



Contract Amendment

Contract No.: 505ENT-M17-WICOMPUTER-05		Amendment No.: 1	
Contract Title: Computer Equipment and Related Services			
This Amendment is entered into by and between the State of Wisconsin, <u>Department of Administration,</u> and the Contractor, whose name, address and principal officer appears below.			
Contractor Name Vanguard Computers, Inc.			
Contractor Address 13100 West Lisbon Road #100			
City: Brookfield		State: WI	Zip: 53005
Principal Officer:			
The parties wish to change the terms of the above-referenced Contract in the following manner: See Attachment A of this Amendment.			
Except as expressly changed by this Amendment, the terms, conditions, rights and obligations of Contract No.: <u>505ENT-M17-WICOMPUTER-05</u> shall remain in effect unchanged. In the event of any inconsistency or conflict in the Contract and this Amendment, the provision of this Amendment shall control.			

To Be Completed by Contractor

For State of Wisconsin
Department of Administration
Rick S. Hughes
State Bureau of Procurement Director



Signature

3-2-2017

Date

For

Vanguard Computers Inc
Company Name

13100 W. Lisbon St 100
Address

Brookfield WI 53005
City State Zip

By

Deb Smith
Printed Name

President
Signature



Title

Feb 27, 2017
Date

Amendment 1, Attachment A

1. **Amendment Purpose**

Contract clarification and pricing for Third Party Accessories and Peripherals.

2. **Effective Date**

March 1, 2017 or upon the date the final required signatures are obtained, whichever occurs later.

3. **Definitions**

"Third Party Products" are products sold by the Contractor that is manufactured by another company. Also called "Third Party" or "Third Party Peripheral and Accessory Products".

See the contract/solicitation for the definitions for Accessories, Monitor, Power Protection and Accessories, and Peripherals.

4. **Contract use**

All Third Party Peripheral and Accessory Products offered through this contract are considered optional to Authorized Users.

5. **The parties wish to change the terms of the above-referenced Contract in the following manner:**

Contractor may include Third Party Products limited to Peripherals and Accessories for computer equipment as defined in the solicitation and contract. Such Third Party Peripheral and Accessory Products may be purchased for new or existing computer hardware equipment by the Authorized Users and shall be listed in the Verifiable Price List.

When available, the Contractor shall provide the warranty service and maintenance for all Third Party Peripherals and Accessories Products on the Contract. Prior to an Order being placed, the Contractor shall provide to the Authorized Users information regarding the name of the Third Party and the warranty service and maintenance for such Third Party Peripheral and Accessory Products in the Verifiable Price List, catalog, website, or on quotations.

The Third Party Product Peripherals and Accessories Products shall only include any of the following categories for use with computer equipment under the scope of this contract:

- General computer accessories as defined by the RFB and contract
- Anti-Glare/Screen/Privacy Filter
- Battery replacement
- Cable (USB, power, audio, monitor, switch, Cat, etc.)
- Card/drive (video card, hard drive, internal/external storage, flash drive, graphics card, etc.)
- Carrying case/bag/backpack for computer equipment
- Charging system (mobile cart, etc.)
- Display system
- Docking station
- Earbuds (with or without mic)

Amendment 1, Attachment A

- Drive/Storage (hard, tape, floppy, CD, USB, flash, blu-ray, DVD, optical, various RAM types, etc.), internal or external
- Headphone (with or without mic)
- Headset (for computer)
- Keyboard (wired or wireless; with or without mouse)
- Keyboard tray
- Microphone
- Monitor/display system/projector
- Multimedia (speaker, LCD)
- Mouse/touchpad/trackball (wired or wireless)
- Mouse pad or gel (with or without wrist rest)
- Monitor stand
- Mounting bracket/computer storage rack
- Network adapter (wired, wireless, switches)
- Port replicator
- Scanner (handheld or desktop)
- Security locks and cables (for use with computer equipment)
- Speaker
- Surge suppressor/power protection
- System memory (various RAM types, etc.)
- Uninterrupted power supply
- Video adapter
- Extended Warranty for Third Party Products
- Webcam-style camera (such as, but not limited to clip on, video capture, plug and play, or high definition)

Third Party Products shall not include equipment outside of the scope of the contract including, but not limited to: TV accessory, TV stand, scanning equipment not considered handheld or desktop and available from another mandatory computer or copier/MFD contract, printer or supplies, interactive white board, furniture or desks, digital camera or camcorder that is not a webcam, cellular phone equipment, cloud service, and service for wireless phone or internet.

6. **Verifiable Price List Link**

The verifiable price list link (www.vanguardinc.com) will be updated as needed without requiring a contract amendment and shall be communicated to the State Contract Manager.

7. **Third Party Peripheral and Accessory Product Discount**

The Third Party Peripherals and Accessories Products are discounted a minimum of 4% off of the Verifiable Price List and offers additional volume discounts at the time of quote.

CONTRACT FOR
COMPUTER EQUIPMENT AND RELATED SERVICES
BETWEEN
THE STATE OF WISCONSIN, DEPARTMENT OF ADMINISTRATION
AND
VANGUARD COMPUTERS, Inc.
Contract #505ENT-M17-WICOMPUTER-05

This Contract is between the State of Wisconsin ("State") as represented by its Wisconsin Department of Administration and Vanguard Computers, Inc. ("Contractor").

This Contract and the following documents incorporated by reference into the Contract constitute the entire agreement of the parties and supersedes all prior communications, representations or agreements between the parties, whether oral or written. This Contract may not be modified or amended except by mutual agreement of both parties in writing. Any conflict or inconsistency will be resolved by giving precedence in the following descending order:

- a. The terms of this Contract.
- b. The terms of RFB #28220-BD, including any amendments thereto.
- c. The terms of Contractor's Bid Response, including any exceptions to the RFB if accepted by the State in writing.

The State of Wisconsin's requirements are provided in its Request for Bid ("RFB") #28220-BD including any amendments thereto, and Contractor's response, as, accepted by the State.

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives have executed this Contract with full knowledge of and agreement with the terms and conditions of this Contract.

