - (1) A security policy for employees related to the storage, access and transportation of data containing Confidential Information;
  - (2) Reasonable restrictions on access to records containing Confidential Information, including access to any locked storage where such records are kept;
  - (3) A process for reviewing policies and security measures at least annually;
  - (4) Creating secure access controls to Confidential Information, including but not limited to passwords; and
  - (5) Encrypting of Confidential Information that is stored on laptops, portable devices or being transmitted electronically.
- (c) The Contractor and Contractor Parties shall notify the Department and the Connecticut Office of the Attorney General as soon as practical, but no later than twenty-four (24) hours, after they become aware of or suspect that any Confidential Information which Contractor or Contractor Parties have come to possess or control has been subject to a Confidential Information Breach. If a Confidential Information Breach has occurred, the Contractor shall, within three (3) business days after the notification, present a credit monitoring and protection plan to the Commissioner of Administrative Services, the Department and the Connecticut Office of the Attorney General, for review and approval. Such credit monitoring or protection plan shall be made available by the Contractor at its own cost and expense to all individuals affected by the Confidential Information Breach. Such credit monitoring or protection plan shall include, but is not limited to reimbursement for the cost of placing and lifting one (1) security freeze per credit file pursuant to Connecticut General Statutes § 36a-701a. Such credit monitoring or protection plans shall be approved by the State in accordance with this Section and shall cover a length of time commensurate with the circumstances of the Confidential Information Breach. The Contractors' costs and expenses for the credit monitoring and protection plan shall not be recoverable from the Department, any State of Connecticut entity or any affected individuals.
- (d) The Contractor shall incorporate the requirements of this Section in all subcontracts requiring each Contractor Party to safeguard Confidential Information in the same manner as provided for in this Section.
- (e) Nothing in this Section shall supersede in any manner Contractor's or Contractor Party's obligations pursuant to HIPAA or the provisions of this Contract concerning the obligations of the Contractor as a Business Associate of the Department.

### **Financial Audit for State Grants**

For purposes of this paragraph, the word "contractor" shall be deemed to mean "nonstate entity," as that term is defined in Section 4-230 of the Connecticut General Statutes. The contractor shall provide for an annual financial audit acceptable to the Department for any expenditure of state-awarded funds made by the contractor. Such audit shall include management letters and audit recommendations. The State Auditors of Public Accounts shall have access to all records and accounts for the fiscal year(s) in which the award was made. The contractor will comply with federal and state single audit standards as applicable.

# MASSACHUSETTS

This Commonwealth Terms and Conditions form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of Massachusetts ("State") Departments and Contractors. **Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.** Upon execution of these Commonwealth Terms and Conditions by the Contractor and filing as prescribed by the Office of the Comptroller, these Commonwealth Terms and Conditions will be incorporated by reference into any Contract for Commodities and Services executed by the Contractor and any State Department, in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

**1. Contract Effective Start Date.** Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

**2. Payments And Compensation.** The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. C. 29, §26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. C. 7A, §3 and 815 CMR 9.00. Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.

**3. Contractor Payment Mechanism.** All Contractors will be paid using the Payment Voucher System unless a different payment mechanism is required. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System, shall be used only for "Individual Contractors" who have been determined to be "Contract Employees" as a result of the Department's completion of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.

**4. Contract Termination Or Suspension.** A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

**5. Written Notice.** Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

**6. Confidentiality.** The Contractor shall comply with M.G.L. C. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Department's public records, documents, files, software, equipment or systems.

**7. Record-keeping And Retention, Inspection Of Records.** The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

**8. Assignment.** The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

**9. Subcontracting By Contractor.** Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

**10. Affirmative Action, Non-Discrimination In Hiring And Employment.** The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

**11. Indemnification.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated settlement agreement or judgment. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.

**12. Waivers.** Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

**13. Risk Of Loss.** The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, Department personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Department.

**14. Forum, Choice of Law And Mediation.** Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The Department, with the approval of the Attorney General's Office, and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

**15. Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration.** Any amendment or attachment to any Contract which contains conflicting language or has the affect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 1. of these Commonwealth Terms and Conditions and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

**IN WITNESS WHEREOF, The Contractor certify under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory below:**

CONTRACTOR AUTHORIZED SIGNATORY: \_\_\_\_\_ (signature)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(Check One): \_\_\_\_\_ Organization \_\_\_\_\_ Individual

Full Legal Organization or Individual Name: \_\_\_\_\_

Doing Business As: Name (If Different): \_\_\_\_\_

Tax Identification Number: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

**INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS**

A "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the Contractor's correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously filed this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS must be submitted with the Response to RFR or as specified in the RFR. Otherwise, Departments or Contractors must timely submit the completed and properly executed COMMONWEALTH TERMS AND CONDITIONS (and the W-9 form if applicable) to the: **Payee and Payments Unit, Office of the Comptroller, 9th Floor, One Ashburton Place, Boston, MA 02108** in order to record the filing of this form on the MMARS Vendor File. Contractors are required to execute and file this form only once.

**Massachusetts Statewide Contract Administration Fee**

**Introduction:**

This Statewide Contract is subject to a 1% Contract Administration Fee, which is created pursuant to MGL c. 7, § 3B, 801 CMR 4.02 and the Transaction Fee section in this solicitation and/or incorporated by reference into Statewide Contracts with the Operational Services Division (OSD). The price stated in any Bidder’s bid price and any Contractor’s Statewide Contract shall be inclusive of this fee and Contractors shall not reflect this fee as a separate line item on customer invoices.

This fee will be based on 1% of the total dollar amounts, adjusted for credits or refunds, paid by Eligible Entities to the Statewide Contractor based on your statewide contract. Eligible entities include, but are not limited to: a) Cities, towns, districts, counties and other political subdivisions; b) Executive, Legislative and Judicial Branches, including all departments and elected offices therein; c) Independent public authorities, commissions, and quasi-public agencies; d) Local public libraries, public school districts, and charter schools; e) Public hospitals owned by the Commonwealth; f) Public institutions of higher education; g) Public purchasing cooperatives; h) Non-profit, UFR-certified organizations that are doing business with the Commonwealth; i) Other states and territories with no prior approval by the State Purchasing Agent required; and j) Other entities when designated in writing by the State Purchasing Agent. For a list of other entities that are eligible to use your specific Statewide Contract, please check the Issuers Tab for each Solicitation or Contract on Comm-PASS at [www.comm-pass.com](http://www.comm-pass.com).

Note that if the 1% Administration Fee is deductible as a business expense for federal income tax purposes, it is also deductible as an expense for Massachusetts tax purposes.

**Quarterly Fee Payment:**

For each Payment Period, Contractor shall pay to OSD a Fee equal to one percent (1%) of the total payments (adjusted for credits or refunds) received from all Eligible Entities that have purchased from the Contractor pursuant to this Agreement. All payments will be based on full calendar quarters (Payment Periods) and must be received by OSD on or before 45 days after the last day of the Payment Period (as specified below) or a contractor will be considered in breach of contract:

<b>Quarter</b>	<b>Payment Period</b>	<b>Quarterly Payment Due Date</b>
First Quarter	January 1st – March 31st	May 15 <sup>th</sup>
Second Quarter	April 1 <sup>st</sup> – June 30th	August 15 <sup>th</sup>
Third Quarter	July 1st – September 30th	November 15 <sup>th</sup>
Fourth Quarter	October 1 – December 31st	February 15 <sup>th</sup>

Quarterly payment will include any periods less than a full calendar quarter if a contract does not start at the first day of a quarter or end on the last day of the quarter.

Payments are to be made by check made payable to the “Operational Services Division, Comm. of Mass.” and mailed to: Operational Services Division, Attn: Contract Admin. Fee, One Ashburton Place, Room 1017, Boston, MA, 02108. Please include the following information in the memo field of each check: 1) “Contract Administration Fee”, 2) the Statewide Contract Number and 3) your Commonwealth of Massachusetts Vendor Code (VC) number. Please do not list social security numbers on the check. If the total Administration Fees due for the Payment and Reporting Period (see section III below) are less than \$50, a Statewide Contractor may carryover that balance to the next Payment and Reporting Period until the cumulative amount owed is \$50 or greater.

**Quarterly Reporting:**

Contractor shall submit one Statewide Contractor Administration Fee Report for each Statewide Contract for each Payment Period, even if no payment is due for the Payment Period. The Statewide Contractor Administration Fee Report for the applicable payment period must be completely filled out and signed by the Statewide Contractor under pains and penalties of perjury.

**Audit:**

During the term of this Agreement and for a period of six years thereafter, the Operational Services Division, its auditors, the Office of the Inspector General or other authorized representatives shall be afforded access at reasonable times to Contractor’s accounting records, including sales information on any system, reports or files, in order to audit all records relating to goods sold or services performed pursuant to this Agreement. If such an audit indicates that Contractor has materially underpaid OSD, then the Contractor shall remit the underpayment and be responsible for payment of any costs associated with the audit.

**Other Terms:**

- a. Contractors are responsible for compliance with all other contract reporting requirements including, but not limited to, contract detailed spend, Supplier Diversity Program (SDP) and other contract reports, as required by this contract.
- b. All amounts payable by the Contractor to OSD under this Agreement that are late and not received by the due date specified shall bear simple interest from the date due until paid. The Late Payment Interest Rate is set by the Office of the State Comptroller on an annual basis and can be found by clicking on the fiscal year in question on the [Comptroller’s Fiscal Year Updates](#) webpage.
- c. In the event of the Contractor’s breach of this policy including, but not limited to, non-reporting, non-payment, late reporting/payment, under-reporting/payment, the Commonwealth reserves the right to pursue any and all recourse and penalties available including, but not limited to, imposing of penalties of up to 10% of the amount in question or \$500, whichever is greater, contract suspension, payment intercept and contract termination. The Commonwealth is allowed to suspend, terminate or debar pursuant to [Massachusetts General Laws Chapter 29, Section 29E](#), as amended, and pursuant to Section 4 of the [Commonwealth Terms and Conditions](#). In addition, in the event the Contractor fails to make any payment when due, the Contractor shall be liable to the Commonwealth for all expenses, court costs, and attorneys’ fees (including inside counsel) incurred in enforcing the terms and conditions of this Agreement.

## NEW JERSEY

# State of New Jersey Standard Terms and Conditions

Rev: 10/21/2011 ST&C

**1. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT** - Unless the bidder/offeror is specifically instructed otherwise in the Request for Proposals (RFP), the following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the bidder/offeror must present those conflicts during the Question and Answer period for the State to consider. Any conflicting terms and conditions that the State is willing to accept will be reflected in an addendum to the RFP. The State's terms and conditions shall prevail over any conflicts set forth in a bidder/offeror's proposal that were not submitted through the question and answer process and approved by the State. Nothing in these terms and conditions shall prohibit the Director of the Division of Purchase and Property (Director) from amending a contract when the Director determines it is in the best interests of the State.

