

**WESTERN STATES CONTRACTING ALLIANCE  
PARTICIPATING ADDENDUM  
FOR DATA COMMUNICATIONS EQUIPMENT  
BETWEEN  
THE STATE OF WASHINGTON, DEPARTMENT OF INFORMATION SERVICES  
AND  
MSN Communications, Inc.**

The undersigned hereby represents, acknowledges, and agrees as follows:

1. The undersigned is a "Participating Entity" which shall be defined as Participating Entity states of WESTERN STATES CONTRACTING ALLIANCE (hereafter "Participating Entity"): (i) which requests Data Communications Equipment pursuant to the terms and conditions of the STATE OF UTAH STATEWIDE CONTRACT AR-1475 (hereafter the "Master Agreement") by executing this Participating Addendum ("PA"); and, (ii) whose request for the sale of Data Communications Equipment by MSN Communications, Inc. (hereinafter "MSN" or "Contractor"), at its sole discretion, is accepted by MSN executing this PA.
2. The undersigned Participating Entity is executing this PA for the purpose of purchasing Data Communications Equipment from MSN pursuant to the Master Agreement by and between State of Utah and MSN. Participating Entity shall be subject to all terms and conditions of this PA and the Master Agreement.
3. Scope: The general purpose of this PA is to provide: Data Communications Equipment, Services, and defined Associated OEM Maintenance.
4. Changes to the Master Agreement specific to the State of Washington are specified in the Attachment(s) to this PA, incorporated herein by this reference.
5. Primary Contact/ Legal Notices:
  - 5.1. Any notice or demand or other communication required or permitted to be given under this PA or applicable law shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, or via facsimile, to the parties at the addresses and fax number provided in this section. For purposes of complying with any provision in this PA or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.
  - 5.2. Notices shall be effective upon receipt or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.
  - 5.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Services provided pursuant to this PA is served upon MSN or Participating Entity, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. MSN and Participating Entity further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.
  - 5.4. For Participating Entity:

<b>State of Washington Department of Information Services</b>	
<b>Attn: TSD Contract Administrator</b>	
<b>Mailing Address:</b>	<b>Street Address:</b>
PO Box 42445	2411 Chandler Court SW
Olympia, WA 98504	Olympia, WA 98502
Phone: (360) 725-4200	
Fax: (360) 664-0711	
E-mail: <a href="mailto:mcadmin@dis.wa.gov">mcadmin@dis.wa.gov</a>	



**ATTACHMENT 1  
WESTERN STATES CONTRACTING ALLIANCE  
PARTICIPATING ADDENDUM  
FOR  
DATA COMMUNICATIONS PRODUCT  
BETWEEN  
THE STATE OF WASHINGTON, DEPARTMENT OF INFORMATION SERVICES  
AND  
MSN Communications, Inc.**

**1. DEFINITIONS.**

**“Acceptance Date”** shall mean: shall mean: (i) for Contractor-installed Products or Products undergoing formal acceptance testing, the date of Purchaser’s written notification to Contractor of acceptance of the Products; (ii) for other Products, the tenth (10<sup>th</sup>) Business Day after the date of delivery.

**“Confidential Information”** shall mean information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver’s license numbers, medical data, law enforcement records, Purchaser source code, Purchaser network configuration information, or other information which is marked confidential at the time of disclosure.

**“Contractor/Officer”** shall mean MSN Communications, Inc. (“MSN”), its employees and agents. It shall also include any Subcontractor retained by Contractor as permitted under the terms of this PA.

**“Customer”** shall mean the same as “Purchaser”.

**“DIS”** shall mean the State of Washington, Department of Information Services.

**“Effective Date”** shall mean the first date this PA is in full force and effect. It may be a specific date agreed to by the parties; or, if not so specified, the date of the last signature of a party to this PA.

**“Order Document”/“Order”** shall mean any official State document and attachments thereto specifying Products and Services to be purchased or licensed from Contractor under this PA. Each Order shall specify on its face the types and quantities of Products and/or Services to be furnished by Contractor pursuant to the Order, the delivery date(s), and the installation site(s).

**“Participating Addendum” or “PA”** shall mean this agreement between the Contractor and the State of Washington, a Participating State, that clarifies the operation of the Master Agreement and may add other state-specific language or other requirements.

**“Participating Entity”** shall mean a member of WSCA who has indicated its intent to participate, as disclosed in the solicitation, or who subsequently signs a PA.

**“Procuring Agency(ies)”** shall mean the same as “Purchaser”.

**“Product(s)”** shall mean data communications hardware and associated maintenance, installation, components, support, software and documentation, specifically, all authorized MSN Product Discounts offered on Cisco and Nortel Routers, Switches, LAN/WAN Wireless, maintenance and installation pursuant to the STATE OF UTAH STATEWIDE CONTRACT AR-1475.

**“Proprietary Information”** shall mean information owned by Contractor to which Contractor claims a protectable interest under law. Proprietary Information includes, but is not limited to, information protected by United States copyright, patent, trademark, or trade secret laws.

**“Purchaser”** shall mean DIS and any other state agency, or political subdivision (including public schools, colleges

or universities), or qualified non-profit organization of the state of Washington, who have a properly executed Interlocal Cooperative Agreement (Customer Service Agreement) with DIS.

“**Purchasing Entity(ies)**” shall mean the same as “Purchaser”.

“**Service(s)**” shall mean installation, training and maintenance services for eligible Products.

“**Subcontractor**” shall mean one not in the employment of Contractor, who is performing all or part of the business activities under this PA under a separate contract with Contractor. The term “Subcontractor” means Subcontractor(s) of any tier.

**2. ORDER OF PRECEDENCE.** In the event of any inconsistency in this PA, the inconsistency shall be resolved in the following order of precedence:

- (i) Sections of this PA, including its Attachments;
- (ii) WSCA Master Agreement, Number AR-1475;
- (iii) Utah’s Request for Proposal LW1907;
- (iv) Contractor’s Response to Request for Proposal (“RFP”) LW1907 (“Response”);
- (v) The terms and conditions contained on Purchaser’s Order Documents.

**3. FORCE MAJEURE.** Contractor, DIS or Purchaser shall not be liable for damages arising from causes beyond the reasonable control and without the fault or negligence of Contractor, DIS or Purchaser. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of a governmental body other than Purchaser acting in either its sovereign or contractual capacity, war, explosions, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the delays must be beyond the reasonable control and without fault or negligence of Contractor, DIS or Purchaser, or their respective Subcontractors.

**4. DELIVERY.**

- 4.1. The prices offered shall be the delivered price to any WSCA state agency or political subdivision. Contractor shall ship all Products F.O.B. destination, freight prepaid, with all transportation and handling charges paid by the Contractor. Contractor may not include freight charges on invoicing. Failure to comply with this requirement may result in PA termination for cause. Responsibility and liability for loss or damage shall remain with the Contractor until delivery of Products to Purchasing Entity’s receiving dock, when responsibility shall pass to the Purchaser, except as to latent defects, fraud and Contractor’s warranty obligations.
- 4.2. Whenever a Purchaser does not accept any Product and returns it to the Contractor, all related documentation furnished by the Contractor shall also be returned. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence of the Purchaser. Contractor is responsible for the pick-up of returned equipment.

**5. NONDISCRIMINATION.** The Offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit 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 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, and Title 49.60 RCW, Washington Law Against Discrimination. The Offeror further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state’s certification requirements, if any, as stated in the special terms and conditions. This PA may be canceled if the Offeror fails to comply with the provisions of these laws and regulations. The Offeror must include this provision in every subcontract relating to purchases by the States to ensure that Subcontractors are bound by this provision.

6. **ACCEPTANCE TESTING.** Contractor agrees that Purchaser may choose to require formal acceptance testing on Products purchased under this PA. Such acceptance testing criteria shall be mutually negotiated and agreed to by both Purchaser and Contractor on an individual case basis. In that case, no payment will be authorized until the Product has met the standard of performance and has been accepted, in writing, by Purchaser.

7. **TITLE.** Upon receipt of payment Contractor shall convey Purchaser good title to any equipment, free and clear of all liens, pledges, mortgages, encumbrances, or other security interests.

8. **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 PA. These records will be retained by the Contractor for at least six (6) years after the PA terminates, or until all audits or litigation initiated within the six (6) years have been completed, whichever is later.

9. **SURVIVORSHIP.** All license and purchase transactions executed and Services provided pursuant to the authority of this PA shall be bound by all of the terms, conditions, prices and discounts set forth within this PA or the Master Agreement, notwithstanding the expiration of the initial term of this PA or the Master Agreement or any extension thereof. Further, the terms, conditions and warranties contained in this PA and the Master Agreement that by their sense and context are intended to survive the completion of the performance, cancellation or termination of this PA or the Master Agreement shall so survive. In addition, the terms of the sections titled Contractor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Order of Precedence; Publicity; Patents; Copyrights, Etc.; and Disputes shall survive the termination of this PA.