For State of Wisconsin
Department of Administration

Cate Zeuske
Printed Name

Deputy Secretary

Signature

Date

11 / 23 / 14

For Contractor
Vanguard Computers, Inc.

Deb Smith
Printed Name

President

Signature

10/27/16

Date

Table of Contents

1.	DEFINITIONS	4
2.	APPLICABLE LAW	8
3.	TERM	8
4.	CONTRACT TERMINATION FOR CAUSE	8
5.	CONTRACT TERMINATION FOR CONVENIENCE	9
6.	CONTRACT CANCELLATION	9
7.	TRANSITION SERVICES	9
8.	POST CONTRACT OBLIGATIONS	10
9.	PRIME CONTRACTOR; CONTRACTOR COMPLIANCE; RESPONSIBILITY FOR ACTIONS.....	10
10.	ROLLING ESTOPPEL.....	10
11.	WORK CENTER CRITERIA.....	11
12.	NON-APPROPRIATION	11
13.	CONTRACTOR'S INSURANCE RESPONSIBILITY	11
14.	NONDISCRIMINATION AND AFFIRMATIVE ACTION	11
15.	PAYMENT OFFSETS FOR CONTRACTOR'S DELINQUENCY	12
16.	CONTRACTOR INDEMNIFICATION	12
17.	CONFIDENTIAL INFORMATION.....	12
18.	INTELLECTUAL PROPERTY INFRINGEMENT AND LABOR STANDARDS.....	13
19.	SECURITY OF PREMISES, EQUIPMENT, DATA AND PERSONNEL.	13
20.	RENDERING OF SERVICES.....	13
21.	CONTRACTOR PERSONNEL.....	14
22.	LIQUIDATED DAMAGES	15
23.	SHIPPING	15
24.	RISK OF LOSS.....	15
25.	IDENTIFICATION	15
26.	LIENS, CLAIMS AND ENCUBRANCES.....	15
27.	WARRANTY OF ITEMS OFFERED	15
28.	RECEIPT OF GOODS	16
29.	PERFORMANCE	16
30.	SPECIFICATIONS	16
31.	INDEPENDENT CONTRACTOR.....	17
32.	COOPERATION WITH OTHER CONTRACTORS.....	17
33.	EMPLOYEES.....	17
34.	ANTITRUST ASSIGNMENT	17
35.	REFUND OF CREDITS.....	17

36.	OWNERSHIP RIGHTS.....	17
37.	PROMPT PAYMENT	17
38.	STATE TAX EXEMPTION	18
39.	PROMOTIONAL ADVERTISING AND NEWS RELEASES	18
40.	NOTICE AND CHANGE OF CONTACT INFORMATION.....	18
41.	RECORDS, RECORDKEEPING AND RECORD RETENTION	18
42.	EXAMINATION OF RECORDS.	18
43.	BREACH NOT WAIVER.....	19
44.	ASSIGNMENT OF CONTRACT.....	19
45.	SEVERABILITY.....	19
46.	CONTRACT DISPUTE RESOLUTION.....	19
47.	NO GUARANTEE OF QUANTITY	19
48.	TERMINATION OF PURCHASE ORDER.....	20
49.	FORCE MAJEURE	20
50.	TIME IS OF THE ESSENCE.....	20
51.	NO AGENCY RELATIONSHIP	20
52.	DISCLOSURE.....	20
53.	OTHER DOCUMENTS	20
54.	REPORTING.....	21
55.	DUPLICATES AND OVER SHIPMENTS	21
56.	RETURN POLICY FOR DEFECTIVE OR DAMAGED GOODS.....	21
57.	ANNUAL REVIEW.....	22
58.	NOTICE OF CHANGE IN FINANCIAL CONDITION	22
59.	THIRD PARTY AGREEMENT; SOFTWARE	22
60.	INFRINGEMENT INDEMNIFICATION.....	22
61.	WISBUY	23
62.	SHOP@UW	24
63.	SERVICES PERFORMED IN UNITED STATES.....	24

1. DEFINITIONS

Words and terms shall be given their ordinary and usual meanings. Unless negotiated otherwise by the parties, where capitalized, the following words and terms shall have the meanings indicated. The meanings shall be applicable to the singular, plural, masculine, feminine and neuter.

“Acceptance” means a manifestation of assent by the Authorized User to the terms, Services, Deliverables or other items offered by the Contractor under the Contract after Inspection by the Authorized User.

“Accessory” means a product that does not extend the functionality of the computer, but enhances the user experience. For example, a mouse pad or monitor stand. An nonessential additional component, but desirable with a secondary or supplementary function. For the purposes of this bid, accessories are considered peripherals.

“Additional Services” means Service or Deliverable within the scope of the Contract, but not specifically provided under any Statement of Work.

“Agency” or **“State Agency”** means an office, department, agency, institution of higher education, association, society or other body in the State of Wisconsin government created or authorized to be created by the State Constitution or any law, which is entitled to expend moneys appropriated by law, including the legislature and the courts, but not including an authority, as defined in Wis. Stat. s. 16.70(2).

“ANSI” means American National Standards Institute, an organization in the U.S. which sets standards used for testing the quality and safety of electronic equipment, scientific equipment, etc. It has also established a standard set of letters and numbers called the ANSI character set, which is used in computers.

“Asset Management” means an assignment of an electronic or physical tag with a unique number. This could include warranty registration to activate new equipment registering of software licenses, interfacing to a Customer asset tracking and financial systems, and automated tracking. Tags may be supplied by the Authorized User, electronic in the CMOS, or custom.

“Asset Tracking” means information tracking of order status, location, ownership, and financial or cost attributes of hardware and software products.

“Authorized Partner” means a certified reseller and service provider authorized by the OEM to sell, service, maintain and support the Products purchased under the Contract and the authorization can be documented upon request of the State.

“Authorized Users” means any State Agency, University of Wisconsin campus, or other state or local public body authorized to use statewide contracts, as established in §§16.70 (1b), (1e), (2), (4) and (8), 16.73 and 66.0301 of the Wisconsin Statutes and §PRO-D-30 of the State Procurement Manual.