**2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS** - The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

**2.1 BUSINESS REGISTRATION** – Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (<http://www.state.nj.us/treasury/revenue/busregcert.shtml>). N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of Revenue at (609) 292-1730. Form NJ-REG can be filed online at

**2.2 ANTI-DISCRIMINATION** - All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference.

**2.3 PREVAILING WAGE ACT** - The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.26 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on [this proposal] is his guarantee that neither he nor any subcontractors he might employ to perform the work covered by [this proposal] has been suspended or debarred by the Commissioner, Department of Labor for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his guarantee that he and any subcontractors he might employ to perform the work covered by [this proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

**2.4 AMERICANS WITH DISABILITIES ACT** - The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.

**2.5 MACBRIDE PRINCIPLES** – The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

**2.6 PAY TO PLAY PROHIBITIONS** – Pursuant to N.J.S.A. 19:44A-20.13 et seq. (L.2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:

- a. make or solicit a contribution in violation of the statute;
- b. knowingly conceal or misrepresent a contribution given or received;
- c. make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- d. make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee;
- e. engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- f. fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- g. engage in any exchange of contributions to circumvent the intent of the Legislation; or
- h. directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

**2.7 <http://www.elec.state.nj.us/> POLITICAL CONTRIBUTION DISCLOSURE** – The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888) 313-3532 or on the internet at



**2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST** - The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

- a. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52: 13D-13g.
- b. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
- c. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52: 130-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest.
- d. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
- e. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
- f. The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

**2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE** - Pursuant to L 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

**2.10 COMPLIANCE - LAWS** - The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

**2.11 COMPLIANCE - STATE LAWS** - It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the STATE OF NEW JERSEY.

### **3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**

**3.1 COMPLIANCE - CODES** - The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

**3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT** - The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

### **3.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS** -

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- a) The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and

selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause:

b) The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

c) The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows;

1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

**3.4 BUILDING SERVICE** – Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

**3.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT** - The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

**3.6 SERVICE PERFORMANCE WITHIN U.S.** – Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b)(1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

**3.7 BUY AMERICAN** – Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.

#### **4. INDEMNIFICATION AND INSURANCE**

**4.1 INDEMNIFICATION** - The contractor's liability to the State and its employees in third party suits shall be as follows:

(a) Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract.

(b) The contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions.

(c) In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

**4.2 INSURANCE** - The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof, and the certificates shall reflect that the insurance policies shall not be canceled for any reason except after sixty (60) days written notice to the State. Certificates of renewals shall be provided within thirty (30) days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, PO Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancellation shall be emailed to the State at:

ccaau.certificate@treas.state.nj.us

The insurance to be provided by the contractor shall be as follows:

- a. Occurrence Form Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Comprehensive General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
- b. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property.
- c. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:

\$1,000,000 BODILY INJURY, EACH OCCURRENCE

\$1,000,000 DISEASE EACH EMPLOYEE

\$1,000,000 DISEASE AGGREGATE LIMIT

d. This \$1 million amount may have been raised by the RFP when deemed necessary by the Director.

e. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17, et.seq., (small business set asides) the minimum amount of insurance coverage in subsections a., b., and c. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the State by the Director.

## **5. TERMS GOVERNING ALL CONTRACTS**

**5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR** – The contractor's status shall be that of any independent contractor and not as an employee of the State.

**5.2 CONTRACT AMOUNT** - The estimated amount of the contract(s), when stated on the RFP form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of the RFP or any contract entered into as a result of the RFP.

**5.3 CONTRACT TERM AND EXTENSION OPTION** - If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least thirty (30) days prior to the expiration date of the existing contract. The contractor shall have fifteen (15) calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions including pricing of the original contract shall apply unless more favorable terms for the State have been negotiated.

**5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK** – The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

(a) If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price.

(b) If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

**5.5 CHANGE IN LAW**– Whenever a change in applicable law or regulation affects the scope of work, the Director shall provide written notice to the contractor of the change and the Director's determination as to the corresponding adjusted change in the scope of work and corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

(a) If the contractor does not agree with the adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the adjusted contract price. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price.

(b) If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

**5.6 SUSPENSION OF WORK** - The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date

as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

#### **5.7 TERMINATION OF CONTRACT**

a. For Convenience

Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than thirty (30) days written notice to the contractor.

b. For Cause 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17: 12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days notice to the contractor with an opportunity to respond.

2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days notice to the contractor with an opportunity to respond.

c. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.

d. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

#### **5.8 SUBCONTRACTING OR ASSIGNMENT –**

a. Subcontracting: The contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws.

b. Assignment: The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

**5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE** - Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State.

**5.10 MERGERS, ACQUISITIONS** - If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within thirty (30) days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

**5.11 PERFORMANCE GUARANTEE OF CONTRACTOR** - The contractor hereby certifies that:

a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.

b. All equipment supplied to the State and operated by electrical current is UL listed where applicable.

c. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location.

d. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters.

e. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice.

f. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract.

g. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

#### **5.12 DELIVERY REQUIREMENTS-**

a. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract.

b. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice.

c. Items delivered must be strictly in accordance with the contract.

d. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

**5.13 APPLICABLE LAW AND JURISDICTION** - This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

**5.14. CONTRACT AMENDMENT** – Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.

**5.15 MAINTENANCE OF RECORDS** - The contractor shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment unless otherwise specified in the RFP. Such records shall be made available to the State, including the Comptroller, for audit and review.

**5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)** - The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract.

In connection with this assignment, the following are the express obligations of the contractor:

a. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder.

b. It shall advise the Attorney General of New Jersey:

1. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;  
2. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.

c. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey.

d. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

## **6. TERMS RELATING TO PRICE AND PAYMENT**

**6.1 PRICE FLUCTUATION DURING CONTRACT** - Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract.

In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date.

Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

**6.2 TAX CHARGES** - The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

### **6.3 PAYMENT TO VENDORS -**

a. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price.

b. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily completed or delivered. For commodity contracts, the invoice, together with the original Bill of Lading, express receipt and other related papers must be sent to the State Contract Manager or using agency on the date of each delivery. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized.

c. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at [www.nj.gov/treasury/purchase/forms/Vendor\\_Timesheet.xls](http://www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls).

d The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

**6.4 OPTIONAL PAYMENT METHOD: P-CARD** - The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

**6.5 NEW JERSEY PROMPT PAYMENT ACT** - The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

**6.6 AVAILABILITY OF FUNDS** – The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenues.

**OREGON**

Participating Addendum  
between

[insert Contractor]

and

State of Oregon acting by and through the Department of Administrative Services  
under  
the WSCA-NASPO Procurement for Computer Equipment

State of Minnesota master contract number: [redacted]

(Oregon contract number for this Participating Addendum: [redacted])

1. **Introduction.** This Participating Addendum (this “Addendum”) between [redacted], a [redacted] corporation which is authorized to do business in Oregon (“Contractor”) and the State of Oregon acting by and through the Department of Administrative Services, DAS Procurement Services (“Oregon DPS”) is entered into effective as of [redacted], 2013.

2. **Scope.** This Addendum allows Oregon DPS and the Purchasers (defined below) to make purchases under the State of Minnesota’s contract number [redacted] with Contractor dated effective [redacted]. Minnesota (the “Lead State”) is the lead state under a WSCA-NASPO cooperative procurement for computer equipment, maintenance services, and related services. WSCA-NASPO members like Oregon DPS who enter into participating addenda such as this Addendum may purchase goods and services under the Minnesota procurement.

3. **Governed by Addendum.** The terms of this Addendum govern the relationship between Oregon DPS and Contractor. As modified by this Addendum, Oregon DPS and Contractor are also bound by the terms of the Minnesota Agreement, as that term is defined in Section 8.3. Purchasers are responsible for payment obligations arising from Purchase Orders under this Addendum. Contractor will only seek payment from a Purchaser which submits a Purchase Order.

4. **Primary contacts.** The primary contacts for this Addendum are the following individuals (or their named successors):

Contractor

Name	[redacted]
Street address	[redacted]
Email address	[redacted]
Office telephone	[redacted]
Cell number	[redacted]
Fax	[redacted]

Oregon DPS

Street address	1225 Ferry Street SE Salem, Oregon 97301
Email address	[redacted]@state.or.us
Office telephone	[redacted]
Cell number	[redacted]
Fax	503-373-1626

Lead State

Name	[redacted]
Street address	[redacted]
Email address	[redacted]
Office telephone	[redacted]

Cell number  
Fax



5. **Role of chief procurement official.** Use of WSCA-NASPO contracts by agencies authorized by Oregon statutes to use state contracts are subject to the approval of Oregon’s chief procurement official (“CPO”). Issues of interpretation and eligibility for participation are solely within the authority of the CPO.

6. **Subcontractors.** Contractor’s subcontractors who receive the prior written consent of Oregon DPS may provide goods and services under this Addendum. Participation by subcontractors must be in accordance with, and is expressly subject to, the terms of this Addendum.

7. [Reserved.]

8. **Definitions.** The following terms have the meanings set forth below.

8.1 “Confidential Information” is defined in Section 20.

8.2 “Independent Agency” means an agency, board, commission, department, or subdivision of the State of Oregon with independent procurement authority under ORS 279A.050, 279A.140, or other provisions of applicable Oregon law.

8.3 “Minnesota Agreement” means State of Minnesota’s contract number [redacted] with Contractor dated effective [redacted]. For purposes of this Addendum, the Minnesota Agreement consists of only the following documents:

(a) The “WSCA-NASPO Terms and Conditions” on pages 22 to 29 of the state of Minnesota request for proposals (“RFP”).

(b) The list of “bands” of computer equipment, maintenance and warranty services, and related services to be sold by Contractor under the Minnesota Agreement which are Exhibits [redacted] and [redacted] to the Minnesota Agreement.

(c) [Possible other Lead State documents.]

For purposes of this Addendum, no other terms are part of the Minnesota Agreement. For example but not in limitation, any other documents issued by or entered into by the Lead State and Contractor (or posted on websites of the Lead State, WSCA-NASPO, Contractor, or elsewhere) are expressly **not** adopted by Oregon DPS and Contractor, and will not govern this Addendum. Also, the “configuration dollars limits” on page 9 of the Lead State RFP do not apply to this Addendum. Further, no amendments to the Minnesota Agreement govern this Addendum unless expressly entered into by Oregon DPS. As noted in Section 2 of the WSCA-NASPO Terms and Conditions (listed on page 22 of the Minnesota RFP), in case of any conflict between the terms of this Participating Addendum, the Minnesota Agreement, the Minnesota RFP solicitation, and Contractor’s proposal in response to the Minnesota RFP solicitation, the terms of this Participating Addendum will control.

8.4 “ORCPP” means the Oregon Cooperative Procurement Program, under which members including local governments, agencies, and organizations in the state of Oregon are authorized to purchase goods and services available under an agreement, like this Addendum, entered into by Oregon DPS, and which are listed in the following online document:

<http://www.oregon.gov/DAS/EGS/PS/docs/orepp/oreppmemberlist.pdf>

8.5 “Purchaser” means an entity that submits a Purchase Order to Contractor under this Addendum. A Purchaser may be either (1) Oregon DPS, (2) an agency submitting a Purchase Order under Oregon DPS purchasing authority and direction, (3) an Independent Agency, or (4) an ORCPP member with its own purchasing authority.

8.6 “Purchase Order” means a document submitted by a Purchaser to Contractor under this Addendum that specifies a quantity and type of goods and services that Purchaser is purchasing and which Contractor will provide to Purchaser under the terms of this Addendum.