10. **ADVANCE PAYMENT PROHIBITED.** No advance payment shall be made for Products and/or Services furnished by Contractor pursuant to this PA. Notwithstanding the above, payments for maintenance Services may be made in advance on a quarterly or annual basis, at Purchaser's option.

11. **TAXES.** Purchaser will pay sales and use taxes, if any, imposed on the Products and/or Services acquired hereunder. Contractor must pay all other taxes including, but not limited to, Washington Business and Occupation Tax, other taxes based on Contractor's income or gross receipts, or personal property taxes levied or assessed on Contractor's personal property.

12. **CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS.** Any written commitment by Contractor within the scope of this PA shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this PA. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time, and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables, descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

13. **PROTECTION OF PURCHASER'S CONFIDENTIAL INFORMATION.**

13.1 Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this PA or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this PA, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this PA, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors reasonably necessary to further the purpose of this PA. Contractor agrees to implement physical, electronic, and managerial safeguards to prevent unauthorized access to Confidential Information.

13.2 Immediately upon expiration or termination of this PA, Contractor shall, at Purchaser's or DIS' option: (i) certify to Purchaser or DIS that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser; or (iii) take whatever other steps Purchaser or DIS requires of Contractor to protect Purchaser's Confidential Information.

- 13.3 DIS and Purchaser reserve the right to monitor, audit, or investigate the use of Confidential Information collected, used, or acquired by Contractor through this PA. The monitoring, auditing, or investigating may include, but is not limited to, salting databases.
- 13.4 Violation of this section by Contractor or its Subcontractors may result in termination of this PA and demand for return of all Confidential Information, monetary damages, or penalties.
- 13.5 The obligations imposed by this PA shall not apply to any information that: (a) is already in the possession of, is known to, or is independently developed by Contractor; or (b) is or becomes publicly available through no fault of Contractor; or (c) is obtained by Contractor from a third person without breach by such third person of an obligation of confidence with respect to the Confidential Information disclosed; or (d) is disclosed without restriction by the Purchaser; or (e) is required to be disclosed pursuant to the lawful order of a government agency or disclosure is required by operation of the law.

**14. PUBLICITY.**

- 14.1 The award of this Contract to Vendor is not in any way an endorsement of Vendor or Vendor's Services by Purchasers and shall not be so construed by Vendor in any advertising or other publicity materials.
- 14.2 Contractor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this PA and Services furnished by Contractor wherein DIS' or Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of DIS' or Purchaser's name therewith may, in DIS' or Purchaser's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS *prior* to such use.
- 14.3 Nothing contained in this Section, however, shall be construed to apply to the following: Communications among Purchasers or communications between Purchasers and other agencies and branches of the Washington State Government; and posting by DIS of a copy of this contract on its website(s), together with a notation identifying Vendor as a supplier for the Services.

**15. INSURANCE COVERAGE.**

- 15.1 Contractor shall, during the term of this PA, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington
- 15.2 In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this PA, Contractor shall provide written notice of such to DIS within thirty (30) Business Days of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at DIS' sole option, result in this PA's termination.
- 15.3 The minimum acceptable limits shall be as indicated below:
- 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;
  - Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than \$1 million per accident;
  - Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than \$1 million per accident for bodily injury by accident and \$1 million per employee for bodily injury by disease;
  - Umbrella policy providing excess limits over the primary policies in an amount not less than \$1 million;
- 15.4 Contractor shall pay premiums on all insurance policies. Such insurance policies certificate(s)

shall name DIS as an additional insured on all general liability, automobile liability and umbrella policies. Such insurance certificates shall also reference the Master Agreement number AR-1475 and this Participating Addendum, and shall have a condition that they not be revoked by the insurer until forty-five (45) calendar days after notice of intended revocation thereof shall have been given to DIS by the insurer.

- 15.5. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State subject to the hold harmless/ indemnification agreements under this PA and shall include a severability of interests (cross-liability) provision.
- 15.6. Contractor shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.
- 15.7. Contractor shall furnish to DIS copies of certificates of all required insurance within thirty (30) calendar days of this PA's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the first business day in the month of April for each successive year that this PA or the Master Agreement is in full force and effect. Failure to provide evidence of coverage may, at DIS' sole option, result in this PA's termination.
- 15.8. By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the State in this PA.

**16. INDUSTRIAL INSURANCE COVERAGE.** Prior to performing work under this PA, Contractor shall provide or purchase industrial insurance coverage for its employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51 RCW during the course of this PA. DIS or Purchaser will not be responsible for payment of industrial insurance premiums or for any other claim or benefit for Contractor, or any Subcontractor or employee of Contractor, which might arise under the industrial insurance laws during the performance of duties and Services under this PA.

**17. WAIVER.** Waiver of any breach of any term or condition of this PA shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this PA shall be held to be waived, modified, or deleted except by a written instrument signed by the parties.

**18. DISPUTES.**

- 18.1. In the event a bona fide dispute concerning a question of fact arises between Purchaser and Contractor and it cannot be resolved between the parties, or with the help of the TSD Contract Administrator, either party may initiate the dispute resolution procedure provided herein.
- 18.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) business days. The initiating party shall have three (3) business days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) business days to negotiate in good faith to resolve the dispute.
  - a) If the dispute cannot be resolved after three (3) business days, a panel ("Dispute Resolution Panel") may be requested in writing by either party who shall also identify the first panel member. Within three (3) business days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) business days.
  - b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.
  - c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

- 18.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.
- 18.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible
- 18.5. Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this PA that are not affected by the dispute.
- 18.6. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

**19. DIS ADMINISTRATIVE FEE.** All purchases made under this PA are subject to a fee (“DIS Administration Fee”), to be collected by Contractor and remitted to DIS. The DIS Administration Fee is one half of one percent (.5% or .005) of the purchase price. The purchase price is defined as total invoice price less sales tax. The DIS Administration Fee shall be invoiced by Contractor to all Purchasers as a separate detailed line item on Purchaser’s invoice. Contractor shall remit the DIS Administration Fee directly to the TSD Contract Administrator, along with the PA Activity Report. The check shall be payable to the Department of Information Services.

**20. DIS ACTIVITY REPORTING..**

- 20.1 Contractor shall submit to the TSD Contract Administrator a quarterly report (“Activity Report”) of all Product and/or Service purchases made under this PA. The Activity Report shall identify:
  - a) The Master Price Agreement (AR-1470);
  - b) Each Purchaser making purchases during that quarter;
  - c) The total invoice price, excluding sales tax for each Purchaser;
  - d) The sum of all invoice prices, excluding sales tax, for all Purchasers; and
  - e) The DIS Administration Fee.

20.2 The Activity Reports and the DIS Administration Fee shall be due on a quarterly basis in accordance with the following schedule:

For activity in the months:	Report & Fee Due:
January, February, March	April 15th
April, May, June	July 15th
July, August, September	October 15th
October, November, December	January 15th

- 20.3. This Activity Report may be corrected or modified by the TSD Contract Administrator with subsequent written notice to Contractor.
- 20.4. Quarterly Activity Reports are required even if no activity occurred.
- 20.5. Upon request by DIS, Contractor shall provide, in the format requested, the contact information for all Purchasers during the term of the PA.

**21. FAILURE TO REMIT REPORTS / FEES.** Failure of Contractor to remit the Activity Report together with the DIS Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DIS terminating this PA with Contractor.

**22. INVOICE / PAYMENT.**

22.1. Contractor will submit properly itemized invoices to each Purchaser within forty-five (45) days of delivery of Products and/or Services at the address(es) indicated in the Order Document. Invoices shall provide and itemize, as applicable:

- a) The Master Price Agreement number, AR-1475;
- b) Purchaser's name and address and Order Document number;
- c) Contractor name, remittance address, phone number, e-mail address, fax number and Federal Taxpayer Identification Number;
- d) Description of Products, including price, quantity ordered, model and serial numbers;
- e) Date(s) of delivery and/or date(s) of installation and set up;
- f) Price for each item, or manufacturer's list price for each item and applicable discounts;
- g) Description of Services provided, including dates;
- h) Net invoice price for each item;
- i) Applicable taxes;
- j) DIS Administration Fee (0.5% or 0.005 of the total purchase price);
- k) Other applicable charges;
- l) Total invoice price; and
- m) Payment terms including any available prompt payment discounts.

22.2. Payment is normally made within thirty (30) days following the date the Order is received or the date a correct invoice is received, whichever is later. After forty-five (45) days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments may be remitted by mail, or via electronic funds transfer. Payments may be made via a Purchasing Entity's "Purchasing Card."