“BIOS” means Basic Input-Output System; the startup routine that prepare the computer for operation. A BIOS update may be adding the serial number, asset tag number and/or other updates to the BIOS.

“Business Day” means any day on which the Contracting Agency is open for business.

“Catalog” means The full product line, accessories, and related Services the Bidder is willing to provide to Authorized Users.

“CIM” means Common Information Model; a computer industry standard for defining device and application characteristics so that system administrators and management programs will be able to control devices and applications from different manufacturers or sources in the same way.

“CMOS” means Complementary Metal Oxide Semiconductor; a small battery-backed memory bank in the computer that holds configuration settings.

“Components” means the parts that make up a computer configuration.

“Confidential Information” means all tangible and intangible information and materials being disclosed in connection with this Contract, in any form or medium without regard to whether the information is owned by the Authorized User or by a third party, which satisfies at least one of the following criteria: (i) Personally Identifiable Information; (ii) Proprietary Information; (iii) non-public information related to the Authorized User’s employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or (iv) information expressly designated as confidential in writing by the Authorized User. Confidential Information includes all information that is restricted or prohibited from disclosure by state or federal law.

“Configuration” means the combination of hardware and software components that make up the total functioning system.

“Contracted Personnel” means a Contractor’s employees or other personnel (including officers, agents and Subcontractors) provided by the Contractor specifically to render Services under this Contract.

“Contracting Agency” means the Agency entering into this Contract on behalf of the State.

“Contract Manager” means the individual in the State Bureau of Procurement (SBOP) responsible for managing this RFB and subsequent contractual issues.

“Contract Term” means the initial term of the Contract and any renewals and/or extensions.

“Day” means calendar day unless otherwise specified in this Contract.

“Default” means the omission or failure to perform a contractual duty or provide Deliverables or render Services as contractually required.

“Deliverables” means all project materials, including Goods, software licenses, data, and documentation created during the rendering of Services hereunder. Deliverables shall be the property of the Authorized User unless otherwise specified in the Contract.

“Deployment” means installation of new computer hardware at the Authorized User’s designated desk. Includes un-boxing, placing on desk, setting up hardware and cables, power-up, preparation for a complete installation, and Contractor removal of shipping material.

“Desktop” means a personal computer intended for regular use at a single location such as a desk, terminal, or workstation and may be integrated within a network. A desktop computer typically comes in several units connected together during installation: the processor, display monitor, and input devices use as a keyboard and mouse. Desktop virtualization endpoints such as zero, thin, or thick client terminals may be considered a desktop. Devices must have all operating systems included and have a minimum manufacturer warranty.

“DMI” means Desktop management Interface, an industry framework for managing and keeping track of hardware and software components in a system of personal computers from a central location.

“**Goods**” means articles of trade or items of merchandise, supplies, raw materials, or finished products, and may also include incidental or related services as the situation may require.

“**Imaging Service**” means installation of Authorized User-supplied image to computer before shipment.

“**Inspection**” means an examination of Deliverables or Services provided under this Contract in order to determine their fitness for use.

“**Key Personnel**” means specifically identified Contracted Personnel that play a lead and critical role in rendering Services during the Contract term.

“**Laptop**” means a personal computer for mobile use. A laptop includes a display, keyboard, point device such as a touchpad and speakers into a single unit. A laptop can be used away from an outlet using a rechargeable battery and includes an operating system where applicable. Laptops may include tablet, notebooks, ultrabooks, netbooks, and chrome book.

“**MLP**” means Manufacturer’s List Price, the price at which the manufacturer sells their Products to the reseller which reflects a standard price for a product that includes all of the manufacturer’s production and distribution costs, transportation, but does not include reseller profit. May also be called Reseller Cost.

“**MSRP**” means Manufacturer’s Suggested Retail Price, the price at which the manufacturer recommends resellers sell their Products which reflects a standard price for a product that includes all the manufacturer’s production and distribution costs, transportation, and reseller profit.

“**Monitor**” means a viewing screen for computers with a minimum manufacturer warranty and software operating system where applicable.

“**Netbook**” – See definition for Portable.

“**Notebook**” – See definition for Portable.

“**OEM**” means Original Equipment Manufacturer.

“**Peripherals**” means any hardware product that can be attached to, added within or networked with a personal computer. Peripherals extend the functionality of a computer without modifying the core components of the system. For the purposes of this bid, peripherals are defined as including accessories. A third party may manufacture peripherals. The Contractor shall provide the warranty service and maintenance for all peripherals on the Contract.

“**Personally Identifiable Information**” means an individual’s last name and the individual’s first name or first initial, in combination with and linked to any of the following elements, if that element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual’s Social Security number; (b) the individual’s driver’s license number or state identification number; (c) the number of the individual’s financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual’s financial account; (d) the individual’s DNA profile; or (e) the individual’s unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.

“Portable” means a computer that is a laptop, tablet, netbook, or notebook form that can perform the functions of a desktop computer, can integrate with a network, includes the operating system, and has a minimum manufacturer warranty.

“Power Protection and Accessories” means batteries, power adapters, inverters, surge suppressors, UPS/Battery Back-up and related power Products.

“Project Management” means planning, monitoring, and controlling all aspects of a project and the motivation of all those involved in it to achieve the project objectives on time and to the specified cost, quality and performance.

“Properly-submitted Invoice” is one that is submitted in accordance with instructions contained on the Authorized User’s Purchase Order, includes a reference to the proper Purchase Order number, and is submitted to the proper address for processing.

“Proprietary Information” means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply:

- a. The information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use.
- b. The information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

“Purchase Order” means the Authorized User’s standard document of a purchase of Deliverables and Services.

“Services” or **“Contractual Services”** is broadly classed as an intangible product such as installation/de-installation, maintenance, support, training, and migration. Services may also include: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training, support, imaging service, BIOS update, asset tracking, roll down, software installation, and project management.

“Software Installation” means installation Services of additional software not part of the original image, but required for the Authorized User.

“SOW” means Statement of Work.

“Standard Configurations” means Sate minimum configurations found in Attachment A, Tabs 1 through 6. Minimum standard configurations cover various desktops, workstation, and various portables.

“State” means the State of Wisconsin.