8.7 “Services” means installation, configuration, implementation, and training regarding the computer equipment (including software) provided by Contractor under this Addendum. The Services include but are not limited to the items identified in Exhibits \_\_\_ and \_\_\_ to the Minnesota Agreement.



9. **Use of Purchase Orders.**

9.1 **Purchase Order forms.** Purchasers may use their own Purchase Order (“PO”) forms, and may also use Oregon DPS’s Purchase Order form. If a Purchaser received a price quote, the quote number should also be included on the PO. If the terms of any PO form differ from the terms of this Addendum, the terms of this Addendum supersede the inconsistent terms.

9.2 **PO language.** Each Purchase Order should contain the language below on the first page.

“This Purchase Order is issued under the Minnesota Agreement and the Participating Addendum entered into by Oregon DPS and [REDACTED], contract number [REDACTED]. The terms of the Participating Addendum govern this purchase and supersede any inconsistent terms.”

9.3 **Liability for Purchase Orders.** Only a Purchaser issuing a Purchase Order is liable for obligations arising under the order. The State of Oregon expressly disclaims any liability for purchases made by entities that are not Oregon state agencies. Contractor acknowledges that the State of Oregon is only responsible for PO that it issues.

9.4 **Verification of Purchasers.** Contractor is responsible for verifying that it provides goods and services under this Addendum only to Purchasers. (Contractor can verify that a particular entity is an ORCPP member at the website listed in the ORCPP definition.)

10. Exhibits. This Addendum includes the following exhibits which are incorporated by this reference.

- 10.1 Exhibit A Contractor insurance requirements.
- 10.2 Exhibit B Approved Resellers of Contractor Products and Services related to the Products
- 10.3 Exhibit C . [Reserved]
- 10.4 Exhibit D Format for Volume Sales Report.

11. **Payment terms.**

11.1 A Purchaser will pay Contractor for goods and services at the rates set forth in a Purchase Order. All payments to Contractor are subject to ORS 293.462. Purchasers may make payments under this Addendum by check or credit card.

11.2 **Invoices.** A Purchaser will pay Contractor no more than once each month for undisputed amounts due upon Contractor’s submission of detailed invoices that describe the goods and services delivered by Contractor and accepted by the Purchaser. Contractor shall request payment only for goods and services accepted by a Purchaser. Contractor must submit invoices electronically to Purchaser’s representative as designated on a Purchase Order.

11.3 Contractor’s invoices must include the following information:

- (a) The number of this Addendum.
- (b) The Purchase Order number.
- (c) The goods and services ordered.
- (d) The date of Contractor’s delivery.
- (e) The quantity of goods and services delivered.
- (f) The price per item of delivered goods and services.
- (g) The total amount due.
- (h) The address to which payment is to be sent.

11.4 **Invoice disputes.** Purchasers may review invoices for compliance with the requirements of this Addendum, and in the event of a discrepancy may dispute an invoice. Purchasers will not pay disputed claims until the dispute is resolved. Purchasers will pay undisputed portions of disputed or incorrect invoices where the undisputed portion can be easily identified by Purchaser. Payment of an amount less than the total amount due on an unpaid invoice must be credited by Contractor as directed by Purchaser. In no event may Contractor apply any payment or portion thereof to any particular amount or item that is subject to any claim of error or dispute between the parties. Contractor shall have three months from the date of any disputed billing item to give notice and initiate a dispute against Purchaser. Once either party has notified the other of an invoice or payment dispute, the parties shall attempt to resolve the dispute within 6 months. Purchasers have two years from the date of any disputed invoice to give notice and initiate a dispute against Contractor.

11.5 **No additional fees.** The cost for products listed in this Addendum is the only allowable charge. Contractor may not

add any other fees or charges irrespective of the payment method used by a Purchaser.

12. **Funds available and non-appropriation.** A Purchaser's payment obligations under this Addendum are conditioned upon Purchaser receiving funding, appropriations, limitations, allotments, or other expenditure authority sufficient to allow Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under any Purchaser Order. Nothing in this Addendum or Purchaser Order is to be construed as permitting any violation of Article XI, Section 7 of the Oregon Constitution or any other law governing liabilities or financial obligations of the State of Oregon.

13. **Volume sales reports and vendor collected administrative fees.**

13.1 **Volume sales reports.** Contractor shall submit to Oregon DPS a volume sales report ("VSR") no later than thirty (30) calendar days from the end of each calendar quarter, whether or not there are sales under this Addendum. When no sales have been recorded for a quarter, Contractor's VSR will state "No sales for the quarter." The calendar quarters end on March 31, June 30, September 30, and December 31.

13.2 **Content of VSRs.** Contractor's VSR must include the following information:

- (a) Complete and accurate details of all receipts (sales and refunds) for the reported period.
- (b) The information listed in Exhibit D to this Addendum. (Exhibit D is the Volume Sales Report Template which Contractor is required to submit to Oregon DPS.)
- (c) Such other information as Oregon DPS may reasonably request.

13.3 **VSR delivery requirements.** Contractor must deliver VSRs by email with the VSR in the form of a Microsoft Excel (.xlsx) spreadsheet attached to the email. Print outs of VSRs are not acceptable. Electronic copies of VSRs on compact disks are only acceptable if the size of the file precludes transmission by email. Approval from the Oregon DPS representative must be obtained for deviations from these requirements.

13.4 **Delivery of VSRs.** The first VSR submitted by Contractor must be submitted to the Oregon DPS representative for review and approval. The first VSR and all subsequent VSRs must be submitted by email to: [vcaf.reporting@state.or.us](mailto:vcaf.reporting@state.or.us). The Oregon DPS representative's receipt of VSRs does not preclude Oregon DPS from challenging the accuracy of VSRs at any time.

13.5 **Vendor collected administrative fee.**

(a) **Vendor collected administrative fee (VCAF) definition.** VCAF means one percent (1%) of Contractor's gross total sales, less any credits, made to Purchasers under this Addendum during each calendar quarter.

(b) **VCAF payments.** During the term of this Addendum, Contractor shall pay the VCAF amount to Oregon DPS within forty-five (45) calendar days after the end of each calendar quarter.

(c) Contractor must not reflect the VCAF fee as a separate line item charge to Purchasers. Contractor's prices must reflect all Contractor's charges to Purchasers, including the VCAF amount. Oregon DPS will invoice Contractor for the VCAF on invoices based on Contractor's VSR. Contractor is responsible for submitting timely VSR reports and making timely VCAF payment to Oregon DPS.

(d) **Payment format.** Contractor's VCAF payment shall be made in the form of a check sent to the address below (or to such other address designated by the Oregon DPS representative). Any form of VCAF payment other than a check must be specifically approved in writing by the Oregon DPS representative.

State of Oregon  
Department of Administrative Services  
Attn: VCAF payment to DPS  
1225 Ferry Street SE, U140  
Salem, Oregon 97301-4285

(e) **Interest on payments.** Any payments owed by Contractor to Oregon DPS which are made after the due date indicated on the invoice shall accrue interest at a rate of 18% per annum or the maximum rate permitted by law, whichever is less, until the overdue amount has been paid in full. Oregon DPS's right to interest on late payments shall not preclude Oregon DPS from

exercising any available rights or remedies.

13.6 **Audit rights.** Oregon DPS shall have the right during regular business hours and upon reasonable notice, at Contractor's premises, by itself or by a person authorized by it, to audit Contractor's books and records to determine and verify the information reported in any VSRs. In the event that any such audit reveals underpayment of VCAF fee, Contractor shall immediately pay the amount of deficiency, together with interest thereon at the rate provided in Section 6.2.3.2. At Oregon DPS'S request, Contractor shall pay the reasonable cost of an audit, but only if such audit reveals that an underpayment may exist as determined by Oregon DPS.

#### 14. **Contractor warranties.**

14.1 Contractor makes the representations and warranties in this section for the benefit of Purchasers. Purchasers are entitled to the warranties, rights, remedies, and benefits under this Addendum. Contractor represents and warrants to Purchasers that:

- (a) Contractor has the power and authority to enter into and perform this Addendum and that this Addendum, when executed and delivered, will be a valid and binding obligation of Contractor enforceable in accordance with its terms.
- (b) Contractor will, at all times during the term of this Addendum, be qualified to do business in the State of Oregon, professionally competent and duly licensed to perform services under this Addendum.
- (c) All goods delivered by Contractor under this Addendum will be new, unused, current versions and models, and will be free from defects in materials, design and manufacture for the longer of Contractor's or the publisher's warranty period, through the expiration of the longer warranty period.
- (d) All goods and services delivered by Contractor will materially conform to, and meet or exceed, the specifications and acceptance criteria set forth in a Purchase Order, this Addendum, or any documentation provided by Contractor.
- (e) All services performed by Contractor will be performed in accordance with the highest applicable professional or industry standards, and that only workmanship of the first quality is acceptable.
- (f) Contractor's performance creates no potential or actual conflict of interest, as defined by ORS chapter 244, for Contractor, any Contractor personnel, or any approved subcontractors who perform services for Purchasers.
- (g) All goods provided by Contractor are free and clear of any liens and encumbrances, and that Contractor has full legal title to the goods, and no other person has any right, title or interest in the goods which is superior to or infringe upon the rights transferred to a Purchaser. Title to goods delivered is subject to the provisions of ORS chapter 72.
- (h) When used as suggested by Contractor in product documentation and otherwise, no good or service delivered by Contractor infringes any copyright, patent, trade secret, trademark, or other proprietary right of any third party, nor will Purchaser's use, duplication, or transfer of the goods or services infringe any such rights.
- (i) All goods and services provided by Contractor comply with all applicable federal and state health and safety standards.
- (j) Any approved subcontractors providing goods or performing services under this Addendum have assigned all of their rights in the goods and services to Purchaser. No third party has any right, title or interest in any goods or services supplied to Purchaser.

14.2 Contractor must transfer to Purchaser all manufacturer warranties covering goods at time of delivery at no charge.

14.3 Contractor shall transfer all goods and services to Purchasers free and clear of any and all restrictions on or conditions of transfer, modification, licensing, sublicensing, direct or indirect distribution, or assignment, and free and clear of any and all liens, claims, mortgages, security interests, liabilities, and encumbrances of any kind.

14.4 The warranties set forth in this Addendum are in addition to, and not in lieu of, any other warranties provided in Contractor's product and service documentation. All warranties provided in this Addendum and in Contractor's product and service documentation are cumulative and should be interpreted expansively so as to afford Purchaser the broadest protection available.

#### 15. **Indemnities and Liability.**

15.1 **General indemnity.** Contractor will defend and indemnify Purchaser and the State of Oregon and their agencies, officers, employees, and agents (together, the “Indemnified Parties”) from and against all claims, suits, actions, losses, damages, liabilities, costs, expenses, and attorney fees of any nature whatsoever including the activities of Contractor and its officers, employees, subcontractors, resellers, and agents without limitation claims for personal injury, death, and property damage (together, “Claims”) resulting from, arising out of, and relating to goods and services provided by Contractor under this Addendum.