22.3. Payments for maintenance Services may be made in advance on a quarterly or annual basis, at Purchaser's option. Payment of maintenance Services of less than one (1) month's duration shall be prorated at 1/30<sup>th</sup> of the basic monthly maintenance charges for each calendar day.

**23. TERMINATION FOR NON-APPROPRIATIONS.** If funds are not allocated to a Purchaser to continue a maintenance agreement, Purchaser may terminate its maintenance agreement upon thirty (30) days' written notice to Contractor without termination charges, or otherwise work with Contractor to arrive at a mutually acceptable resolution of the situation. Purchaser agrees to notify Contractor in writing of such non-allocation at the earliest possible time. This section shall not be construed to permit a Purchaser to terminate its maintenance agreement in order to acquire similar Services from a third party.

**24. GOVERNING LAW.** This PA shall be governed in all respects by the law and statutes of the State of Washington, without reference to conflict of law principles. However, if the Uniform Computer Information Transactions Act (UCITA) or any substantially similar law is enacted as part of the law of the State of Washington, said statute will not govern any aspect of this PA or any license granted hereunder, and instead the law as it existed prior to such enactment will govern. The jurisdiction for any action hereunder shall be exclusively in the Superior Court for the State of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

**25. VENDOR'S PROPRIETARY INFORMATION.** Contractor acknowledges that DIS and Purchaser are subject to chapter 42.17 RCW and that this PA shall be a public record as defined in chapter 42.17 RCW. Any specific information that is claimed by Contractor to be proprietary ("Proprietary Information") must be clearly identified as such by Contractor. To the extent consistent with chapter 42.17 RCW, DIS and Purchaser shall maintain the confidentiality of all such information marked Proprietary Information. If a public disclosure request is made to view Contractor's Proprietary Information, DIS or Purchaser will notify Contractor of the request and of the date that such records will be released to the requester unless Contractor obtains a court order from a court of competent jurisdiction enjoining that disclosure. If Contractor fails to obtain the court order enjoining disclosure, DIS or Purchaser will release the requested information on the date specified.

**26. GENERAL**

- 26.1 Participating Entity or Purchaser is responsible for meeting all physical and environmental site standards and requirements of the equipment manufacturer and of Contractor for installation and/or operation, as appropriate, of equipment installed or serviced by Contractor under the Agreement.
- 26.2 Any agreement by Contractor to a Participating Entity or Purchaser requested change or cancellation (in whole or in part) of equipment, software or services under this Agreement shall be subject to Participating Entity's or Purchaser's payment of all restocking charges incurred by Contractor.
- 26.3 Returns of new, unopened or installed equipment within thirty (30) days from the ship date are subject to a 15% percent restocking fee. No returns after thirty (30) days.



STATE OF UTAH
CONTRACT AMENDMENT

AMENDMENT # 2 To CONTRACT # AR1475

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract by and between the State of Utah, WSCA Administrator referred to as STATE and, MSN Communications Inc. referred to as CONTRACTOR.

THE PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

1. Contract period:

June 5, 2002 (original starting date)

May 31, 2004 (current ending date)

May 31, 2006 new ending date

2. Contract amount:

(current contract amount)

(amendment amount)

- 0 - new contract amount

(add current amount to amendment amount)

3. Other changes: (attach other sheets if necessary):

None

4. Effective Date of Amendment: As soon as both parties sign.

All other conditions and terms in the original contract and previous amendments remain the same.

IN WITNESS WHEREOF, the parties sign and cause the amendment to be executed.

CONTRACTOR

Handwritten signature and date 2-24-04

Contractor's signature Date
Type or Print Name and Title

STATE

Handwritten signature and date MAR 03 2004

Douglas G. Richins Date
Director, Division of Purchasing

**STATE OF UTAH**  
**STATEWIDE CONTRACT AR-1475**

1. CONTRACTING PARTIES: This Statewide Contract is between the **Division of Purchasing and General Services**, an agency of the State of Utah, and the following CONTRACTOR:

MSN Communications, Inc  
Name

5239 S Rio Grande St  
Address

Littleton, CO 80120  
City State Zip

Federal Tax ID# 84-1328634 Contractor # 94834A Commodity Codes: 20464, 20621, 20623

Contractor Contact Person: Ron Aukamp Contractor Phone #: 303-347-8303

Contractor Fax #: 303-347-8335 Contractor email address: raukamp@msncomm.com

LEGAL STATUS OF CONTRACTOR

- Sole Proprietor  
 Non-Profit Corporation  
 For-Profit Corporation  
 Partnership  
 Government Agency

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this Contract is to provide:  
Data Communications Equipment and Associated OEM Maintenance & Training

3. CONTRACT PERIOD: Effective date June 5, 2002 Termination date May 31, 2004 unless terminated early or extended in accordance with the terms and conditions of this contract.  
Renewal option: Renewable for one or two year terms up to four additional years

4. PRICING AS PER ATTACHMENT A (Addendum 1)  
PAYMENT TERMS: Net 30 days  
DAYS REQUIRED FOR DELIVERY: various  
MINIMUM ORDER: \$1.00  
FREIGHT TERMS: F.O.B. Destination, Freight Prepaid

5. ATTACHMENT A: Addendum 1  
ATTACHMENT B: WSCA Standard Terms and Conditions  
**Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.**

6. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:  
a. All other governmental laws, and regulations applicable to the goods and/or services authorized by this contract.  
b. Utah State Procurement Code, Procurement Rules, RFP LW1907, and CONTRACTOR'S proposal response to RFP LW1907 dated 07-17-01.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

**CONTRACTOR**

**STATE OF UTAH**

Signature on file  
Contractor's signature

Signature on file  
Douglas G. Richins  
Director, Division of Purchasing

\_\_\_\_\_  
Type or Print Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTACHMENT A  
ADDENDUM 1**

This Addendum serves to clarify terms and conditions of the contract between the State of Utah, referred to as STATE, and MSN Communications, Inc, referred to as Contractor. The State of Utah is acting as the Lead State for the procurement process resulting in **WSCA Contracts for Data Communications Equipment, associated OEM Maintenance and Training.**

**A. Manufacturer Product Line(s)**

This contract authorizes the Contractor to provide the following manufacturer's Data Communications Equipment, Maintenance, and Training, as listed by category. No other equipment or maintenance will be covered under this contract, unless identified in an amendment to the contract. Products covered under this agreement are:

Routers: Nortel  
Switches: Cisco, Nortel  
LAN/WAN Wireless: Cisco  
CSU/DSU: N/A

**B. State of Utah/WSCA Contract Manager**

Lois Wiesemann  
State of Utah  
Division of Purchasing and General Services  
State Office Building, Capitol Hill  
Room 3150  
Salt Lake City, UT 84114-1061

email: [loisw@utah.gov](mailto:loisw@utah.gov)  
Voice: (801) 538-3144  
Fax: (801) 538-3882

**C. Remittance Address**

MSN Communications, Inc.  
5239 S Rio Grande St  
Littleton, CO 80120

**D. Special Terms and Conditions**

The parties agree to amend the terms and conditions as follows:

1. Order of Precedence  
The order of precedence for the contract terms will be as follows:
  1. Addendum 1
  2. WSCA Terms and Conditions
  3. Contractor's Proposal Response to RFP LW1907
  4. RFP LW1907

2. Included Documents  
The documents listed in Number 1 are included in the contract. It is agreed that any reference to the “Entire Agreement” includes these documents.
3. Public Information  
The contract, including the price lists and the Response to the RFP, will be considered public documents and will be subject to government records policies in each state. The Contractor gives the STATE express permission to make copies of the information specified to provide to other STATE government entities that may use the contract, and to the public, in accordance with general STATE policies, including copies of said information that may be identified as confidential, proprietary, or copyrighted.
4. Arbitration  
The STATE will not accept mandatory, binding arbitration. If there are any references to binding arbitration in the Contractor’s Response to the RFP, they will be null and void. The parties may agree, on a case by case basis, to voluntary arbitration to resolve contract issues.
5. Contract Period  
The contract period, including renewal options, is listed on the STATE OF UTAH - Statewide Contract cover page. Renewals will be agreed to upon written authorization from both parties. All references to automatic renewals will be null and void.
6. Governing Law  
This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the State of Utah. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity’s State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity’s State.
7. Revisions to the WSCA Standard Terms and Conditions  
The WSCA Standard Terms and Conditions will be revised as follows:  
A. There are no changes to the WSCA Standard Terms and Conditions.  
**Any additional changes listed by the Contractor in the Response to the RFP will be null and void.**
8. Revisions to Contractor’s Response to the RFP  
Note: Many of the changes below are listed in multiple locations throughout the response. The changes will apply to all instances of similar terms.  
The Contractor’s Response to the RFP will be revised as follows:  
A. There are no additional changes, except the changes identified in this Addendum, to the Contractor’s Response to the RFP.