“State Holidays” include January 1, Martin Luther King Jr. birthday, Memorial Day, July 4, Labor Day, Thanksgiving Day, December 24, December 25, and December 31

“Subcontract” means an agreement, written or oral between the Contractor and any other party to fulfill the requirements and performance obligations of this Contract.

“Subcontractor” means an entity that enters into aSubcontract with the Contractor for the purpose of delivering Deliverables or rendering Services to the Authorized User.

“Tablet” means a mobile computer that provides a touchscreen which acts as a primary means of control. Tablets may include notebooks, ultrabooks, and netbooks that are touchscreen capable.

“Upgrade” means replacement of existing software, hardware or hardware component with a newer version.

“Verifiable Price List” means prices recorded in a catalog, price list, schedule, reseller cost list, MSRP, MLP or other verifiable and established record that is regularly maintained by the manufacturer and is published or otherwise available for customer inspection to verify pricing.

“VPAT” means Voluntary Product Accessibility Template, a tool used to document a product’s conformance with the accessibility standards under Section 508 of the Rehabilitation Act. The purpose of the VPAT is to assist Federal contracting officials and other buyers in making preliminary assessments regarding the availability of commercial “Electronic and Information Technology” products and services with features that support accessibility.

“Work Center” means a charitable organization or nonprofit institution which is licensed under s. 104.07 and incorporated in this State or a unit of county government which is operated for the purpose of carrying out a program of rehabilitation for severely handicapped individuals and for providing the individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature, and which is engaged in the production of materials, supplies or equipment or the performance of contractual services in connection with which not less than 75% of the total hours of direct labor are performed by severely handicapped individuals.

2. APPLICABLE LAW

This Contract shall be governed by the laws of the State of Wisconsin. Venue for any action brought under this Contract shall lie in Madison, Dane County, Wisconsin.

3. TERM

The initial term of this Contract is targeted to be three (3) years from the effective date, with the initial term ending no later than November 11, 2019. The initial term is subject to change and will be at the sole discretion of the State. This Contract is eligible for up to one (1) mutually agreed upon two-year renewal, unless terminated as provided herein. To ensure the delivery of improved services and competitive pricing, to address potential performance issues, changes in technology or industry consolidation, the state reserves the right to negotiate the pricing and terms at the time of contract renewal. The Contract may be extended when it is in the best interests of the State.

4. CONTRACT TERMINATION FOR CAUSE

The State may terminate this Contract after providing the Contractor with thirty (30) Days written notice of the Contractor’s right to cure a failure of the Contractor to perform under the terms of this Contract.

The Contractor may terminate this Contract after providing the State with sixty (60) Days written notice of the State’s right to cure a failure of the State to perform under the terms of this Contract.

Upon the termination of the Contract for any reason, or upon Contract expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration.

5. CONTRACT TERMINATION FOR CONVENIENCE

The State may terminate this Contract at any time, without cause, by providing a written notice to the other party at least thirty (30) Days in advance of the intended date of termination. Contractor may terminate this Contract at any time, without cause, by providing a written notice to the other party at least sixty (60) Days in advance of the intended date of termination.

In the event of a termination for convenience, the Contractor shall be entitled to receive compensation for any completed or partially completed Services rendered or Deliverables provided under the Contract. Compensation for partially completed Services shall be no more than the percentage of completion of the Services requested, as determined by the State in its sole discretion, multiplied by the corresponding payment for completion of such Services as set forth in the Contract. Alternatively, at the sole discretion of the State, the Contractor may be compensated for the actual Service hours provided. The Authorized Users shall be entitled to a refund for Deliverables or Services paid for but not received or rendered, such refund to be paid within 30 Days of written notice to the Contractor requesting the refund.

6. CONTRACT CANCELLATION

(a) The State reserves the right to cancel this Contract in whole or in part without penalty, and without prior notice, if the Contractor:

- Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity
- Makes an assignment for the benefit of creditors
- Fails to maintain and keep in force all required insurance, permits and licenses as provided in this Contract;
- Fails to maintain the confidentiality of the Authorized User's information that is considered to be Confidential Information, or
- Performs in a manner that threatens the health or safety of an Authorized User's employee, citizen, or customer.

(b) The State reserves the right to cancel this Contract in whole or in part without penalty, with thirty (30) days' notice, if the Contractor:

- Fails to follow the sales and use tax certification requirements of s. 77.66 of the Wisconsin Statutes;
- Incurs a delinquent Wisconsin tax liability;
- Fails to submit a non-discrimination or affirmative action plan as required herein.
- Fails to follow the non-discrimination or affirmative action requirements of subch. II, Chapter 111 of the Wisconsin Statutes (Wisconsin's Fair Employment Law); or
- Becomes a state or federally debarred contractor.

7. TRANSITION SERVICES

Upon cancellation, termination, or expiration of this Contract for any reason, the Contractor shall provide such reasonable cooperation, assistance and Services, and shall assist the Authorized User in the migration of the Authorized Users's production operations to the Authorized User's control or to the control of an alternative contractor upon written notice to the Contractor at least thirty (30) Business Days prior to termination or cancellation, and

subject to the terms and conditions set forth herein. This Contract shall automatically be extended by the number of days that training or continued Services are necessary to be performed in order to complete the transition. The Contractor's Services required to complete the transition after the notice set forth herein shall be within this Contract's scope and shall not be the subject of any change order.

8. POST CONTRACT OBLIGATIONS

Upon the termination of this Contract for any reason, or upon Contract expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration.

9. PRIME CONTRACTOR; CONTRACTOR COMPLIANCE; RESPONSIBILITY FOR ACTIONS

Contractor is the Prime Contractor. Subcontractors are permitted to perform Services on this Contract. The Prime Contractor shall be the sole point of contact with regard to all contractual matters arising hereunder, including the performance of services and the payment of any and all charges resulting from its contractual obligations.

The Contractor shall at all times comply with and observe all federal, state, and local laws, ordinances, and regulations that are in effect during the term of this Contract that may affect the Contractor's work or obligations hereunder.