15.2 **Infringement indemnity.** Contractor will defend and indemnify the Indemnified Parties from and against Claims resulting from, arising out of, or relating to a claim that any aspect of the goods or services furnished under a Purchase Order infringes a copyright, patent, trademark, trade dress, utility model, industrial design, mask work, or any other intellectual property right of any third party (“Infringement Claim”).

15.3 **Defense of indemnity claims.** Contractor’s obligation to defend and indemnify a Purchaser is conditioned on Purchaser providing to Contractor notice of a Claim or potential Claim of which Purchaser becomes aware that may be the subject of those sections. However, to the extent Purchaser’s notice is delayed, Contractor’s obligation to defend and indemnify is only foregone only to the extent it is prejudiced by delay. Contractor may control the defense and settlement of Claims. However, neither Contractor nor any attorney engaged by Contractor may defend a claim nor purport to act as legal representative in the name of the State of Oregon or the Indemnified Parties which are state agencies without the approval of the Oregon Attorney General. Contractor may not settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election, assume its own defense by providing notice to Contractor. Contractor may not settle any indemnity claim on the State of Oregon’s behalf without the prior written consent of the Oregon Attorney General. The participation of the State of Oregon under this section will not relieve Contractor of its obligation to indemnify the State of Oregon.

15.4 **Remedies for Infringement Claims.** If any goods or services furnished by Contractor are, in Contractor’s opinion, likely to become the subject of an Infringement Claim, or if an Purchaser is prevented from exercising its rights under this Addendum based on any Infringement Claim or court order arising from any Infringement Claim, then Contractor may, at its option and expense, (1) procure for the Purchaser the right to continue using the allegedly infringing goods and services, or (2) replace or modify the goods or services so that they become non-infringing, provided that the replacement or modified product or service meets the specifications in the applicable Purchase Order to the satisfaction of Purchaser. If the foregoing remedies are not available, then Purchaser may return the allegedly infringing goods or terminate the allegedly infringing services, and Contractor must refund Purchaser’s payments in full, for the allegedly infringing goods or services, in addition to any other remedies available to Purchaser.

15.5 **Limitation of liability.** Except for indemnity and defense liability or confidentiality violations, or claims for personal injury, including death, or damage to property arising from the negligence, reckless conduct, or intentional acts of Contractor, its officers, employees, and agents, Contractor’s liability for damages to the State of Oregon for individual claims is limited to the greater of one million dollars or two times the aggregate value of all payments made by Purchasers under this Addendum over the two year period prior to notice of a claim. Neither party is liable to the other party for any consequential or incidental damages.

## 16. **Term and termination of Addendum.**

16.1 **Term of Addendum.** The initial term of this Addendum will be \_\_\_\_\_ years beginning on the date that Oregon DPS signs the Addendum. Oregon DPS may extend the term of the Addendum for additional periods not to exceed a cumulative total of \_\_\_\_\_ years, unless terminated earlier in accordance with the termination provisions in this Addendum. Irrespective of any termination, a Purchaser’s rights this Addendum continues in force for any goods and services accepted by a Purchaser.

16.2 **Termination of Addendum.** In addition to any termination rights in the Minnesota Agreement, Oregon DPS may terminate this Addendum, in whole or in part, immediately upon notice to Contractor, or at such later date as Oregon DPS may establish in such notice, for no reason or for any reason. Oregon DPS may also terminate this Addendum for the following reasons:

(a) Contractor is in default under this Addendum and breaches any term of this Addendum.

(b) Oregon DPS fails to receive funding, appropriations, limitations, allotments, or other expenditure authority at levels sufficient to allow Oregon DPS, in the exercise of its reasonable administrative discretion, to meet its payment obligations under this Addendum.

(c) Federal, state, or local laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods or services under this Addendum is prohibited or a Purchaser is prohibited from paying for such goods or services from the planned funding source.

16.3 Upon receipt of written notice of termination, Contractor shall stop performance under all Purchase Orders under this Addendum as directed by Oregon DPS. Contractor must notify Oregon DPS and effected Purchasers regarding the status of Purchase Orders which have not been fully performed by Contractor at the time of the termination.

16.4 Termination of this Addendum or the Minnesota Agreement does not extinguish or prejudice Oregon DPS's or a Purchaser's right to enforce this Addendum or a Purchase Order, including without limitation any right of the Oregon DPS or a Purchaser to indemnification by Contractor. If this Addendum or a Purchase Order is so terminated, the Purchaser will pay Contractor in accordance with the terms of a Purchase Order for goods and services which are accepted by the Purchaser.

#### 17. **Termination of individual Purchase Orders.**

17.1 A Purchaser may, at its sole discretion, terminate individual Purchase Orders, in whole or in part, immediately upon notice to Contractor, or at such later date as Purchaser may establish in such notice, for no reason or for any reason. A Purchaser may also terminate this Purchase Orders on the occurrence of any of the following events:

(a) Contractor is in default of or breaches any term of a Purchase Order.

(b) A Purchaser fails to receive funding, appropriations, limitations, allotments, or other expenditure authority at levels sufficient to allow a Purchaser, in the exercise of its reasonable administrative discretion, to meet its payment obligations under a Purchase Order.

(c) Federal, state, or local laws, regulations or guidelines are modified or interpreted in such a way that either the purchase of goods or services is prohibited, or a Purchaser is prohibited from paying for such goods or services from the planned funding source.

17.2 Upon receipt of written notice of termination, Contractor will stop performance under the Purchase Order as directed by Purchaser.

17.3 Termination of a Purchase Order does not extinguish or prejudice a Purchaser's right to enforce the Purchase Order, including without limitation any right of Purchaser to indemnification from Contractor. In addition, termination of a Purchase Order does not extinguish or prejudice Purchaser's right to enforce the any provisions of this Addendum. If a Purchase Order is terminated, Purchaser will pay Contractor in accordance with the terms of this Addendum for goods and services accepted by Purchaser.

#### 18. **Compliance with law.**

18.1 Contractor will comply with all federal, state, and local laws, rules, regulations, executive orders, and ordinances applicable to Contractor's performance under this Addendum and to the goods and services purchased.

18.2 Without limitation, a Purchaser's performance under this Addendum and Purchase Orders is conditioned on Contractor's compliance with the provisions of ORS 279B.220, 279B.230, 279B.235, and 279B.270. In addition, Contractor warrants the goods and services provided under this Addendum will comply with all federal Occupational Safety and Health Administration (OSHA) requirements and with all Oregon safety and health requirements, including those of the Oregon Workers' Compensation Division. Contractor must comply with (a) Title VI of the Civil Rights Act of 1964, (b) Section v of the Rehabilitation Act of 1973, (c) the Americans with Disabilities Act of 1990 and ORS 659.425, (d) all regulations and administrative rules established pursuant to the foregoing laws, and (e) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.

18.3 In addition, if Contractor is notified by a Purchaser that a specific purchase is being made with American Recovery and Reinvestment Act of 2009 ("ARRA") funds, Contractor agrees to comply with the data element and reporting requirements as defined in Federal Register Volume 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Purchaser will inform Contractor when Purchaser becomes aware that ARRA funds are being used for a purchase. Contractor will provide the required report to Purchaser with the invoice presented to Purchaser for payment. Contractor, as it relates to purchases under this Addendum, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

18.4 **Application of public records law.** Contractor acknowledges that any disclosures Contractor makes to Purchaser under this Addendum are subject to application of the Oregon Public Records Law, including but not limited to ORS 192.410 to 192.505, the provisions for the custody and maintenance of public records, ORS 192.005 to 192.710, and of ORS 646.461 to 646.475. The non-disclosure of documents or of any portion of a document submitted by Contractor to Purchaser may depend upon official or

judicial determinations made pursuant to the foregoing laws. Contractor will be notified prior to Purchaser's release of documents to entities other than participating agencies or other State agencies. Contractor shall be exclusively responsible for defending Contractor's position concerning the confidentiality of the requested documents, at its own expense.

18.5 **Recycled products.** Contractor must use, to the maximum extent economically feasible in the performance of this Contract, recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as "recycled product" is defined in ORS 279A.010(1)(ii)).

19. **Notices.** Except as otherwise provided in a Purchase Order, any notices to be given under this Addendum or under a Purchase Order must be given in writing by personal delivery, by facsimile, or by mailing the notice, postage prepaid, to the address or phone number set forth on the Purchase Order. Any communication so addressed and mailed will be deemed to have been received five calendar days after mailing. Any communication delivered by facsimile will be deemed to be given when a confirming report for the transmission is generated by the transmitting fax machine. To be effective against the receiving party, a fax transmission or mailed notice must be confirmed by telephone notice and email notice to the receiving party's authorized representative. Any notice by personal delivery will be deemed to be given when actually received by the appropriate authorized representative. For notices given under this Addendum, the contact information for representatives of Contractor and Oregon DPS are set forth in Section 5 of the Addendum.

## 20. **Confidential Information and non-disclosure.**

20.1 In the course of performing under this Addendum, Contractor may be exposed to or acquire information that is confidential to Oregon DPS and Purchasers. Any information of any form obtained by Contractor and its employees, agents, and approved subcontractors (together, "Contractor Personnel") in the performance of this Addendum and Purchase Orders is confidential information of Oregon DPS and Purchasers ("Confidential Information"). Contractor must treat any reports or other documents or items which result from the use of the Confidential Information in the same manner as Confidential Information.

20.2 **Non-disclosure obligation.** Contractor must hold Confidential Information in confidence, using at least the same degree of care that Contractor uses in maintaining its own confidential information, and must not transfer, copy, reproduce, sell, assign, license, market, or otherwise disclose Confidential Information to third parties (other than Contractor Personnel who have a need to know such information). Contractor must not use Confidential Information for any purpose whatsoever other than in performing under this Addendum. Contractor must advise Contractor Personnel in writing of their obligations to keep the Confidential Information confidential. Contractor must use commercially reasonable efforts to assist Purchasers in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, Contractor must advise Purchasers immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the non-disclosure obligations of this Addendum. Contractor will at its expense cooperate with Purchasers in seeking injunctive or other equitable relief in the name of Purchasers or Contractor against any such person. Contractor agrees that, except as directed by Purchasers, Contractor will not at any time during or after the term of this Addendum disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Addendum, and that upon termination of this Addendum or at a Purchaser's request, Contractor will provide to the Purchaser all documents, papers, and all other materials in Contractor's possession that contain Confidential Information of that Purchaser.

20.3 Confidential Information does not include information that (a) is or becomes (other than by disclosure by Contractor) publicly known or is contained in a publicly available document, (b) is furnished by Purchaser to others without restrictions similar to those imposed by this Addendum, (c) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Addendum, (d) is obtained from a source other than Purchaser without the obligation of confidentiality, (e) is disclosed with the written consent of a Purchaser, or (f) is independently developed by Contractor Personnel who have had no access to the Confidential Information.

21. **Dispute resolution.** In the event that there is any disagreement, dispute, breach, or claim of breach, non-performance, or repudiation arising from, related to or in connection with the Addendum or any Purchase Order, including without limitation to any party's failure or alleged failure to comply with any of the provisions of the Addendum (collectively, a "Dispute"), other than one related to the release of Confidential Information, Oregon DPS and Contractor shall first conduct the following procedure in an attempt to resolve the Dispute:

(a) Oregon DPS and Contractor must make every effort to settle any dispute through their respective managers within five calendar days of one party notifying the other party of a dispute.