9. State of Utah Only Requirement  
Attachment C from the RFP will apply to the State of Utah only. This term is as follows:  
**E-PROCUREMENT:** The State of Utah has awarded an e-procurement system contract that has a transaction fee of 1% per order with a ceiling of \$500 for any one order of products/services. There are expected cost savings to the Contractors with implementation of the system. The successful contractor must agree to terms as described in the following subparagraphs:
- a. The Contractor must agree to integrate its catalog of products/services into the e-procurement system. Once implemented, the Contractor must pay the transaction fees for orders placed against the contract. In the event, the Contractor fails to make payments, the State may: (i) eliminate the Contractor from the system in accordance with an escalation and review process developed by the State and its e-procurement contractor and (ii) terminate the State contract and award the contract to the next acceptable bidder.
  - b. At the time that the Contractor will be required to offer products/services through the e-procurement system, the State will negotiate an equitable adjustment in unit prices to account for the expected supplier fees on orders placed on the system. The State will negotiate a single pricing structure for contract purchases and (i) prohibit discounting off-system purchases or otherwise offering discriminatory pricing or preferences for orders placed off-system; and (ii) require the Contractor to manually track and report the ordering volume of off-system purchases of supplies/services.

## **E. Contractor Requirements**

1. Contractor Responsibility  
Contractor is solely responsible for fulfillment of the responsibilities under the terms and conditions of the contract. The procuring agencies will issue purchase orders and make payments to only the named contractors.
2. Serving Subcontractors  
If using servicing subcontractors for the performance of local marketing, maintenance and/or technical support services in accordance with the terms and conditions of the contract. Servicing subcontractors may not directly accept purchase orders or payments for products or services from procuring agencies under the terms and conditions of the contract. The authorized procuring agency has the option of choosing whether to purchase the associated OEM maintenance and/or training to support the equipment purchased.
3. WSCA Administration Fee  
The contractor must pay a WSCA administration fee of one tenth of one percent (.10%) in accordance with the terms and conditions of the contract. The WSCA administration fee is not negotiable.
4. Usage Reporting Requirement  
Contractor must submit quarterly usage reports to the contract manager. Initiation and submission of the quarterly report is the responsibility of the contractor without prompting or notification by the contract manager. The due dates of each quarterly contract usage report are April 15, July 15, October 15 and January 15. Quarterly usage reports must contain total dollar

usage figures for each WSCA member-state (and non-member state), per product category, per manufacturer, respectively. Usage figures must be provided per maintenance option.

5. Change in Contractor Representatives

The State of Utah/WSCA reserves the right to require a change(s) in contractor representatives if the assigned representative(s) is not, in the opinion of the State of Utah's contract manager, meeting its needs adequately.

6. Website Development and Maintenance

Contractor must maintain said website and keep the information current and correct on a timely basis.

7. Rollout and Marketing

Contractor may conduct a marketing effort as described in Contractor's proposal.

8. Right to Publish

Contractor must secure prior approval from the contract manager for permission to release any information that pertains to the potential work or activities relating to this contract. Failure to adhere to this requirement may result in termination of the contract for cause.

9. Contractor's Scope of Equipment and Services

Contractor may only fill contract orders from the scope of equipment and services under contract. Any sale made under this contract by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described in Section E may result in contract termination for cause.

10. E-Rate Requirement

Contractor must participate in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications Commission Act of 1996. Participation in, and implementation of, this program must be provided without the addition of any service or administration fee by the contractor.

11. Freight Terms of Sale F.O.B. Destination, Freight Prepaid

Contractor will ship all products F.O.B. destination, freight included in the product price. Contractor may not include freight charges on invoicing. Failure to comply with this requirement may result in contract termination for cause.

Whenever a procuring agency does not accept any product and returns it to the contractor, all related documentation furnished by the contractor shall be returned also. The contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the procuring agency. Contractor is responsible for the pick-up of returned equipment.

12. Price Guarantee Period  
 Percentage discount depth from list is not subject to a “price increase request” that would result in a less attractive discount; discounts may only be adjusted by the contractor to reflect a deeper discount(s). The discount is applied to manufacturers current published list price schedule(s).  
  
 Maintenance and any training related costs are guaranteed for two years.
13. Product Revision Requests  
 Contractor must submit updated price list(s) upon publication, or any other product model changes, addition of new products, product upgrades or services in a timely manner.  
  
 Contractor agrees to delete obsolete and discontinued products from the contract price list(s) on a timely basis. Major product model changes will be incorporated into the contract as soon as possible after product introduction, to be offered at the same rate of discount for the appropriate price list and its discount.
14. Maintenance of Current Price List with Discount(s) Applied  
 Manufacturer’s price list(s) must be tailored for WSCA with the WSCA contract discount(s) applied; this must be created and maintained by the contractor on an Internet website hosted by the contractor, at no additional charge(s) to the State of Utah or WSCA. This website will be listed as a link from the WSCA website.

**F. Contract Scope of Equipment and Related Services**

Any sale by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described below may result in contract termination for cause.

**1. Discounts of Manufacturers Price List**

**a. Pricing Discounts**

Cisco LAN/WAN Wireless & Switch	All = 38.2% discount
Nortel Router & Switch Group	A = 41.2% discount B = 36.2% discount C = 36.2% discount

**b. Discount Structures Based on Volume (per order or progressive cumulative volume)**

None

**2. Escalation Procedures**

**a. MSN Communications, Inc. Problem Prioritization and Escalation Guidelines**

To ensure that all problems are reported in a standard format, MSN Communications, Inc. has established the following problem priority definitions. These definitions will assist MSN Communications, Inc. and Cisco Systems in allocation the appropriate resources to resolve problems. The customer will assist in the assignment of the priority for all problems submitted to MSN Communications, Inc.

b. Problem Priority Definitions:

Priority 1: An existing network is down or there is a critical impact to the End user’s business operation. Cisco, MSN Communications and the Customer will commit full-time resources to resolve the situation.

Priority 2: Operation of an existing network is severely degraded or significant aspects of the Customer’s business operations are being negatively impacted by unacceptable network performance. Cisco, MSN Communications and Customer will commit full-time resources during standard business hours to resolve the situation.

Priority 3: Operational performance of the network is impaired while most business operations remain functional. Cisco, MSN Communications and Customer are willing to commit resources during standard business hours to restore service to satisfactory levels.

Priority 4: Information or assistance is required on Cisco product capabilities, installation or configuration. There is clearly little or no impact to the End User’s business operation. Cisco, MSN Communications and Customer are willing to provide resources during standard business hours to provide information or assistance as requested.

c. If the MSN Communication’s engineer responsible for the problem does not feel there is adequate forward Progress or the quality of MSN Communications or Cisco support is not satisfactory, MSN Communications requires the engineer to escalate the problem ownership to the appropriate level of MSN Communications and Cisco management by referring to the following chart.

MSN	Communications:	Problem	Escalation	Guidelines
Elapsed Time	Priority 1	Priority 2	Priority 3	Priority 4
1-Hour	MSN Comm: CCNP & SE Coordinator			
4-Hour	MSN Comm: CCIE & SE Coordinator	MSN Comm: CCNP & SE Coordinator		
	Cisco: Customer Engineering Manager	Cisco: Customer Engineering Manager		
24-Hour	MSN Comm: Mgr of Engineering Svcs	MSN Comm: CCIE & SE Coordinator		
	Cisco: Vice President Customer	Cisco: Customer Engineering		

	<b>Advocacy</b>	<b>Manager</b>		
<b>48-Hour</b>	<b>MSN Comm: President/CEO</b>	<b>MSN Comm: VP of Operations</b>		
	<b>Cisco: President/CEO</b>	<b>Cisco: Vice President Customer Advocacy</b>		
<b>72-Hour</b>		<b>MSN Comm: President/CEO</b>	<b>MSN Comm: CCIE &amp; SE Coordinator</b>	
		<b>Cisco: President/CEO</b>	<b>Cisco: Customer Engineering Manager</b>	
<b>96-Hour</b>			<b>MSN Comm: CCIE &amp; SE Coordinator</b>	<b>MSN Comm: CCIE &amp; SE Coordinator</b>

3. **Resolution of Customer Problems**

- a. MSN Communications, Inc. employs two Systems Engineer Coordinators whom have the responsibility to:
  1. Respond to all customer calls within a one-(1) hour period without exception.
  2. Maintain phone logs that documents MSN Communications response statistics
  3. Answer customer calls from 8:00 am to 5:00 p.m. Monday through Friday (except on National Holidays). *MSN has developed a 24 hour response plan.* Determine severity of call based on customer responses and customer's view of the severity
  4. Ensure all requests for service are handled in compliance with the MSN Communications Problem Guidelines matrix.



replacement parts, used in Hardware repair, may be new or equivalent to new. Cisco's obligations hereunder are conditioned upon the returned of affected Products, in accordance with Cisco's then-current Return Material Authorization (RMA) procedures.