The Contractor shall be solely responsible for its actions and those of its agents, employees, or Subcontractors. Neither the Contractor nor any of the foregoing parties has authority to act or speak on behalf of the State.

10. ROLLING ESTOPPEL

The Authorized User assumes the obligation for the resources as indicated in the Statement of Work. The Authorized User will be conclusively deemed to have fulfilled its obligations, unless it receives a deficiency report from the Contractor by the fifteen (15th) day of the month following the month of the alleged deficiencies and the Contractor identifies specific deficiencies in the Authorized User's fulfillment of its obligations in that report. Deficiencies must be described in terms of how they have affected the specific performance requirement of the Contractor.

The Contractor is estopped from claiming that a situation has arisen that might otherwise justify changes in the project timetable, the standards of performance under the Agreement or the contract price, if the Contractor knew of that problem and failed to include it in the applicable report.

In the event the Contractor identifies a situation where the Authorized User is impairing the Contractor's ability to perform for any reason, the Contractor's deficiency report should contain the Contractor's suggested solutions to the situation(s). These suggestions should be in sufficient detail so that the Authorized User's project managers can make a prompt decision as to the best method of dealing with the problem and continuing the project in an unimpeded fashion.

If the problem is one that allows the Contractor (within the terms of the Agreement) to ask for changes in the project timetable, the standards of performance, the project quoted total price, or all of these elements, the report should comply with the change order procedures.

11. WORK CENTER CRITERIA

The Contractor shall implement processes that allow Agencies to satisfy the State's obligation to purchase goods and services produced by Work Centers certified under the State's Work Center Law, §16.752, Wis. Stat. The Contractor shall include goods provided by Work Centers in its catalog for Agencies and block the sale of comparable items to Agencies.

12. NON-APPROPRIATION

The State reserves the right to cancel this Contract in whole or in part without penalty if the Legislature fails to appropriate funds necessary to complete the Contract.

The Authorized Users reserve the right to cancel Orders associated with this Contract in whole or in part without penalty if the Legislature fails to appropriate funds necessary to complete the Order.

13. CONTRACTOR'S INSURANCE RESPONSIBILITY

The Contractor shall maintain the following insurance coverage:

- Worker's compensation insurance, as required under Chapter 102 of the Wisconsin Statutes, for all of the Contractor's employees and Contracted Personnel engaged in the work performed under this Contract;
- Commercial liability, bodily injury and property damage insurance against any claim(s) that may occur in carrying out the terms of this Contract, with a minimum coverage of one million dollars (\$1,000,000) liability for bodily injury and property damage including products liability and completed operations; and
- Motor vehicle insurance for all owned, non-owned and hired vehicles that are used in carrying out the terms of this Contract, with a minimum coverage of one million dollars (\$1,000,000) per occurrence combined single limit for automobile liability and property damage.
- Certificate of Insurance, showing up-to-date coverage, shall be on file in the Contracting Agency before the Contract may commence. (if applicable)

The State reserves the right to require higher or lower insurance limits, where warranted.

14. NONDISCRIMINATION AND AFFIRMATIVE ACTION

The Contractor shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, national origin, developmental disability as defined in § 51.01(5), Wis. Stats., or sexual orientation as defined in §111.32(13m), Wis. Stats. This provision shall include, but is not limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor shall take affirmative action to ensure equal employment opportunities.

Unless exempted by workforce size (50 or fewer employees) or Contract amount (\$50,000 or less), the Contractor must submit a written affirmative action plan to the State.

The Contractor shall post a notice provided by the State, setting forth the provisions of the State's nondiscrimination laws, in its workplace, website or conspicuous places in order that the Contractor's employees and applicants for employment are able to read it.

Failure to comply with the conditions of this provision may result in the following consequences:

- termination of this Contract as provided in Section 6, Contract Cancellation herein,
- designation of the Contractor as "ineligible" for future consideration as a responsible, qualified bidder or proposer for State contracts, or
- withholding of a payment due under the Contract until the Contractor is in compliance

15. PAYMENT OFFSETS FOR CONTRACTOR'S DELINQUENCY

The Authorized User or State shall offset payments made to the Contractor under this Contract in an amount necessary to satisfy a certified or verifiable delinquent payment owed to the State, or to any state or local unit of government. The State also reserves the right to cancel this Contract as provided in Section 6, Contract Cancellation, if the delinquency is not satisfied by the offset or other means during the term of the Contract.

16. CONTRACTOR INDEMNIFICATION

Contractor shall hold the State harmless and shall defend and indemnify the State, its Agencies, officers and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees, for personal injury or damage to property arising from the acts or omissions of the Contractor, its agents, officers, employees or Subcontractors.

17. CONFIDENTIAL INFORMATION

17.1 Disclosures

In connection with the Contractor's performance hereunder, it may be necessary for the Authorized User to disclose to the Contractor Confidential Information. The Contractor shall not use such information for any purpose other than the limited purposes set forth in this Contract, and all related and necessary actions taken in fulfillment of the obligations thereunder. The Contractor shall hold all such information in confidence, and shall not disclose such information to any persons other than its directors, officers, employees, and agents who have a business-related need to have access to such information in furtherance of the limited purposes of this Contract and who have been apprised of, and agree to maintain, the confidential nature of such information in accordance with the terms of this Contract.

Contractor shall institute and maintain such security procedures as are commercially reasonable to maintain the confidentiality of such information while in its possession or control, including transportation, whether physically or electronically.

Contractor shall ensure that all indications of confidentiality contained on or included in any item of such information shall be reproduced by Contractor on any reproduction, modification, or translation of such Confidential Information. If requested by the Authorized User, Contractor shall make a reasonable effort to add a proprietary notice or indication of confidentiality to any tangible materials within its possession that contain such information of the Authorized User, as directed.

The Contractor shall maintain all such information for a period of six (6) years from the date of termination of this Contract, and shall thereafter return or destroy said information as directed by the State.