(b) If the dispute is not resolved between the managers, then either party may initiate formal dispute resolution discussions by advising the other party in writing. The contacts for these discussions will be Oregon DPS's and Contractor's

representatives listed in Section 4 of this Addendum. Oregon DPS and Contractor must attempt in good faith to resolve the dispute within five calendar days of the notice from the other party that they are initiating this second level of dispute resolution. If Oregon DPS and Contractor agree in writing that there has been substantial progress toward resolution of the dispute, this second level may be extended for an additional five business day period which shall commence at the conclusion of the first five day period.

(c) Nothing in this section (1) will in any way limit a party's rights to seek injunctive relief of any kind, at any time, with respect to any matter, nor (2) will in any way limit a party's right to suspend or terminate the Addendum or pursue other remedies available under the Minnesota Agreement, Addendum, law or otherwise, nor (c) will remove the requirement to provide notices or filings to meet deadlines otherwise required by law, nor (d) will constitute a waiver of the any form of immunity available to the State of Oregon.

(d) Purchasers and Contractor must attempt to resolve all disputes related to Purchase Orders under the procedures described in this section.

22. **Governing law.** This Addendum and Purchase Orders are governed by and construed in accordance with the laws of the State of Oregon, without regard to principles of conflicts of laws.

23. **Jurisdiction and venue.** (a) **Oregon state agencies.** Any claim, action, suit, or proceeding (collectively, "Claim") between Contractor and Oregon DPS, or a Purchaser other than an ORCPP member, that arises from or relates to this Addendum or a Purchase Order, must be brought and conducted exclusively in the Circuit Court of Marion County for the State of Oregon.

(b) **ORCPP members.** Any Claims between Contractor and an ORCPP member that arise from or are related to Purchase Orders must be brought and conducted exclusively within the Circuit Court of the Oregon county in which the ORCPP member has its principal office, or at Purchaser's option, within such other county as Purchaser will be entitled to proceed under the venue laws of Oregon to bring or defend Claims.

(c) This section is not a waiver by the State of Oregon or any Purchaser of any form of immunity, including but not limited to sovereign immunity or immunity based on the Eleventh Amendment to the Constitution of the United States. If a Claim must be brought in a federal court, then it must be brought and conducted exclusively in the United States District Court of the District of Oregon. BY EXECUTION OF THIS ADDENDUM OR ACCEPTANCE OF A PURCHASE ORDER, CONTRACTOR HEREBY CONSENTS TO THE PERSONAL JURISDICTION PROVISIONS OF THIS ADDENDUM.

24. **Entire agreement.**

24.1 This Addendum constitutes the entire agreement between the parties on the subject matter hereof, and supersedes all prior agreements, oral or written. The terms of this Addendum prevail and govern in the case of inconsistent terms of any other document. There are no understandings, agreements, or representations, oral or written, between these parties that are not specified in this Addendum. No waiver, consent, modification, or change of terms of this Addendum binds either party unless in writing and signed by both parties and all necessary state approvals have been obtained. Such waiver, consent, modification or change, if made is effective only in the specific instance and for the specific purpose given. The failure of Oregon DPS or a Purchaser to enforce any provision of this Addendum does not constitute a waiver of that or any other provision.

24.2 This Addendum does not govern or modify any terms under existing contracts that Oregon DPS or Purchasers may have in place with Contractor. Such existing contracts, if any, are governed by and to be performed according to the terms of their own terms.

25. **Foreign contractor.** If Contractor is not domiciled in, or registered to do business in, the State of Oregon as of the effective date of this Addendum, Contractor will promptly provide to the Oregon Department of Revenue all information required by that department. A Purchaser may withhold final payment under a Purchase Order until Contractor has provided the Oregon Department of Revenue with the required information.

26. **Independent contractor.** Contractor is an independent contractor and is not an officer, employee, or agent (as those terms are used in ORS 30.265) of Oregon DPS or Purchasers. Contractor has no authority to bind Oregon DPS or Purchasers in any way. Contractor must not hold itself out as an officer, employee, or agent of Oregon DPS or Purchasers. Neither party shall make any statements, representations, or commitments of any kind or to take any action binding on the other except as provided for herein or authorized in writing by the party to be bound.

27. **Access to records.** Contractor will maintain all fiscal records relating to this Addendum and to Purchase Orders in accordance with generally accepted accounting principles and will maintain any other records relating to this Addendum and Purchase Orders in such a manner as to clearly document Contractor's performance. Contractor must provide access to Purchasers, Oregon

DPS, and the State of Oregon, and their representatives to all records including without limitation to all books, documents, papers, plans and writings of Contractor which relate to this Addendum and Purchase Orders to perform examination and audits and make copies. Contractor will retain and keep accessible all such records for a minimum of six years following final payment or termination of this Addendum, or such longer period as may be required by applicable law, or until the conclusion of any audit, controversy or litigation arising out of or related to this Addendum or a Purchase Order, whichever date is later.

28. **Severability.** If any term of this Addendum is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Addendum did not contain the particular term held to be invalid.

29. **Survival of terms.** Any terms of this Addendum, which by their nature are intended to survive termination or expiration including but not limited to warranties, indemnification, access to records, governing law, venue, consent to jurisdiction, termination, and remedies will survive the termination of this Addendum.

30. **Insurance requirements.** Contractor must obtain the insurance coverage as set forth in Exhibit 1. Contractor may not transact business under Addendum or a Purchase Order until it has provided certificates of insurance to Oregon DPS demonstrating that it has complied with the insurance requirements.

31. **Amendments.** (a) The parties may amend this Addendum from time to time. An amendment must be in writing and signed by the parties.

(b) Oregon DPS, in its sole discretion, may add goods and services to this Addendum on an as-needed basis from time to time as determined by Oregon DPS with input from Purchasers.

32. **Tax certification.** The individual signing on behalf of Contractor hereby certifies under penalty of perjury: (a) Contractor's federal tax identification number is correctly shown on this Addendum. (b) Contractor is not subject to backup withholding because either (1) Contractor is exempt from backup withholding, (2) Contractor has not been notified by the IRS that Contractor is subject to backup withholding as a result of a failure to report all interest or dividends, or (3) the IRS has notified Contractor that Contractor is no longer subject to backup withholding. (c) He or she is authorized to act on behalf of Contractor, has authority and knowledge regarding Contractor. And (d) Contractor is not in violation of any Oregon Tax Laws. "Oregon Tax Laws" means a state tax imposed by ORS 320.005 to 320.150, 403.200 to 403.250, or ORS chapters 118, 314, 316, 317, 318, 321 or 323, or the elderly rental assistance program under ORS 310.630 to 310.706, or a local taxes administered by the Department of Revenue under ORS 305.620.

Contractor: \_\_\_\_\_, a \_\_\_\_\_ corporation

Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_  
Federal tax #: \_\_\_\_\_

State of Oregon acting by and through the Department of Administrative Services

Signature: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_



Exhibit A  
to  
Participating Addendum

**Contractor's insurance requirements**

A. **REQUIRED INSURANCE.** Contractor shall obtain the insurance specified in this exhibit prior to performing under this Addendum and shall maintain it in full force and at its own expense throughout the duration of this Addendum and all warranty periods. Contractor shall obtain the following insurance from insurance companies or entities that are authorized to transact the business of insurance and issue coverage in Oregon and that are acceptable to Oregon DPS.

i. **WORKERS COMPENSATION.** All employers, including Contractor, that employ subject workers who work under this Addendum shall comply with ORS 656.017 and provide the required workers' compensation coverage, unless the employers are exempt under ORS 656.126(2). Contractor shall require each of its subcontractors, if any, to comply with, and shall ensure that each of its subcontractors, if any, complies with, these requirements.

ii. **PROFESSIONAL LIABILITY**

**Required.**

Professional Liability Insurance with a combined single limit, or the equivalent, of not less than \$ 1 million each claim, incident or occurrence This is to cover damages caused by error, omission or negligent acts related to the professional services to be provided under this Addendum.

iii. **COMMERCIAL GENERAL LIABILITY.**

**Required.**

Commercial General Liability Insurance covering bodily injury and property damage in a form and with coverage that is satisfactory to Oregon DPS. This insurance shall include personal and advertising injury liability, products liability and completed operations liability. Coverage may be written in combination with Automobile Liability Insurance (with separate limits). Combined single limit per occurrence shall not be less than \$1 million for each job site or location. Each annual aggregate limit shall not be less than \$ 2 million.

iv. **Automobile Liability Insurance.**

**Required.**

Automobile Liability Insurance covering all owned, non-owned, and hired vehicles including MCS-90 endorsement. This coverage may be written in combination with the Commercial General Liability Insurance. The policy shall insure against bodily injury, property damage, or environmental damage arising out of the use (including loading, transporting and unloading) by or on behalf of Contractor, its agents and employees of owned, non-owned or hired vehicles. Combined single limit per occurrence shall not be less than \$1 million each accident for bodily injury and property damage.

v. **EMPLOYERS' LIABILITY.**

**Required.**

If Contractor is a subject employer, as defined in ORS 656.023, Contractor shall obtain employers' liability insurance coverage with combined single limit per occurrence of not less than \$1 million and annual aggregate limits of not less than \$2 million.

B. **ADDITIONAL INSURED.**

The commercial general liability insurance and automobile liability insurance required under this Addendum shall include State, and its agencies, departments, divisions, commissions, branches, officers and employees as Additional Insureds with respect to Contractor's performance obligations under this Addendum. Contractor shall ensure that coverage is primary and non-contributory with any other insurance and self-insurance.

C. "TAIL" COVERAGE.

If any of the required liability insurance is on a "claims made" basis, Contractor shall either maintain either "tail" coverage or continuous "claims made" liability coverage, provided the effective date of the continuous "claims made" coverage is on or before the effective date of this *Participating Addendum*, for a minimum of 24 months following the later of (i) Contractor's delivery of all goods and completion of all services required under this Addendum, or (iii) the expiration of all warranty periods provided under this Addendum. Notwithstanding the foregoing 24-month requirement, if Contractor elects to maintain "tail" coverage and if the maximum time period "tail" coverage reasonably available in the marketplace is less than the 24-month period described above, then Contractor shall maintain "tail" coverage for the maximum time period that "tail" coverage is reasonably available in the marketplace for the coverage required under this Addendum. Contractor shall provide to Oregon DPS upon a Purchaser's request certification of the coverage required under this exhibit.

D. NOTICE OF CANCELLATION OR CHANGE.

Contractor shall immediately notify Oregon DPS of any change in insurance coverage.

E. CERTIFICATES OF INSURANCE.

Contractor shall provide to Oregon DPS certificates of insurance for all required insurance before delivering any goods or performing any services under this Addendum. The insurance certificates must specify all entities and individuals who are endorsed on the policy as additional insured (or loss payees). Contractor shall pay for all deductibles, self-insured retention and self-insurance, if any.