1.2 Software. Cisco warrants that from the date of shipment by Cisco to Customer and continuing for a period of the longer of (a) ninety (90) days or (b) the period set forth in the Warranty Card accompanying the Product: (a) the media on which the Software is furnished will be free of defects in materials and workmanship, under normal use; and (b) the Software substantially conforms to its published specifications. Except for the foregoing, the Software is provided AS IS. This limited warranty extends only to the Customer who is the original licensee. Customer's sole and exclusive remedy and the entire liability of Cisco and its suppliers under this limited warranty will be, at Cisco or its service center's option, repair, replacement, or refund of the Software if reported (or, upon request, returned) to the party supplying the Software to Customer, if different than Cisco. In no event, does Cisco warrant that the Software is error free or that Customer will be able to operate the Software without problems or interruptions. In addition, due to the continual development of new techniques for intruding upon and attacking networks, Cisco does not warrant that the Software or any equipment, system or network on which the Software is used will be free of vulnerability to intrusion or attack.

1.3 Y2K. Cisco represents that Products which it has designated as "Year 2000 Compliant" (or Status Description "Green"), as set forth in the "Compliance Table," (including accompanying Notes), located in Cisco's "Year 2000 Compliance" web pages beginning at <http://www.cisco.com> (the "Year 2000 Pages"), are "Year 2000 Compliant," meaning that, as delivered to Customer:

- 9.3.1 Products accurately process data and time calculations before and during the years 1999 and 2000;
- 9.3.2 All manipulation of time-related data yields the desired results for valid date values within the application domain;
- 9.3.4 Date elements in those Products use four digit storage and indicate century to eliminate the chance for errors;
- 9.3.5 If a date element exists without a century indication, the correct century continues to be unambiguous and produces accurate results; and Software accurately processes date and time data when used in conjunction with other Year 2000 compliant software products.

Should a Product that is so identified as "Year 2000 Compliant" not be Year 2000 Compliant, or should Cisco otherwise breach the foregoing representation, Cisco will, as Customer's sole and exclusive remedy, repair or replace the Product so that it becomes Year 2000 Compliant or, if Cisco is unable to repair or replace the Product to make it Year 2000 Compliant, Cisco will refund the purchase price of the Product paid to Cisco, provided that Customer returns the Product to Cisco, as originally delivered by Cisco (except for normal wear and tear) and pursuant to Cisco's then-

current RMA policy. The foregoing representation and remedy shall only apply to Products returned prior to January 31, 2001, or to Products returned before the Products are no longer supported pursuant to Cisco's standard support policies, whichever event first occurs. Each Product ordered will be subject to Cisco's then-current "Year 2000 Pages" as of the date of delivery.

1.4 Restrictions. This warranty does not apply if the Product (a) has been altered, except by Cisco, (b) has not been installed, operated, repaired, or maintained in accordance with instructions supplied by Cisco, (c) has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (d) is sold or, in the case of Software, licensed, for beta, evaluation, testing or demonstration purposes for which Cisco does not receive a payment of purchase price or license fee.

1.5 DISCLAIMER OF WARRANTY. EXCEPT AS SPECIFIED IN THIS WARRANTY, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD. This disclaimer and exclusion shall apply even if the express warranty set forth above fails of its essential purpose. The date of shipment of a Product by Cisco is set forth on the packaging material in which the Product is shipped. Customer acknowledges that the Internet URL address and the web pages referred to above may be updated by Cisco from time to time; the version in effect at the date of delivery of the Products to the Customer shall apply.

## **2. Replacement Parts**

Cisco will provide support for Hardware for a period of five (5) years from the date of its announced end-of-life. Cisco will provide support for Software (except for ICSG Software) for a period of thirty six (36) months from the date of first commercial shipment of that release, meaning that for that time period, errors in that release will be corrected either by means of a patch or correction to that release, or in a subsequent release.

For ICSG Software, Cisco will support the most current Major Release and the immediately preceding Major Release of ICSG Software, and all Minor Releases released subsequent thereto, meaning that errors in such releases will be corrected either by means of a patch or correction to such releases, or in a subsequent release.

Refer to sec. 1.1 of the attached warranty provision for providing replacement during the warranty period. After the warranty period, repair and replacement may be provided in accordance with Cisco's standard support programs, if customer

purchases these. (Reseller may chose to respond differently, but if not, the Smartnet program can be referenced.

Pricing for all repair parts or accessory items shall be in accordance with Cisco's then current Global Price List less any applicable discounts provided by the reseller.

### 3. **Maintenance**

#### Maintenance Options

Contractors must provide the following maintenance options and supply pricing for all equipment maintenance plans that are to be made available to customers under this acquisition. The financial analysis for this procurement requires respondents to provide pricing for Option Plans 1, 2, 3, and 4 as described below. (See Appendix II for the specific forms to be completed.) The pricing model used by the Contractor to determine service costs must be clearly described. The financial analysis for this procurement requires respondents to provide pricing and information for all of the Option Plans as described below. (See the spreadsheet)

a. Option Plan 1 - Time & Materials

Time & Materials - Contractor will provide a list of certified contractors (residing within each State) that can resolve problems in a timely manner.

b. Option Plan 2 - Software and Minimal Maintenance

Software Updates, Support – Contractor will provide to the customer all new releases of manufacturer software updates for installation on all owned equipment. Contractor will also provide unlimited access to a Technical Support Hot Line for customer's trained technicians to obtain support for the resolution of complex problems and problem identification. Telephone response by the Contractor must occur within 2 hours of a service call being placed. Contractor will promptly resolve all reported software problems and provide prompt remedial action, if appropriate. Contractor will also provide for the routine distribution of manufacturer's technical or release notes in a variety of media.

Failed parts replacement - Contractor will provide for the prompt replacement of failed parts or components of owned equipment, including (but not limited to) advance shipment of replacement parts from the Contractor's inventory to be received by the customer within 24 hours of a determination that a component has failed, and will pay for the cost of the return shipment of the failed parts. Replacement parts will be at the current manufacturing revision level, and the cost of reinstallation is to be borne by the customer. Expedited exchange and repair must also be available from the Contractor, if required by the customer, at reasonable "time and materials" and shipping costs.

c. Option Plan 3 - 8 to 5 Service and Maintenance

On-site support for hardware and software problems using factory-certified technical staff, including full restoration of operations within forty-eight (48)

hours after the reported failure or problem. Telephone response by the Contractor must occur within two (2) hours of a service call being placed for “major” failures (system down), and Contractor staff must be at the customer’s site within 8 working hours. Service will include all new releases of software and installation of manufacturer’s software updates. Service will include 8 a.m. to 5 p.m. access to Technical Support Hot Line for customer’s “user-trained” staff to troubleshoot problems and identify component failures. Service will also include the replacement (at no additional charge to the customer) of any failed parts or components. Contractor’s Hot Line must provide toll-free calling for the customer, and be staffed from 8:00 a.m. to 5:00 p.m. within the applicable time zone. Contractor will supply such “end-user” training as is needed for customer’s staff to interact successfully with the Contractor’s support staff on an ongoing basis. (Contractor should describe training program.)

d. **Option Plan 4 – 7 X 24 X 4 Service and Maintenance**

Problem reporting must be available twenty-four (24) hours a day, seven (7) days a week. Telephone response by the Contractor must occur within two (2) hours of a service call being placed for “major” failures (system down), and Contractor staff must be at the customer’s site within 4 working hours. Responding technical staff must be factory-certified and must provide full restoration of operations within twenty-four (24) hours of the reported failure or problem. Service will include all new releases of software and installation of manufacturer’s software updates. Service will include access to Technical Support Hot Line for customer’s “user-trained” staff to troubleshoot problems and identify component failures. Service will also include the replacement (at no additional charge to the customer) of any failed parts or components. Contractor’s Hot Line must provide toll-free calling for the customer. Contractor will supply such “end-user” training as is needed for customer’s staff to interact successfully with the Contractor’s support staff on an ongoing basis. The contractor will provide the names, titles, addresses, and telephone numbers of the primary and backup contacts for service problems.

4. **Coterminous Maintenance**

It is desirable that all maintenance solutions be coterminous with the use of the equipment. That is to say, if a purchasing entity replaces or discontinues the use of a piece of equipment covered under a maintenance agreement, the agreement can also be terminated and a credit is due to the purchasing agency.

Individual agencies may choose to work with the contractor(s) in order to secure maintenance agreements including contract dates coterminous with the calendar or States fiscal, and/or prorated maintenance pricing based on a calendar or fiscal year, and/or options to renew maintenance.

5. **Maintenance by Customer Personnel**

The equipment may be designed to allow for Customer personnel to maintain the equipment and perform routine trouble shooting.