17.2 Indemnification in Event of Contractor Breach; Equitable Relief

Indemnification: In the event of a breach of this Section by Contractor, Contractor shall indemnify, defend and hold harmless the State of Wisconsin and any of its officers, employees, or agents from any claims arising from the acts or omissions of the Contractor, and its Subcontractors, employees and agents including, but not limited to, disallowances or penalties from federal oversight agencies, and any court costs, expenses, and reasonable attorney fees, incurred by the State in the enforcement of this Section and, with respect to Personally Identifiable Information, the costs of monitoring the credit of all persons whose Personally Identifiable Information was disclosed.

Equitable Relief: The Contractor acknowledges and agrees that the unauthorized use, disclosure, or loss of Confidential Information may cause immediate and irreparable injury to the individuals whose information is disclosed and to the State, which injury will not be compensable by money damages and for which there is not an adequate remedy available at law. Accordingly, the parties specifically agree that the State, on its own behalf or on behalf of the affected individuals, may seek injunctive or other equitable relief to prevent or curtail any such breach, threatened or actual, without posting security and without prejudice to such other rights as may be available under this Contract or under applicable law.

18. INTELLECTUAL PROPERTY INFRINGEMENT AND LABOR STANDARDS

The Contractor guarantees that any items provided to the Authorized User hereunder were manufactured or produced in accordance with applicable state and federal labor laws, and that the sale or use of said items shall not infringe any United States patent, copyright, or other intellectual property rights of others. The Contractor shall at its own expense indemnify, defend and hold the State harmless from any claims brought against the State for any alleged patent, copyright or other intellectual property right infringement due to the sale or use of such items, provided that the Contractor is promptly notified of such suit, and is given all related documents. The Contractor shall pay all costs, damages, and profits recoverable in any such infringement lawsuit.

19. SECURITY OF PREMISES, EQUIPMENT, DATA AND PERSONNEL.

During the performance of Services under this Contract, the Contractor may have access to the personnel, premises, equipment, and other property, including data files, information, or materials (collectively referred to as "data") belonging to the Authorized User. The Contractor shall preserve the safety, security, and the integrity of the personnel, premises, equipment, data and other property of the Authorized User, in accordance with the instruction of the Authorized User. The Contractor shall be responsible for damage to the Authorized User's equipment, workplace, and its contents, or for the loss of data, when such damage or loss is caused by the Contractor, Contracted Personnel, or Subcontractors, and shall reimburse the Authorized User accordingly upon demand. This remedy shall be in addition to any other remedies available to the Authorized User by law or in equity.

20. RENDERING OF SERVICES

The Contractor shall render Services with all due skill, care, and diligence, in accordance with accepted industry practices and legal requirements, and to the State's satisfaction; the State's decision in that regard shall be final and conclusive. The Authorized User may inspect, observe and examine the performance of the Services rendered on the Authorized User's premises at any time. The Authorized User may inspect, observe and examine the performance of Contractor's Services at reasonable times, without notice, at any other premises.

If the Authorized User notifies the Contractor that any part of the Services rendered are inadequate or in any way differ from the Contract requirements for any reason other than as a result of the Authorized User's Default or negligence, the Contractor shall at its own expense re-schedule and perform the work correctly within such reasonable time as the Authorized User specifies. This remedy shall be in addition to any other remedies available to the State by law or in equity.

21. CONTRACTOR PERSONNEL

21.1 Identification

If requested by the Authorized User, the Contractor shall provide a list of the names and addresses of all Contractor's employees, Contracted Personnel, or Subcontractor's employees who may at any time require admission to the Authorized User's premises in connection with the rendering of Services, specifying each such person's connection to the Contractor, the role the person is to take in the performance of the Contract, and other particulars as the Authorized User may require. The Authorized User reserves the right to refuse to admit to the Authorized User's premises any person employed or contracted by the Contractor whose admission, in the sole opinion of the Authorized User, would be undesirable.

21.2 Right to Approve Changes of Contracted Personnel

The Authorized User shall have the absolute right to approve or disapprove a proposed change of Key or Contracted Personnel. The Contractor shall provide to the Authorized User, in each instance a resume of the proposed substitute and an opportunity to interview that person prior to giving its approval or disapproval. The Authorized User shall not unreasonably withhold this approval.

21.3 Contracted Personnel Removal

The Authorized User may direct the Contractor to remove or reassign Key or Contracted Personnel at the Authorized User's discretion; however, the Authorized User's right to do so does not implicate the State as a party to any of the Contractor's obligations in the Contract. The Authorized User shall not unreasonably withhold this approval.

21.4 Identification of Contracted Personnel

The Contractor shall furnish each Contracted Personnel with a means of identifying themselves as agents, Subcontractors, or employees of the Contractor assigned to perform Services under the Contract, and furnish the Authorized User with security credentials on these Contracted Personnel, if requested.

21.5 Background or Criminal History Investigation

Prior to the commencement of any Services under this Contract, the Authorized User may request a background or criminal history investigation of Contracted Personnel, and Subcontractor's employees, who will be providing Services to the Authorized User under the Contract. If any of the stated personnel providing Services to the Authorized User under this Contract is not acceptable to the Authorized User in its sole opinion as a result of the background or criminal history investigation, the Authorized User may either request immediate replacement of the person, or immediately terminate this Contract and any related Service Agreement.

22. LIQUIDATED DAMAGES

Both parties acknowledge that it can be difficult to ascertain actual damages when a Contractor fails to carry out the responsibilities of the contract. The Contractor acknowledges that for the resulting Contract, they shall negotiate liquidated damages. The Contractor agrees that the Authorized User and/or State shall have the right to liquidate such damages, through deduction from the Contractor's invoices, in the amount equal to the damages incurred, or by direct billing to the Contractor.

23. SHIPPING

Except as otherwise specified herein, Deliverables shall be shipped, F.O.B. Destination with Freight prepaid and allowed, and the Authorized User shall accept legal title of Deliverables at the point of delivery. Freight charges shall not be paid by the Authorized User, but rather shall be prepaid by the Contractor. Unless otherwise specified, the Contractor shall determine the mode of freight and shall accept responsibility for payment of freight charges and processing of freight claims.

Expedited or overnight deliveries, if requested by the Authorized User, may be a billable cost and shall be itemized in the written quotation and invoice.