Exhibit B  
to  
Participating Addendum

Approved Resellers of Contractor Products and Services related to the Products

Exhibit C  
to  
Participating Addendum

[Reserved]

Exhibit D  
to  
Participating Addendum

**Format for Volume Sales Report**



VSR-Template.xlsx

**UTAH**  
**Additional Terms and Conditions**  
**For WSCA Participating Addendums**

The following terms and conditions will be added to the Participating Addendum for the State of Utah:

1) **AUTHORITY:** Provisions of this Addendum are pursuant to the authority set forth in 63G-6, Utah Code Annotated, 1953, as amended, Utah State Procurement Rules (Utah Administrative Code Section R33), and related statutes which permit the STATE to purchase certain specified services, and other approved purchases for the STATE.

2) **LAWS AND REGULATIONS:** Any and all supplies, services and equipment furnished will comply fully with all applicable Federal and State laws and regulations, including applicable licensure and certification requirements.

3) **RECORDS ADMINISTRATION:** The Contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized by this contract. These records will be retained by the Contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later. The Contractor agrees to allow the State and Federal auditors, and State agency staff, access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

4) **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process, and to sole sources that are included within a Request for Proposal. It does not apply to Invitation to Bids nor to the Multiple Stage Process.

**4.1 Status Verification System**

A. Each offeror and each person signing on behalf of any offeror certifies as to its own entity, under penalty of perjury, that the named Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of the contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including UCA Section 63G-12-302.

B. The Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302 and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."

C. The State will not consider a proposal for award, nor will it make any award where there has not been compliance with this Section.

D. Manually or electronically signing the Proposal is deemed the Contractor's certification of compliance with all provisions of this employment status verification certification required by all applicable status verification laws including UCA Section 63G-12-302.

**4.2 Indemnity Clause for Status Verification System**

A. Contractor (includes, but is not limited to any Contractor, Design Professional, Designer or Consultant) shall protect, indemnify and hold harmless, the State and its officers, employees, agents, representatives and anyone that the State may be liable for, against any claim, damages or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.

B. Notwithstanding Section 1. above, Design Professionals or Designers under direct contract with the State shall only be required to indemnify the State for a liability claim that arises out of the design professional's services, unless the liability claim arises from the Design Professional's negligent act, wrongful act, error or omission, or other liability imposed by law except that the design professional shall be required to indemnify the State in regard to subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Design Professional, and includes all independent contractors, agents, employees or anyone else for whom the Design Professional may be liable at any tier.

5) **INDEMNITY CLAUSE:** The Contractor will release, protect, indemnify and hold the STATE and the respective political subdivisions and their officers, agencies, employees, harmless from and against any damage, cost or liability, including reasonable attorney's fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the Contractor, his employees or subcontractors or volunteers. The parties agree that if there are any Limitations of the Contractor's Liability, including a limitation of liability for anyone for whom the Contractor is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or to damages to property.

6) **EMPLOYMENT PRACTICES CLAUSE:** The Contractor agrees to abide by the provisions of Title VI and VII of the Civil Rights Act of 1964 (42USC 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age; and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. Also, the Contractor agrees to abide by Utah's Executive Order, dated March 17, 1993, which prohibits sexual harassment

in the work place.

7) **DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract), by any governmental department or agency. If the Contractor cannot certify this statement, attach a written explanation for review by the STATE. The Contractor must notify the State Director of Purchasing within 30 days if debarred by any governmental entity during the Contract period.

8) **TERMINATION:** Unless otherwise stated in the Special Terms and Conditions, this contract may be terminated, with cause by either party, in advance of the specified termination date, upon written notice being given by the other party. The party in violation will be given ten (10) working days after notification to correct and cease the violations, after which the contract may be terminated for cause. This contract may be terminated without cause, in advance of the specified expiration date, by either party, upon thirty (30) days prior written notice being given the other party. On termination of this contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved services rendered to date of termination.

9) **NONAPPROPRIATION OF FUNDS:** The Contractor acknowledges that the State cannot contract for the payment of funds not yet appropriated by the Utah State Legislature. If funding to the State is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the State may terminate this contract or proportionately reduce the services and purchase obligations from the State upon 30 days written notice. In the case that funds are not appropriated or are reduced, the State will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the State will not be liable for any future commitments, penalties, or liquidated damages.

10) **TAXES:** Bid/proposal prices will be exclusive of state sales, use and federal excise taxes. The State of Utah's sales and use tax exemption number is 11736850-010-STC, located at <http://purchasing.utah.gov/contract/documents/salestaxexemptionformsigned.pdf>. The tangible personal property or services being purchased are being paid from STATE funds and used in the exercise of that entity's essential functions. If the items being purchased are construction materials, they will be converted into real property by employees of this government entity, unless otherwise stated in the contract, or contract orders. The State of Utah's Federal excise exemption number is 87-780019K.

11) **INSURANCE:** Contractor must carry insurance with policy limits no less than one million per incident and three million in the aggregate. Contractor must provide proof of insurance to State and must add State as an additional insured with notice of cancellation.

12) **PARTICIPANTS:** This is a contract to provide the State of Utah government departments, institutions, agencies and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) with the goods and/or services described in the bid/proposal.

13) **POLITICAL SUBDIVISION PARTICIPATION:** Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) will be voluntarily determined by the political subdivision. The Contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

14) **REPORTS AND FEES:** The Contractor agrees to provide a quarterly administrative fee to the State of Utah in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" for an amount equal to 1% of the net sales (net of any returns, credits, or adjustments) under this Addendum for the period. The Contractors WSCA pricing to the Participating Entity may be adjusted to offset for the equivalent fee amount. Payment(s) shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Fee Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The Contractor agrees to provide a quarterly utilization report, reflecting net sales to the Participating Entity during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The report will be provided in secure electronic format and/or submitted electronically to the Purchasing Agent in the Division of Purchasing over in this Addendum and a copy to the Utah reports email address [salesreports@utah.gov](mailto:salesreports@utah.gov).

15) **PAYMENT:** Payments are normally made within 30 days following the date the order is delivered or the date a correct invoice is received, whichever is later. After 60 days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Utah Code Annotated Section 15-6-3. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue. Payments may be made via a State of Utah (or political subdivision) "Purchasing Card" (major credit card). All payments to the Contractor will be remitted by mail, electronic funds transfer, or Purchasing Card.

16) **HAZARDOUS CHEMICAL INFORMATION:** The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

17) **PUBLIC INFORMATION:** Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, as far as distribution of copies. Contractor gives the STATE express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the State of Utah Government Records Access and Management Act (GRAMA). Except for sections identified in writing and expressly approved by the State Division of Purchasing, Contractor agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public under GRAMA laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.

18) **PROCUREMENT ETHICS:** The Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State, or who in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization (63G-6-1002, Utah Code Annotated, 1953, as amended).

19) **ENERGY CONSERVATION AND RECYCLED PRODUCTS:** The contractor is encouraged to offer Energy Star certified products or products that meet FEMP (Federal Energy Management Program) standards for energy consumption. The State of Utah also encourages contractors to offer products that are produced with recycled materials, where appropriate, unless otherwise requested in the solicitation.

20) **INDIVIDUAL CUSTOMERS:** Each State agency and each political subdivision, as a State Entity, that uses this contract will be treated as if they were individual Customers. Each agency and each political subdivision will be responsible for their own charges, fees, and liabilities. The Contractor will apply the charges to each State Entity individually.

Rev 8-20-13



**B. MODEL PARTICIPATING ADDENDUM**

1. Scope: This addendum covers the **WSCA-NASPO COMPUTER EQUIPMENT CONTRACT** lead by the State of Minnesota for use by state agencies and other entities located in the Participating **State/Entity** authorized by that state’s statutes to utilize **state/entity** contracts with the prior approval of the state’s chief procurement official.

2. Participation: Use of specific WSCA/NASPO cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state’s statutes to use **state/entity** contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Participating State Modifications or Additions to Master Agreement: These modifications or additions apply only to actions and relationships within the Participating Entity. **Utilize this section with specific changes or a statement that No Changes Are Required**

**Items to consider for inclusion in the Participating Addendum:**

- a. State Administrative Fees
- b. Additional Restrictions
- c. Configuration Limits
- d. Service- allowance of, travel associated with and limits
- e. Restrictions/Configuration Limits waiver process
- f. Partner utilization & approval Process
- g. Lease/Rental Allowance
- h. Ordering and Payment Process
- i. State Reporting Requirements
- j. Chief Procurement Officer approval for Participating Addendums for political subdivisions
- k. Additional State Terms and conditions
- l. Bring Your Own Device Option

4. Primary Contacts: The primary contact individuals for this participating addendum are as follows (or their named successors):

**LEAD STATE**

Name	Sue Kahle
Address	50 Sherburne Avenue, Room 112
Telephone	651-201-2434
E-mail	Susan.kahle@state.mn.su

**WSCA-NASPO**

Name	Tim Hay
Address	201 East Main Street, Suite 1405, Lexington, Kentucky 40607
Telephone	503-428-5705
E-mail	<a href="mailto:thay@wsca-naspo.org">thay@wsca-naspo.org</a>

**CONTRACTOR**

Name	
Address	
Telephone	
E-mail	

**PARTICIPATING ENTITY**

Name	
Address	
Telephone	
E-mail	

5. Purchase Order Instructions:

All orders should contain the following:

- (1) Mandatory Language "PO is subject to WSCA-NASPO Contract # **XXXXX**"
- (2) Your Name, Address, Contact, & Phone-Number
- (3) Purchase order amount.
- (4) Orders can be made out to either (a) **[CONTRACTOR]** or (b) to an AUTHORIZED reseller depending upon the preference of the Participating State or other participating legal entity.

6. Price Agreement Number:

All purchase orders issued by Purchasing Entities within the jurisdiction of this participating addendum shall include the Participating State contract number: **[insert appropriate number]** and the Lead State price agreement number: **xxxxx**.

7. Individual Customer:

Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

This Participating Addendum and the Master Agreement number **xxx** (administered by the State of **xxxxxxxxx**) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

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

Participating State:	Contractor:
By:	By:
Name:	Name:
Title:	Title:
Date:	Date:

**[Additional signatures as required by Participating State]**



Materials Management Division  
112 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155  
Voice: 651.296.2600  
Fax: 651.297.3996

### C. MODEL MASTER AGREEMENT

Date

[Type Name]  
[Company Name]  
[Street Address]  
[Address2]  
[City State Zip]

Dear [Type Name]:

The following documents are enclosed for you to complete and return:

- Notification of Contract MASTER AGREEMENT Award [Contract No.] for:  
MN WSCA-NASPO COMPUTER EQUIPMENT
- Exhibit XX, Negotiated Terms & Conditions
- Exhibit XX, Pricing Discounts
- Minnesota New Hire Reporting Form. Minn. Stat 256.998 requires employers to report to the Department of Human Services when they hire a sole proprietorship to perform work for them.

Please sign and return **all sets** of documents, **VIA MAIL**,  
to **Nancy Rafferty** at the above address by **Date** .

A certificate of insurance from your insurer, in the amounts called for in the solicitation,  
*is required now.*

In accordance with Minn. Stat. § 16A.40 the responder receiving the award of a Contract will be required to provide their bank routing information to the Department of Minnesota Management & Budget to enable payments to be made through Electronic Funds Transfer (EFT). According to our records, you are not currently enrolled and participating in EFT with the State of Minnesota. Please complete the enclosed EFT Authorization form and fax it to the Minnesota Management and Budget Office at Fax: 651.797.1305.