6. **Maintenance of Proposed Equipment**

The Contractor must have a minimum of three (3) years' experience maintaining equipment of the same type or functionally equivalent equipment to that being proposed, and factory certified technicians available to perform maintenance services. Provide a description of maintenance capabilities in the USA, the number of installed systems under service coverage, size of maintenance staff, and years of collective staff experience and training.

7. **Spare Parts Availability**

It is desirable that spare parts be available when needed, without the necessity of the Customer owning and maintaining a large inventory. The Contractor's should include a description of recommended spare parts requirements for each applicable piece of equipment. Indicate what spares are recommended to be bought and housed on site. If depots are used, identify their locations.

8. **Training**

The contractor will provide details on course material to be offered and whether equipment will be available for training at the Buyer's facility.

The contractor will offer technical training and provide cost information for a qualified instructor to provide this training. This cost information must cover two possible venues, either the Buyer's location or the contractor's location.

c. Nortel (Routers & Switching Equipment)

1. **Warranty**

The contractor will guarantee that all equipment delivered pursuant to these specifications will be new and un-used, will conform to said specifications, and will be free from mechanical, electrical or other defects for a minimum of two (2) years.

a. **Exception:** Nortel Networks product warranty periods vary from product to product (ranging from 90-days to one-year) and the warranty period for each product is as specified in the Price List currently in effect on the date that a customer's order is received. The warranty period begins on the date that the product is shipped to the customer. Nortel Networks standard warranty provides for Return to Factory, 20-day turnaround, repair or replacement of the failed component. Nortel Networks equivalent to extended warranty programs for extended parts and labor is an annual maintenance service agreement.

The proposed Nortel Networks Passport 6400 and Passport 4400 feature a one-year warranty on hardware components and a 90-day software warranty, and the Nortel Networks Passport 2430 features a 90-day warranty on both hardware and software.

b. Following is Nortel Networks warranty policy as stated in Article 6. Warranty of the standard Nortel Networks “*Purchase and License Agreement*”.

- a) Nortel Networks warrants that Hardware i) is free from defects in materials and workmanship and ii) substantially conforms to Nortel Networks’ published specifications. If Hardware does not function as warranted during the warranty period, Nortel Networks will determine to either i) make it do so, or ii) replace it with equivalent Hardware.
- b) Nortel Networks warrants that when Software is used in the specified operating environment it will substantially conform to its published specifications. If Software does not function as warranted during the warranty period, Nortel Networks will provide a suitable fix or workaround or will replace the Software; provided Software is within one software release level of the then-current software.
- c) Services will be performed in a professional and workmanlike manner. If Services are not performed as warranted and Nortel Networks is notified in writing by Customer within 30 days, Nortel Networks will re-perform the non-conforming Services.
- d) The warranty period for Hardware and Software shall be the warranty period identified in the Nortel Networks warranty matrix in effect at the time of Customer’s Order. In the event Nortel Networks determines that repair or replacement as set forth in this Section 6 cannot be made using commercially reasonable efforts, Nortel Networks will refund to Customer the price paid for the Product, less applicable depreciation.
- e) No warranty is provided for i) supply items normally consumed during Product operation; ii) failures caused by non-Nortel Networks products; iii) failures caused by a Product’s inability to operate in conjunction with other Customer hardware or software; or iv) performance failures resulting from services not performed by Nortel Networks or Customer’s failure to purchase all necessary Products under this Agreement. Warranty will be voided by misuse, accident, damage or modification, failure to maintain proper physical or operating environment or improper Customer maintenance. Software is not warranted to operate uninterrupted or error free. THESE WARRANTIES AND LIMITATIONS ARE CUSTOMER’S EXCLUSIVE WARRANTIES AND SOLE REMEDIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- f) Nortel Networks provides Third Party Vendor Items on an “AS IS” BASIS WITHOUT WARRANTIES OF ANY KIND, unless Nortel Networks specifies otherwise. However, such Third Party Vendor Items may carry their own warranties and Nortel Networks shall pass through to Customer any such warranties to the extent authorized.

## 2. **Replacement Parts**

Once a product is announced to be at the end-of-life, Nortel Networks Enterprise Solutions strives to provide up to 5 years of support for customers with a current

contract under the Assurance Service programs at the time of the product's Last Order Date as published in the Nortel Networks Price List. Nortel Networks Enterprise Solutions is not required to provide free support services either during or after this timeframe, and may, in its sole discretion, charge premiums for continued support of any discontinued products. Continued support for any discontinued Product beyond this period may be provided on a commercially reasonable efforts basis, as determined by Nortel Networks.

Nortel Networks standard warranty provides for Return to Factory, 20-day turnaround, repair or replacement of the failed component. Nortel Networks obligation is to repair or replace (at our discretion) any failed hardware item returned to Nortel Networks under a proper Return Materials Authorization. Repairs performed by anyone other than Nortel Networks (or an approved agent) will void the warranty. Defective parts must be returned to Nortel Networks within 30 days of failure, or customer pays purchase price of part. Shipping - Nortel Networks pays shipping fees to customer. Customer pays return fees.

a. Return Material Authorization Process

A Return Material Authorization (RMA) must be obtained prior to returning a defective part and must accompany the part, as follows:

1. Direct end-user customers and partners can request an RMA via the telephone or a fax.
2. Contracted partners may also request RMAs through the Internet
3. Customer's of partners must initiate the RMA process through their partner, and return all parts back to Nortel Networks through their partner
4. Direct end-user customers and partners can request an RMA by calling the following Nortel Networks numbers:

b. US & Canada

800-2LANWAN, ERC 275 (Phone)  
408-495-1100 or 978-916-3474 (Fax)

c. Information Required To Request an RMA

1. Proof of purchase (purchase date may be requested if ship date cannot be verified)
2. Model number and serial number of the unit(s)
3. Requester name, telephone and fax numbers
4. Name and telephone number of person responsible for defective parts return (if different than RMA requester's name)
5. Ship to address, including contact name and phone number of individual receiving replacement part

d. Out-of-Warranty Repairs

If a product is out-of-warranty and not covered under a service agreement/contract, then the RMA process is still used as with products under warranty or contract. A service and repair price will be quoted at that time;

pricing can vary depending on the age of the product, type of product, and whether is at end-of-life or not.

**3. Maintenance**

a. Option Plan 1 - Time & Materials

Nortel Networks provides Assurance Services through Global Customer Care Services (GCCS) and also provides options for customers to purchase Assurance and Maintenance Service through select partners. These offerings vary from state to state and by product. These solutions can be provided by each individual state's appropriate designated Nortel Networks partner.

b. Option Plan 2 - Software and Minimal Maintenance

Nortel Networks Next-Business-Day Courier Service, which includes advance shipment and delivery of field-replaceable hardware components the next business day, Monday through Friday, 7:00 a.m. to 7:00 p.m. customer local time (excluding Nortel Networks holidays), is proposed to meet the requirements of this option. Software maintenance and 7x24x365 technical telephone support is also provided.

c. Option Plan 3 - 8 to 5 Service and Maintenance

Nortel Networks Next-Business-Day OnSite Service, which includes on site installation of field-replaceable hardware components the next business day, where applicable, Monday through Friday, 7:00 a.m. to 7:00 p.m. customer local time (excluding Nortel Networks holidays), is proposed to meet the requirements of this option. Software maintenance and 7x24x365 technical telephone support is also provided.

d. Option Plan 4 – 7 X 24 X 4 Service and Maintenance

Nortel Networks Around-the-Clock (24x7, 4-hour) OnSite Service, which includes on-site installation of field-replaceable hardware components within four hours (depending on distance) 7x24x365 (including Nortel Networks holidays), is proposed to meet the requirements of this option. Software maintenance and 7x24x365 technical telephone support is also provided.

**4. Cotermious Maintenance**

Nortel Networks' standard billing procedure according to our service contract terms and conditions is on a monthly basis. Therefore, if the customer gives Nortel Networks a 30-day advance notice, the contract will be terminated the following month.

**5. Maintenance by Customer Personnel**

Routine trouble shooting and regular preventive maintenance on the Passport 6000 series and the Passport 4000 series is a non-intrusive activity that does not require shutting down the equipment. Preventive maintenance is typically performed once per quarter (three-month intervals), and consists of the following activities: replacing air filters, inspection of connections and equipment, and general cleaning of

equipment exteriors. These activities are fully described in the Nortel Networks NTPs Hardware Maintenance Guides and can be performed by customer personnel without obtaining a service certificate.

**6. Maintenance of Proposed Equipment**

Nortel Networks currently has more than 500 field Customer Service and Support personnel worldwide, including over 400 domestic field and Technical Solution Center (TSC) support personnel. These highly experienced individuals provide customers with support coverage seven days a week, 24 hours per day (7x24 coverage), 365 days per year. Our service strategy assures you of the support you require when you require it.