24. RISK OF LOSS

The Contractor shall bear all risks of loss, injury or destruction of the Deliverables ordered herein that occur prior to delivery. Such loss, injury or destruction shall not release the Contractor from any obligation hereunder.

25. IDENTIFICATION

All invoices, packing lists, packages, shipping notices, instruction manuals, and other written documents affecting an order hereunder shall contain the applicable Authorized User Purchase Order number. Packing lists shall be enclosed in each and every box or package shipped pursuant to an order, indicating the contents therein. Standard commercial packaging, packing and shipping containers shall be used. If requested by the Authorized User, all shipping containers shall be legibly marked or labeled on the outside with Authorized User Purchase Order number, product description, and quantity, or as otherwise directed by the Authorized User.

26. LIENS, CLAIMS AND ENCUMBRANCES

The Contractor warrants and represents that all Deliverables ordered hereunder are free and clear of all liens, claims or encumbrances of any kind.

27. WARRANTY OF ITEMS OFFERED

Deliverables and Services rendered shall be strictly in accordance with the order placed and may not deviate in any way from the terms, conditions or specifications of this Contract, without the prior written approval of the State. Deliverables delivered under this Contract are subject to Inspection and testing upon receipt.

The Contractor warrants that the Deliverables provided shall conform to the specifications in this Contract, are fit and sufficient for the purpose manufactured, of good material and workmanship, and free from defect. Deliverables offered must be new and unused and of the latest model or manufacture, unless otherwise specified by the Authorized User. Items shall be

equal in quality and performance to the standards indicated herein. Deliverables delivered that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at the Contractor's expense. The Contractor shall assign to the Authorized User its right to recover under any warranties applicable to the Deliverables offered. [Descriptions used herein are specified solely for the purpose of indicating standards of quality, performance, and/or use desired.]

28. RECEIPT OF GOODS

The State's receipt of Deliverables upon delivery is for the sole purpose of identification. Such identification shall not be construed as Acceptance of the Deliverables if they do not conform to contractual requirements. If there are any apparent defects in the Deliverables at the time of delivery, the Authorized User shall promptly notify the Contractor of its rejection of said Deliverables. Without limiting any other rights, the Authorized User, at its option, may require the Contractor to:

- a. Repair or replace any or all of the defective and rejected Deliverables at Contractor's expense,
- b. Refund the price of any or all of the defective and rejected Deliverables, and
- c. Accept the return of any or all of the defective and rejected Deliverables.

If rejected, the Goods shall remain the property of the Contractor.

29. PERFORMANCE

Services rendered under this Contract shall be performed in a timely, professional and diligent manner by qualified and efficient personnel and in conformity with the strictest quality standards mandated or recommended by all generally recognized organizations establishing quality standards for the type of Services to be rendered hereunder. The Contractor shall be solely responsible for controlling the manner and means by which it and its Contracted Personnel or its Subcontractors render Services, and the Contractor shall observe, abide by, and perform all of its obligations in accordance with all legal requirements and Authorized User or Agency work rules.

Without limiting the foregoing, the Contractor shall control the manner and means of the Services rendered so as to do so in a reasonably safe manner and in compliance with all applicable codes, regulations and requirements imposed or enforced by any government agencies, including all applicable requirements of the Occupational Safety and Health Administration (OSHA) and all safety codes and procedures mandated or recommended by insurance underwriting organizations and all generally recognized organizations establishing safety standards, including without limitation the National Fire Protection Association. Notwithstanding the foregoing, any stricter standard provided in plans, specifications or other documents incorporated as part of this Contract shall govern.

30. SPECIFICATIONS

The apparent silence of the State's specifications as to any detail, or the apparent omission of a detailed description concerning any matter, shall be regarded as meaning that only the best commercial practice shall be followed and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, Contractor shall supply proof of compliance with the specifications. Contractor shall provide written notice of its intent to deliver alternate or substitute Services or Deliverables. Alternate or substitute Services or Deliverables may be accepted or rejected in the sole discretion of the State; and any such

alternates or substitutes shall be accompanied by Contractor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance shall be equal or superior to the original Services or Deliverables specified.

31. INDEPENDENT CONTRACTOR

The Contractor shall act as an independent contractor in rendering any and all Services under this Contract and, except as otherwise outlined herein, shall maintain complete control over its employees, Contracted Personnel, and Subcontractors, if any.

32. COOPERATION WITH OTHER CONTRACTORS

In the event that the Authorized User enters into a contract with another contractor for additional Services, the Contractor shall ensure that Contracted Personnel fully cooperate with such other contractor. Contracted Personnel shall not commit any act that interferes with the rendering of Services by any other contractor or by the Authorized User. Contracted Personnel shall cooperate with Authorized User personnel, hardware manufacture representatives, system software suppliers, and communications systems suppliers in the provision of Services to the Authorized User.

33. EMPLOYEES

Both Parties may not solicit, contract with, or employ either Parties' employee or an individual retained as a full-time contractor during the term of this Contract.

34. ANTITRUST ASSIGNMENT

By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the Authorized User all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating specifically to that proportionate amount of the particular Deliverables or Services purchased or acquired by the State under this Contract.

35. REFUND OF CREDITS

Within sixty (60) Days of the Authorized User's request, the Contractor shall pay to the Authorized User any credits resulting from an order that the Authorized User determines cannot be applied to future invoices.

36. OWNERSHIP RIGHTS

Unless an ownership interest is granted or reserved in this Contract, a Authorized User Purchase Order issued under this Contract shall allow the Authorized User unrestricted authority to reproduce, distribute, and use any submitted report, data, or material, and any software or modifications and any associated documentation that is designed or developed and delivered to the Authorized User as part of the performance of the Contract.

37. PROMPT PAYMENT

Payment is not be made until the Authorized Entity determines the Products or Services meet all Specifications and the requirements and deliverables has been accepted.

Bidder shall accept the Authorized User's Purchasing Card for order placement, in addition to accepting a purchase order.

The Authorized User shall pay the Contractor's Properly-submitted Invoices within thirty (30) Days of receipt, provided that the Deliverables or Services to be provided to the Authorized User have been delivered, rendered, or installed, and accepted as specified in the solicitation document, Statement of Work (SOW) or this Contract.