Instructions for properly completing the Contract documents are enclosed. Documents that are not properly executed will be returned to you. Failure to submit executed forms in the time required may result in cancellation of the award. Upon receipt of the properly executed forms, and after signatures are obtained from the appropriate State authorities, a copy of the completed Contract documents will be sent to your company.

Sincerely,

AMS Name  
Acquisition Management Specialist  
Enclosures

## INSTRUCTIONS

### **Return the signed sets of documents to the MMD office.**

#### **REQUIRED SIGNATURES:**

- ◆ The documents must be signed by an **officer** of your company, e.g., president, vice president, assistant vice president, corporate secretary, assistant corporate secretary, treasurer, or assistant treasurer.
- ◆ If your company is a corporation, the signature of one corporate officer is binding. If your company is a partnership, the signature of one partner is binding.

If someone other than the corporate officers listed above signs the document (e.g., manager, sales manager, executive assistant, etc.), evidence of his or her authority to do so must accompany the document. The evidence can be either:

- A corporate power of attorney, or
- A **certified copy** of a board resolution authorizing the alternate signature with a letter attached and signed by a corporate officer stating the resolution is in force and effective



Materials Management Division  
 112 Administration Building  
 50 Sherburne Avenue  
 St. Paul, MN 55155  
 Voice: 651.296.2600  
 Fax: 651.297.3996

**NOTIFICATION OF CONTRACT MASTER AGREEMENT AWARD**

To: [Type Name]	CONTRACT NO:	[Contract No.]
[Company Name]	RELEASE NO:	[Release No.]
[Street Address]	CONTRACT PERIOD:	
[Address 2]	Through	
[City State Zip]	EXTENSION OPTION:	[Ext. Option]

You are hereby notified that your response to our solicitation, which opened **xxxxx**, is accepted.

The following documents, in order of precedence, are incorporated herein by reference and constitute the entire Contract between you and the State: (1) this Notification of Contract Award, together any attachments or subsequent purchase orders, amendments or similar documents; (2) the State's solicitation; and (3) your response. In the event of a conflict in language among any of these documents, the terms and conditions set forth and/or referenced in this Notification and any later executed documents shall prevail over conflicting terms and conditions contained in the earlier documents, in their original form or as amended.

**1. COMPANY NAME**

The Contractor certifies that the appropriate person(s) have executed this Contract on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: \_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Printed Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_  
 Signature

\_\_\_\_\_  
 Printed Name

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**2. MATERIALS MANAGEMENT DIVISION**

In accordance with Minn. Stat. § 16C.03, subd. 3.

By: \_\_\_\_\_

Title: Acquisition Management Specialist

Date: \_\_\_\_\_

**3. COMMISSIONER OF ADMINISTRATION**

Or delegated representative.

By: \_\_\_\_\_

Date: \_\_\_\_\_

**STATE OF MINNESOTA  
MATERIALS MANAGEMENT DIVISION  
EXHIBIT xx  
MODIFIED TERMS & CONDITIONS**

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As stated in the Notification of Contract Award,  
this Contract incorporates the terms, conditions and  
Specifications of the solicitation and response.

The following terms and conditions have been modified by negotiation. These replace or are in addition (as indicated) the original solicitation Terms and Conditions. Any terms NOT modified or replaced are agreed to by both parties from the original solicitation.

Contract No. [Contract No.]

**STATE OF MINNESOTA  
MATERIALS MANAGEMENT DIVISION  
EXHIBIT xx**

**PRICING DISCOUNT SCHEDULE**

**PRICING WILL NOT BE HELD CONFIDENTIAL**

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**BAND(S) AWARDED:**

**INSERT FINAL NEGOTIATED DISCOUNT STRUCTURES AND VOLUME DISCOUNTS HERE**



# Completing the Direct Deposit Authorization for Electronic Fund Transfer (EFT) Form

## Notice of Intent to Collect Private Data

All payment recipients are asked to provide private data to Minnesota Management & Budget for the following purposes. State employees who support this function of the state's accounting system need to access the data to verify information. Others who have legal access to the data include: Legislative Auditor, Attorney General, enforcement agencies with statutory authority, and any other person or entity authorized by law or court order.

Social Security Number (SSN) or Federal Employee Identification Number (FEIN): Needed for identification purposes. This number is used to match recipients with payments. This number is also called a Tax Identification Number or TIN number. You are not legally required to provide this data. However, without this information we cannot convert you to EFT.

ABA Routing Number, Account Number, Account Type: This data is required to correctly deposit payments to your designated bank account. You are required by law to provide this information. Incomplete information may cause a delay in converting to EFT. Additionally, incorrect information may cause a payment to be delayed or deposited to the wrong account.

## Instructions for Completing the Form

Determine which bank accounts will be used for direct deposit. A separate copy of the Electronic Fund Transfer Authorization form is required for each bank account.

## Mailing Address (General)

1. Name, Address, City, State, Zip Code. Enter the name of the business or individual, address, city, state, and zip code.
2. Number. Enter the eleven-digit vendor number, if you know it. If you received this form with a letter, this number is located under the date. If you received this form with a duplicate warrant, the number is located above your name and is listed as "Vendor Number" and "Vendor Location."

## Contact Information

Enter the name, email address, phone and FAX number of the person who can respond to questions regarding the information provided on this form.

## Tax Identification Information

1. Federal ID/ Social Security Number and Name. Enter the nine-digit Federal Employer Identification Number (FEIN) for business, or the nine-digit Social Security Number (SSN). Enter the name associated with either the FEIN or SSN listed on the form.
2. MN State ID Number. *For businesses located in Minnesota*, enter the MN state tax identification number.

## Current Financial Institution Information

This information is required to verify that we are changing the correct account

1. ABA Routing Number. Enter the ABA Routing Number to identify your financial institution. Contact your bank if you are not sure what number to put in this field.
2. Customer Account Number. Enter your bank account number. Contact your bank if you are not sure what number to put in this field.
3. Financial Institution Name.

## New Account Information

1. ABA Routing Number. Enter the ABA Routing Number to identify your financial institution. Contact your bank if you are not sure what number to put in this field.
2. Customer Account Number. Enter your bank account number. Contact your bank if you are not sure what number to put in this field.
3. Financial Institution Name, Address, City, State, Zip Code. Enter the name and address of your financial institution.
4. Type of Account. Indicate if the account listed on this form is a checking or savings account.

## Authorization to Make Electronic Fund Payments

Sign the form and print your name and title (if any) and the date.

## Send the Form

You can mail or fax the form to Minnesota Management & Budget.

Minnesota Management & Budget  
File Maintenance - EFT  
658 Cedar Street, Ste. 400  
St. Paul, MN 55155  
FAX number: (651) 797-1305

## Questions about this Form?

Call the Minnesota Management & Budget EFT Helpline at (651) 201-8106 or [efthelpline.mmb@state.mn.us](mailto:efthelpline.mmb@state.mn.us)



**D. ACTION REQUEST FORM SAMPLE**

DATE: \_\_\_\_\_

Materials Management Division  
112 Administration Building  
50 Sherburne Avenue  
St. Paul, MN 55155

ATTN: Ms. Susan Kahle, CPPB  
Acquisitions Management Specialist  
WSCA Master Agreement Administrator

RE: Master Agreement # \_\_\_\_\_ with \_\_\_\_\_ (Contract Vendor)

Dear Ms. Kahle:

\_\_\_\_\_ (Contract Vendor) is requesting the action noted below. If needed, a Product and Service Schedule has been submitted online via SciQuest or is attached for WSCA approval.

Action Requested: \_\_\_\_\_  
Action Log: \_\_\_\_\_ Verify Log is attached

**SELECT ACTION BELOW AND PROVIDE REQUIRED INFORMATION:**

\_\_\_ Product Addition: \_\_\_\_\_  
Band: \_\_\_\_\_  
Original Discount: \_\_\_\_\_  
Proposed Discount \_\_\_\_\_ (must meet or exceed)

\_\_\_ Product & Service Schedule Change Describe - Include File

\_\_\_ Third Party Product Addition Provide warranty Guarantee

\_\_\_ Marketing Approval Attach Materials

\_\_\_ Website Change Review Describe and attach

\_\_\_ Miscellaneous Inquiry Provide detail

The Contract Vendor assures Products and Services provided meet the terms and conditions of the original Master Agreement and understands WSCA may audit the Contract Vendor for compliance. Additional information may be requested upon submission. WSCA also reserves the right to remove previously approved items throughout the life of the Master Agreement if in the best interest of the State.

Contract Vendor: \_\_\_\_\_ Name of Signer: \_\_\_\_\_

Title of Signer: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_



**E. PRODUCT AND SERVICE SCHEDULE**

**SAMPLE**

MANUFACTURER NAME: ABC

DATE: 09/01/14

Part #	BAND	CATEGORY	MANUFACTURER	DESCRIPTION	BASE LIST PRICE	WSCA PRICE	WSCA MINIMUM DISCOUNT	ACTUAL DISCOUNT PROVIDED	ADD = A DELETE= D PRICE REDUCED=R
					<a href="http://www.ABCpricelist.com">www.ABCpricelist.com</a>				
XYZ	1	Value Desktops	ABC	DESKTOP	\$100	\$25	60%	75%	A
550	2	Third Party Products	ZZZZZZ	LAPTOP CART	\$50	\$25	10%	50%	D
123A	3	Services	ABC	INSTALLATION	\$100	\$50	25%	50%	R

**F. BULK/VOLUME PRICING EXAMPLES**

CUMULATIVE		
\$ Threshold	Frequency	Discount
\$1,000,000-\$2,000,000	Annually	add'l 1%
\$2,000,000-\$3,000,000	Annually	add'l 1.5%
\$3,000,000-\$4,000,000	Annually	add'l 2%
\$5,000,000 on up	Annually	add'l 2.5%

PER TRANS MULTI UNIT
\$75,000-\$100,000 - add'l 1%
\$100,000-\$200,000 - add'l 1.5%
\$200,000-\$300,000 - add'l 2%
\$300,000-\$400,000 - add'l 2.5%
\$400,000-\$500,000 - add'l 3%
\$500,000 on up - add'l 3.5%

Additional .5% for online orders

CUMULATIVE		
\$ Threshold	Frequency	
\$2,000,000,000 & up	Every \$2 Billion 'gate'	additional .5% on band 1-6A

PER TRANS MULTI UNIT
\$50,000-\$99,999 - add'l 1%
\$100,000-\$199,999 - add'l 2%
\$200,000-\$499,999 - add'l 4%
\$500,000-\$999,999 - add'l 6%
\$1,000,000-No Max - add'l 8%

CUMULATIVE		
\$ Threshold	Frequency	Discount
\$5,000,001-\$10,000,000	Duration of Master Agreement	add'l 1%
\$10,000,001-\$20,000,000	Duration of Master Agreement	add'l 1%
\$20,000,001-\$40,000,000	Duration of Master Agreement	add'l 1%
\$40,000,001-\$80,000,000	Duration of Master Agreement	add'l 1%
\$80,000,001 TO 160,000,000	Duration of Master Agreement	ADDL 2%
106,000,001 - 220,000,000	Duration of Master Agreement	ADDL 1.5
ABOVE \$220,000,000	Duration of Master Agreement	ADDL .5%

WSCA Volume Pricing (per order) for Desktops and Notebooks	Minimum Discount
1-99 Units	XX%
100-500 Units	XX%
500+ Units	XX%

## G. DETAILED REPORTING SAMPLE

Click to download:

[Detail Sales Report Template](#)

## H. PRICE WORKBOOKS

PDF Samples provided in original solicitation.