Nortel Networks Technical Support Engineers are highly skilled, qualified experts. Nortel Networks prides itself on having some of the most experienced service engineers within the industry. All of our service engineers receive continuous and extensive training across the full breadth of the Nortel Networks product line, thus ensuring their complete knowledge of our products. We provide training to all of our Technical Support Engineers and Field Engineers on all current, past and future Nortel Networks products. All TSC Technical Support Engineers and Field Engineers receive full Nortel Networks certification within one year of their hiring date. Our Technical Staff has an average of four years of Nortel Networks experience and over 10 years of industry experience. To our knowledge, no other vendor within the networking industry can claim an average level of experience that exceeds the experience level of our Technical Support staff. Additionally, our Technical Support Engineers have direct access to the Product Engineers directly responsible for the product.

**a. Required Nortel Networks Qualifications & Experience**

1. Experience – A minimum of five years experience in Telecommunications in one or more of the following areas:
  - a. Project Management
  - b. Engineering
  - c. New Product Introduction
  - d. Customer Service
  - e. Installation
  - f. Marketing
  - g. Equivalent with a focus on process, change management, system analysis and project management
2. Qualifications:
  - a. Demonstrated experience in above areas
  - b. Product Knowledge
  - c. Familiarity with internal TSE, installation, and customer service process.
  - d. Knowledge of web-based tools
  - e. Customer interface and interpersonal skills
  - f. Planning and directing work in a matrix organization
  - g. Assembling project teams
  - h. Proactively identifying and reporting project risk

- i. Team building and negotiating skills.

**7. Problem Escalation Procedure**

Problem notification encompasses a one-call process. All service calls are placed to our Technical Solutions Center (TSC) by dialing toll-free 1-800-2LANWAN (1-800-252-6926). The anticipated and guaranteed response times are in accordance with the terms of the service-contracted customer's specific service level support plan.

**8. Spare Parts Availability**

Nortel Networks Logistics maintains relationships with third-party vendors who include Federal Express, IBM, Unisys, IEC/DHL and Logistics. These partnerships provide our customers with additional spare parts depots and qualified engineers, which enhance Nortel Networks service capabilities. Spare part inventory per each depot is determined by equipment type supported. We currently have several spares depots in close proximity to participating WSCA members, including the following locations:

- a. Nortel Networks - IBM Stocking Locations Spare Parts Depot
  - ALBUQUERQUE - 4320 YALE BLVD, NE, SUITE D, ALBUQUERQUE, NM. 87107
  - ANCHORAGE - 4501 BUSINESS PARK BLVD., SUITE L, ANCHORAGE, AK. 99503
  - BILLINGS - 401 NORTH 31<sup>ST</sup> STREET, 6<sup>TH</sup> FLOOR, BILLINGS, MT. 59101
  - CONCORD - 1340 F GALAXY WAY, CONCORD, CA. 94520
  - COSTA MESA - 3176 PULLMAN, #106, COSTA MESA, CA. 92626
  - DENVER - 4800 COLORADOBLVD. DENVER, CO. 80216
  - FRESNO - 285 W BULLARD AVENUE, FRESNO, CA. 93704
  - HAWAII - 1240 ALA MOANA BLVD., 1<sup>ST</sup> FLOOR HONOLULU, HI. 96814
  - HAYWARD - CDC 2660 WINTON AVE. HAYWARD, CA. 94545
  - HELENA - 1710 NATIONAL AVENUE, BLDG 1, HELENA, MT. 59601
  - LAS VEGAS - 3021 SOUTH VALLEY VIEW, BLVD, UNIT 106, LAS VEGAS, NV. 89102
  - LONG BEACH - 3299 HILLSTREET, SUITE #305, SIGNAL HILL, CA. 90804
  - LOS ANGELES – 10551 HATHAWAY AVE, SANTA FE SPRINGS, CA. 90670
  - MINNEAPOLIS - 2480 LONG LAKE ROAD, ROSEVILLE, MN. 55113
  - ONTARIO - 4395 LOWELL STREET, SUITE F, ONTARIO, CA. 91761
  - PHOENIX - 4602 EASTELWOOD, SUITE 11, PHOENIX, AZ. 85040
  - PHOENIX - 652 N. 52<sup>ND</sup> AVENUE, PHOENIX, AZ. 85043
  - PORTLAND - 15889 SW 72<sup>ND</sup> AVENUE. TIGARD, OR. 97224
  - ROCHESTER (MN) - 1831 24<sup>TH</sup> STREET N.W, ROCHESTER, MN. 55901
  - SACRAMENTO - 4200 82<sup>ND</sup> STREET, SUITE J, SACRAMENTO, CA. 95826
  - SALT LAKE CITY - 2570 WEST 2589 SOUTH, SUITE A, WEST VALLEY, UT. 84119
  - SAN DIEGO - 5644 KEARNY MESA ROAD, SUITE R, SAN DIEGO, CA. 92111

SAN FRANCISCO - 1511 ADRIAN RD., BURLINGAME, CA. 94010  
SAN FRANCISCO - 425 MARKET STREET, 9<sup>TH</sup> FLOOR, SAN FRANCISCO,  
CA. 94105  
SAN JOSE - 1202 COLEMAN AVENUE, SANTA CLARA, CA. 95050  
SEATTLE - 1097 ANDOVER PARK E. TUKWILA, WA. 98188  
SPOKANE - 109 SOUTH SCOTT STREET, SUITE B52, SPOKANE, WA.  
99202  
VAN NUYS - 16735 SATICOY, SUITE 107, VAN NUYS, CA. 91406  
WEST COVINA - 16045 KAPLAN INDUSTRY, CA. 91744

- b. To further reduce any downtime to customers in the event of a hardware failure, Nortel Networks recommends having one of each type of chassis and interface cards on hand as a spare.

9. **Training**

To ensure that WSCA agency personnel are proficient in the use of the proposed equipment and enable them to successfully install, configure and perform minor troubleshooting, Nortel Networks recommend that, at a minimum, your personnel attend the following instructor-led technical training courses:

- a. Passport 6400 Operations and Maintenance (Course Number: #7280C)
  - b. ATM on Passport 6400 (Course Number: #7281C)
  - c. Passport NMS Operations (Course Number: #7392C)
- (Note: Not available on-site)*
- d. Passport 4400 Operations and Maintenance I (Course Number: #7822C)
  - e. Passport 4400 Operations and Maintenance II (Course Number: #7823C)

**ATTACHMENT B**  
**Standard Contract Terms and Conditions**  
**Western States Contracting Alliance (WSCA)**

**1. PARTICIPANTS:** Western States Contracting Alliance (“WSCA”) is a cooperative group contracting consortium for state government departments, institutions and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming. Obligations under this contract are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed 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 price agreement(s) will be permissive.

**2. DEFINITIONS:**

“Lead State” means the State conducting this cooperative solicitation and centrally administering any resulting price agreement.

“Offer” or “Bid” or “Proposal” refers to the offer submitted in response to a solicitation, whether denominated as an invitation for bid, request for proposal, or otherwise. “Bidder” or “Contractor” similarly refers to the person, company, or other entity submitting the bid or proposal that constitutes an offer capable of acceptance, regardless of the solicitation method used.

“Permissive price agreement” means that placement of orders through the price agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the price agreement without using statutory or regulatory procedures (e.g. invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the price agreement so long as applicable procurement statutes and rules are followed.

“Participating Addendum” means a bilateral agreement executed by the contractor and a Participating State that clarifies the operation of the price agreement for the State concerned, e.g. ordering procedures specific to a State, and may add other state-specific language or other requirements.

“Participating State” means a member of WSCA who has indicated its intent to participate as disclosed on the solicitation, or who subsequently signs a Participating Addendum where contemplated by the solicitation.

“Purchasing Entity” means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and Participants authorized to purchase the goods and/or services described in this solicitation.

**3. QUANTITY ESTIMATES:** Estimated quantities are informational and not to be construed as a warranty of accuracy of historical or anticipated volumes or a guarantee to purchase any amount.

**4. SPECIFICATIONS:** Any deviation from specifications must be clearly indicated by contractor, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the solicitation says "no substitute." Offers will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

**5. ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS:** The Lead State reserves the right to accept or reject any or all bids or proposals, or parts of bids or proposals, and to waive informalities therein.

**6. SAMPLES:** Generally, when required, samples will be specifically requested in the solicitation. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated during testing, samples will be returned at a contractor's request, transportation collect.

**7. CASH DISCOUNT TERMS:** Contractor may quote a cash discount based upon early payment; however discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

**8. TAXES:** Offered prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

**9. MODIFICATION OR WITHDRAWAL OF BIDS AND PROPOSALS:** Bids and proposals may be modified or withdrawn prior to the time set for receipt of bids or proposals. After the time set for receipt of bids or proposals, no proposal may be modified or withdrawn.

**10. PATENTS, COPYRIGHTS, ETC:** The Contractor shall release, defend, indemnify, and hold harmless WSCA, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities, from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, process, patented or unpatented invention, article or appliance furnished or used in performance of this contract.

**11. AWARD:** Multiple contracts may be awarded as a result of this solicitation. Awards in requests for proposals (competitive sealed proposals) shall be made to the responsible contractor(s) whose proposals are determined to be the most advantageous to the Participating States, taking into consideration price and the other evaluation factors set forth in the solicitation. Unless otherwise stated in the solicitation, an award in an solicitation denominated as an invitation to bid will be made to the lowest responsive and responsible bidder(s) meeting specifications and all bid terms and conditions. The Participating States reserve the right to award items separately or by grouping items, or by total lot.

**12. NON-COLLUSION:** By signing the proposal the contractor certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other contractor of materials, supplies, equipment or services described in the solicitation, designed to limit independent bidding or competition.

**13. TERMINATION:** Unless otherwise stated in the solicitation, any contract entered into as a result of this solicitation may be terminated by either party upon 60-days notice, in writing, prior to the effective date of the termination. Further, any Participating State may terminate its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Any termination under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order.”

**14. DEFAULT AND REMEDIES:**

A. Any of the following shall constitute cause to declare the contract or any order under this contract in default:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this contract.

B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire agreement), a Participating State (in the case of a breach of the Participating Addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.

C. If the default remains after the opportunity for cure, the non-defaulting party may:

- (1) Exercise any remedy provided by law or equity;
- (2) Terminate the contract or any portion thereof, including any orders issued against the contract;
- (3) Impose liquidated damages, as specified in the solicitation or contract;
- (4) In the case of default by the contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend contractor from receiving future solicitations.

**15. 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.

**16. CONFLICT OF TERMS:** In the event of any conflict between these standard terms and conditions and any special terms and conditions in the solicitation, the special terms and conditions shall govern.

**17. REPORTS:** The contractor shall submit quarterly reports to the Lead State contract administrator, and upon request to any Participating State, showing the quantities and dollar volume of purchases by each Purchasing Entity.

**18. HOLD HARMLESS:** The contractor shall release, defend, indemnify and hold harmless WSCA, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities, from and against any damage, cost or liability, including reasonable attorneys fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, its employees or subcontractors or volunteers.

**19. ORDER NUMBERS:** Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

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

**21. DELIVERY:** The prices offered shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

**22. WARRANTY:** As used herein "Purchasing entity" refers to any WSCA state agency or political subdivision. The CONTRACTOR agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the PURCHASING ENTITY under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The CONTRACTOR (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the PURCHASING ENTITY apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the CONTRACTOR warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used,

(4) the product will be suitable for any special purposes that the PURCHASING ENTITY has relied on the CONTRACTOR'S skill or judgment to consider when it advised the PURCHASING ENTITY about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the PURCHASING ENTITY has not been warned. Remedies available to the PURCHASING ENTITY include the following: the CONTRACTOR will repair or replace (at no charge to the purchasing entity) the product whose nonconformance is discovered and made known to the CONTRACTOR in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the CONTRACTOR will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the PURCHASING ENTITY may otherwise have under this contract with respect to defects.

**23. AMENDMENTS:** The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Contract Administrator of the Lead State.

**24. ASSIGNMENT/SUBCONTRACT:** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the Contract Administrator of the Lead State.

**25. NONDISCRIMINATION:** The contractor agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit 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 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. The contractor further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Contractor agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the contractor fails to comply with the provisions of these laws and regulations. The contractor must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and contractors are bound by this provision.

**26. SEVERABILITY:** If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

**27. INSPECTIONS:** Goods furnished under this contract shall be subject to inspection and test by the Purchasing Entity at times and places determined by the Purchasing Entity. If the Purchasing Entity finds goods furnished to be incomplete or in compliance with proposal specifications, the Purchasing Entity may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Purchasing Entity, the Purchasing Entity may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Purchasing Entity's rights including the rights and remedies under the Uniform Commercial Code.

**28. PAYMENT:** Payment for completion of an contract 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 Contractor 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 Purchasing Entity's "Purchasing Card".

**29. FORCE MAJEURE:** Neither party to this contract 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 Lead State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

**30. 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 Purchasing Entity agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

**31. FIRM PRICE:** Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of receipt of bids or proposals. Prices must remain firm for the full term of the contract.

**32. EXTENSION OF PRICES:** In the case of error in the extension of prices in the proposal, the unit prices will govern.

**33. PROPOSAL PREPARATION COSTS:** WSCA is not liable for any costs incurred by the contractor in preparation of the bid or proposal.

**34. CERTIFICATION REGARDING CONFLICT OF INTEREST:** Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any Participating State to any officer or employee of WSCA or Participating States to secure favorable treatment with respect to being awarded this contract.

**35. INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind the Participating States to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

**36. POLITICAL SUBDIVISION PARTICIPATION:** Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) of the WSCA participating states shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

**37. E-RATE COMPLIANCE:** Contractor agrees to participate in the Federal Communication Commission's E-rate discount program established pursuant to the Telecommunications Act of 1996, and

in accordance with any State and local government E-rate related requirement(s) of the authorized procuring agency.

**38. CERTIFICATION REGARDING 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 WSCA.

**39. 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.

**40. AUDIT OF RECORDS:** The contractor agrees to allow WSCA, 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.

**41. PRICES AS CEILING:** Price agreement prices represent ceiling prices for the supplies and services priced in the price agreement. The contractor shall report to the Lead State any price reduction or discount, or other more favorable terms, offered to any Purchasing Entity, and the awarded contractor agrees to negotiate in good faith to reestablish ceiling prices or other more favorable terms and conditions applicable to future orders.

**42. STATE PARTICIPATION/UNIQUE TERMS AND CONDITIONS:** Apart from the Lead State conducting the solicitation, the States indicated on Attachment A have signified their intent to enter into a price agreement and, except where Attachment A or the solicitation requires execution of a Participating Addendum, are considered Participating States for purposes of this solicitation and the resulting contract. Attachment A of the Solicitation includes any significant State-specific provisions required by the laws, regulations, or procurement practices of the State(s).

Additional States may be added with the consent of the contractor and the Lead State (on behalf of the WSCA Participating States) through execution of a Participating Addendum.

**Revision Date: April 2001**

**MSN Communications Inc. Product Discount  
AR 1475**

**Cisco Hardware: 38.2% Off List**  
**Cisco Maintenance: 20.0% Off List**  
**Installation: List Pricing**

**Nortel Hardware: A = 41.2% Off List**  
**B = 36.2% Off List**  
**C = 36.2% Off List**  
**GE ( JMUX ) = 30.2% Off List**  
**Unrestricted = 36.2% Off List**  
**Nortel Maintenance: List Pricing**  
**Installation: List Pricing**



STATE OF UTAH
CONTRACT AMENDMENT FOR WSCA DATA COMMUNICATIONS CONTRACT

AMENDMENT # 5 to CONTRACT # AR1475

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract between the State of Utah, Division of Purchasing & General Services, referred to as STATE, and, MSN Communications, Inc., referred to as Contractor.

THE PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

June 29, 2002 (original starting date of contract)

August 31, 2007 (current ending date)

October 1, 2007 new ending date

Other changes to the contract include:

Effective Date of Amendment: August 31, 2007

The State of Utah Terms and Conditions still apply to the contract. All other conditions and terms in the original contract remain the same.

IN WITNESS WHEREOF, the parties sign and cause the amendment to be executed.

CONTRACTOR

Handwritten signature of Mike Avkamp over a line, labeled Contractor's signature

MIKE AVKAMP SALES MGR. Type or Print Name and Title

8-16-07 Date

STATE

Handwritten signature of Director over a line, labeled Director, Division of Purchasing & Gen. Svs.

AUG 21 2007 Date



STATE OF UTAH
CONTRACT AMENDMENT FOR WSCA DATA COMMUNICATIONS CONTRACT

AMENDMENT # 6 to CONTRACT # AR1475

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract between the State of Utah, Division of Purchasing & General Services, referred to as STATE, and, MSN Communications Inc., referred to as Contractor.

THE PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

June 29, 2002 (original starting date of contract)

October 1, 2007 (current ending date)

November 1, 2007 new ending date

Other changes to the contract include:

Effective Date of Amendment: October 1, 2007

The State of Utah Terms and Conditions still apply to the contract. All other conditions and terms in the original contract remain the same.

IN WITNESS WHEREOF, the parties sign and cause the amendment to be executed.

CONTRACTOR

STATE

Contractor's signature

Director, Division of Purchasing & Gen. Svs.

MIKE AUKAMP, SALES MGR
Type or Print Name and Title

SEP 26 2007
Date

9-26-07
Date