Addenda released revised versions of Price Workbooks.

[Band 1 - Desktop Price Workbook v3](#)

[Band 2 - Laptop Price Workbook V3](#)

[Band 3 - Tablet Price Workbook v3](#)

[Band 4 - Server Price Workbook v6](#)

[Band 5 - Storage Price Workbook v4](#)

[Band 6 - Ruggedized Price Workbook v3](#)



## I. SOLICITATION HISTORY

**WEBINAR INVITATION:** 05/16/2013

Issued advanced notice of webinar to review Draft Solicitation

**DRAFT SOLICITATION ISSUED:** 05/20/2013

**WEBINAR:** 05/22/13

**COMMENTS DUE:** 06/10/2013

**DRAFT TO WSCA-NASPO DIRECTORS FOR REVIEW:** 08/07/2013

**REFERENCE #:** 19512

**FINAL SOLICITATION ISSUED:** 09/16/2013

**PRE-PROPOSAL MEETING:** 10/01/2013

**PROPOSALS DUE: ORIGINAL:** November 18, 2013 **AMENDED:** January 29, 2014

**ADDENDUM 1:** 10/30/2013 Announced an addendum would be issued soon to 1) provide answers to questions, provide pricing, extend due date.

**ADDENDUM 2:** 11/07/2013 Extended the due date to December 6, 2013

**ADDENDUM 3:** 11/15/2013 1) Provided responses to questions, 2) Issued revised RFP – redline and clean version 3) Issued Pricing Workbooks, Allow for additional questions by November 22.

**ADDENDUM 4:** 12/03/2013 Extend to 12/18/2103

**ADDENDUM 5:** 12/11/2013 Extend to January 7, 2014. Provide 1) Responses to questions due November 22 2) Issued revised RFP – redline and clean version 3) Issued updated Pricing Workbooks.

**ADDENDUM 6:** 12/13/2013 1) The link provided for Band 1 in Addendum 5 was incorrect and has been corrected. 2. Clarification regarding the Baseline Price List Date: The Baseline Price List submitted may be dated an alternate date. However, the market basket pricing submitted must be representative of the pricing for an order placed on November 15, 2013 for purposes of evaluation.

**ADDENDUM 7:** 12/19/2013 Provide Version 3 of Band 4: Server Pricing Workbook. Revisions include: a. The Processor in Base Equipment Spec 2 has been changed to “Xeon E5-2600 series” b. The option and upgrades in the Equipment pricing tab have been synced with the upgrade on the Spec 1 tab. c. The upgrade on Spec 2 tab has been deleted.

**ADDENDUM 8:** 12/27/2013 1) provide version 4 of band 4: server pricing workbook. Revision includes: The Processor in Base Equipment TAB Specs 2, cell D12 has been changed to “Four Xeon E5-4640 series (2.4Ghz, 8-core)”. This processor supports the minimum requirement of 4 sockets. 2) Clarification on warranty pricing: It is understood that responders may have varying base warranties. For example, in Band 3 – Tablet Price Workbook, Services Tab – a warranty upgrade is listed for accidental damage. If a responder includes accidental damage in their base warranty they should indicate this on the pricing workbook in their offer. 3) Provide version 3 of band 5: storage pricing workbook. Revision includes: Added Line 20 to the equipment pricing tab (ST20-1). To clarify: Responders are to provide capacity and drives based on the upgraded configuration to Spec 1- 12TB total raw and Spec 2 - 16TB raw.

**ADDENDUM 9:** 01/02/2014 Extend the due date of the solicitation to January 14, 2014, 3:00 p.m. C.T.

**ADDENDUM 10:** 01/09/2014 1) Extend the due date of the solicitation to January 21, 2014, 3:00 p.m. CT. 2) Instruct responders that may have already postmarked a response that additional “MUST” addenda are to be postmarked and sent as a separate package. Addenda will state “MUST” be returned or “MAY” be returned as the final statement of each addenda. 3) If an addendum requires the responder to change the response, additional materials may be sent. These are to be clearly marked and detailed regarding the changes to the response. 4) Clarify that the minimum specifications are provided in the Price Workbooks. Manufacturer specific items may be substituted for the minimum specification if the manufacturer is able to provide an approved equal. This is stated in Section 4: Cost Proposal; Item 2. 5) Inform responders that an addendum is forthcoming to further clarify pricing workbooks.

**ADDENDUM 11:** 01/16/2014 1) Extend the due date to January 28, 2014, 3:00 p.m. CT  
2) Inform responders the printer pricing for printers in ALL Pricing Workbooks was transposed on the pricing pages. To be specific: The black and white printer price entered populated the color printer pricing. The color printer pricing entered populated the black and white pricing. To ensure the State has the correct printer pricing responders are given one of the following options

\_\_\_ Acknowledge the pricing workbook(s) has already been submitted. Responder recognizes, as detailed above, that the printer pricing has been transposed on the pricing pages. Responder is authorizing the State of Minnesota to correct pricing pages.

\_\_\_ Acknowledge the pricing workbook(s) has already been submitted. The printer pricing issue was recognized by the responder previous to submitting and printer pricing is correct.

\_\_\_ Resubmit applicable pricing workbooks provided in this addendum

3) Provide clarification regarding the specifications on the Band 5: Storage Price Workbook: a) Responder is to determine drive size based on minimum requirement for Raw Disk Capacity – Base (Row D12) on Spec 1 of 4 TB and Spec 2 of 8TB. The drive size must also be sufficient to meet the upgraded configuration (Row C39) on Spec 1 to 12TB installed raw and Spec 2 to 16TB installed raw. The response must meet or exceed the minimum specifications. b) RAID options changed to “Specify” allowing the responder to specify the RAID number. (Specs-Item 1 TAB, Cell D16 and Specs-Item 2 TAB, Cell D16).

4) Provide revised Pricing Workbooks reflecting corrections to populate the printer pricing correctly and modification to the Band 5: Storage Price Workbook detailed in 2.b. above.

**ADDENDUM 12:** 01/22/2014 1) Extend the opening date to: January 29, 2014; 3:00 p.m. C.T. 2) Issue revised RFP dated 01/22/2014. This version includes revisions resulting from addenda. 3) Issue Band 4 – Server Price Workbook Version 6. Past version did not populate entries on the Server 1 Spec Tab to the Equipment Pricing Tab. Responder may resubmit new version. The State reserves the right to transfer the amounts from the Server 1 Spec Tab to the Equipment Pricing Tab if the submitted version is not populated. 4) Clarify: A password is NOT needed to unprotect worksheets.

**ADDENDUM 13:** 1) To Clarify: The RFP version 01/22/2014 provided in Addendum 12 does not need to be submitted with the response. This version was provided as courtesy to responders to clarify and confirm addenda changes.

2) Provide summary of addenda and allow responders to acknowledge receipt of all addenda provided in relation to the solicitation by submitting addendum 13.

**ADDENDUM 14:** Extend the due date of the solicitation to January 31, 2014, 3:00 p.m. CT.



# CITY OF SAN LEANDRO

## SOLE SOURCE JUSTIFICATION

Project Manager: Anton Batalla

Date: March 21, 2016

Contractor/Consultant/Vendor: Strategic Products and Services, LLC (formerly ExtraTeam).

Project Number: \_\_\_\_\_ Contract Amount: \$ 144,646.95

Project Description: Purchase of hardware through WSCA contract; installation services to configure upgraded network hardware.

**Notice: Purchases of goods or contracting for services over \$5,000 without obtaining at least three (3) quotes is a violation of City policy unless justified on one or more of the bases below. The City's formal bidding process will normally apply to purchases over \$25,000.**

**Attach Requisition Form for Signature Approval**

### JUSTIFICATION FOR AWARD OF SOLE SOURCE CONTRACT

- Emergency PO request. Need for the service is of such an unusual and compelling urgency that the City of San Leandro would be seriously injured unless it is permitted to limit the number of sources from which it solicits bids or proposals. This justification is not met on the basis of a lack of planning.
- Staff solicited competitive bids and was unable to obtain three quotes from responsive vendors – Attach sheet with company names, contact names and phone numbers of vendors contacted
- The service/product is only available from a single source and there is no acceptable substitute
- The item is directly procured from the original manufacturer and that supplier is the only source for such item
- Only one vendor can meet the necessary delivery date of \_\_\_\_\_.
- Only one (1) Contractor/Consultant/Vendor who can provide unique/highly specialized item/ service
- Economy or efficiency supports award to existing contractor/consultant as a logical follow-on to work already in progress under a competitively awarded contract
- Cost to prepare for a competitive procurement exceeds the cost of the work or item
- The item is an integral repair part or accessory compatible with existing equipment
- The item or service is essential in maintaining research or operational continuity
- The item/service is one with which staff members who will use the item/service have specialized training and/or expertise and retraining would incur substantial cost in time and/or money

#### EXPLANATION:

The City has contracted with the proposed vendor in the past and they are very familiar with the current network topology throughout the City. Given this history, and the overall quality and completeness of their proposal, which met all of the City's requirements, it has been decided to award the professional services portion of this contract (totaling \$22,520.00 per Exhibit B) as a sole-source to Strategic Products and Services, LLC.

\_\_\_\_\_  
**REQUESTOR SIGNATURE**



# City of San Leandro

Meeting Date: April 18, 2016

## Resolution - Council

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**File Number:** 16-128

**Agenda Section:** CONSENT CALENDAR

**Agenda Number:**

**TO:** City Council

**FROM:** Chris Zapata  
City Manager

**BY:** Lianne Marshall  
Assistant City Manager

**FINANCE REVIEW:** David Baum  
Finance Director

**TITLE:** RESOLUTION Making a Sole Source Finding and Approving an Agreement Between the City of San Leandro and Strategic Products and Services, LLC in the Amount of \$144,646.95 from the FY2015-2016 IT Operating Budget

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WHEREAS, an agreement between the City of San Leandro and Strategic Products and Services, LLC has been presented to this City Council; and

WHEREAS, the City Council is familiar with the contents thereof; and

WHEREAS, the City Manager recommends approval of said agreement; and

WHEREAS, the City Council desires to find that pursuant to California Public Contract Code section 3400(c)(2), this contract should be awarded to a sole source in order to match the design and plans, and other products already planned and in the course of completion for the project.

NOW, THEREFORE, the City Council of the City of San Leandro does RESOLVE as follows:

That said agreement with Strategic Products and Services, LLC in the amount of \$144,646.95 is hereby approved and execution by the City Manager is hereby authorized and

That the amount of \$144,646.95 from the FY2015-2016 IT Operating Budget (Account 688-13-121-7410) is hereby authorized to purchase said agreement.

That said agreement must be awarded to Strategic Products and Services, LLC as a sole source, because the City Council finds that under California Public Contract Code section 3400(c)(2), a sole source procurement is necessary to match existing products and designs that are in the course of completing the project.