If the Authorized User fails to pay a Properly-submitted Invoice within thirty (30) Days of receipt, it shall pay a late payment penalty as provided in §16.528, Wis. Stats. However, if the Authorized User declares a good faith dispute in regard to an invoice pursuant to §16.528 (3)(e), Wis. Stats., it may pay any undisputed portion of said invoice, and will be exempt from the prompt payment requirement for the disputed portion.

38. STATE TAX EXEMPTION

The State is exempt from payment of Wisconsin sales or use tax on all purchases.

39. PROMOTIONAL ADVERTISING AND NEWS RELEASES

Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Contract shall not be made without prior written approval of the State.

40. NOTICE AND CHANGE OF CONTACT INFORMATION

Any notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery or three (3) Business Days after mailing by postal service, certified or registered mail-receipt requested.

In the event the Contractor moves or updates contact information, the Contractor shall inform the State of such changes in writing within ten (10) Business Days. The Authorized User shall not be held responsible for payments on Purchase Orders delayed due to the Contractor's failure to provide such notice.

41. RECORDS, RECORDKEEPING AND RECORD RETENTION

Pursuant to §19.36 (3) of the Wisconsin Statutes, all records of the Contractor that are produced or collected under this Contract are subject to disclosure pursuant to a public records request. The Contractor shall establish and maintain adequate records of all documentation developed or compiled and expenditures incurred under this Contract. All expenditure records shall be kept in accordance with Generally Accepted Accounting Procedures (GAAP). All procedures shall be in accordance with federal, State and local laws or ordinances. The Contractor, following final payment, shall retain all records produced or collected under this Contract for six (6) years.

42. EXAMINATION OF RECORDS.

The State shall at any time during normal business hours, upon reasonable notice, have access to and the right to examine, audit, excerpt, transcribe, and copy, on Contractor's premises, any of the Contractor's records and computer data storage media involving transactions directly pertinent to this Contract. If the material is on computer data storage media, the Contractor shall provide copies of the data storage media or a computer printout of such if the State so requests. Any charges for copies of books, documents, papers, records, computer data storage media or computer printouts provided by the Contractor shall not exceed the actual cost to the

Contractor. This provision shall survive the termination, cancellation, or expiration of this Contract.

43. BREACH NOT WAIVER

A failure to exercise any right, or a delay in exercising any right, power or remedy hereunder on the part of either party shall not operate as a waiver thereof. Any express waiver shall be in writing and shall not affect any event or Default other than the event or Default specified in such waiver. A waiver of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The making of any payment to the Contractor under this Contract shall not constitute a waiver of Default, evidence of proper Contractor performance, or Acceptance of any defective item or work furnished by the Contractor.

44. ASSIGNMENT OF CONTRACT

The Contractor shall provide prior written notice to the State before assigning this Contract to another party. The State reserves the right to withhold approval of any such assignment. The terms and conditions of this Contract as well as any rights obligations and liabilities associated with such shall survive any and all assignments, mergers, or acquisitions by a third party until cancelled in writing by both parties.

45. SEVERABILITY

If any provision of this Contract is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall remain valid and in full force and effect. The invalid provision shall be replaced by a valid provision that comes closest in intent to the invalid provision.

46. CONTRACT DISPUTE RESOLUTION.

In the event of any dispute or disagreement between the parties under this Contract, whether with respect to the interpretation of any provision of this Contract, or with respect to the performance of either party hereto, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety or welfare, may begin in regard to the dispute until this dispute resolution procedure has been elevated to the Contractor's highest executive authority and the equivalent executive authority within the Contracting Agency, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.

46.1 No Termination or Suspension of Services

If any problem or dispute arises between the parties, in no event nor for any reason and unless and until authorized by a court of competent jurisdiction, shall Contractor interrupt the performance of the Services or any other obligation hereunder, disable any equipment used in the Services, or perform any other action that prevents, slows down, or reduces in any way the performance of the Services or the Authorized User's ability to conduct its business.

47. NO GUARANTEE OF QUANTITY

The Authorized User may obtain related Deliverables and Services from other sources during the term of this Contract. The State makes no express or implied warranties whatsoever that

any particular quantity or dollar amount of Deliverables or Services will be procured through this Contract.

48. TERMINATION OF PURCHASE ORDER

The Authorized User may terminate a specific Purchase Order issued under this Contract if it determines that the Contractor is unable to render the Services or provide the Deliverables required in a timely manner, in order to meet the business needs of the Authorized User.

49. FORCE MAJEURE

Neither party shall be in Default by reason of any failure in performance of this Agreement in accordance with reasonable control and without fault or negligence on their part. Such causes may include, but are not restricted to, acts of nature or the public enemy, acts of the government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes and unusually severe weather, but in every case the failure to perform such must be beyond the reasonable control and without the fault or negligence of the party.

50. TIME IS OF THE ESSENCE

Timely provision of Services or Deliverables required under this Contract shall be of the essence of the Contract, including the provision of Services or Deliverables within the time agreed or on a date specified.

51. NO AGENCY RELATIONSHIP

The Contractor shall not take any action, or make any omission, that may imply, or cause others reasonably to infer that the Contractor is acting as the Authorized User's agent in any matter or in any way not expressly authorized by this Contract.

52. DISCLOSURE

If a state public official (as defined in §19.42 (14) of the Wisconsin Statutes) or an organization in which a state public official holds at least a 10% interest is or becomes a party to this Agreement, it shall be voidable by the State unless appropriate disclosure is made to the State of Wisconsin Government Accountability Board, 212 East Washington Avenue, Madison, Wisconsin 53703 (Telephone 608-266-8005).

53. OTHER DOCUMENTS

The parties to this Contract understand and agree that standard forms or templates may be used for various purposes, including but not limited to, purchase orders, invoices, quotes, 'Website Terms and/or Conditions' or 'click to accept' agreement(s), some of which may contain boilerplate or standard terms and conditions ("Other Documents"). **However, any use of Other Documents are not a part of this Contract and are deemed to be for administrative convenience only and the terms therein are of no effect, have no force of law and do not modify the terms of this Contract.** No "Shrink-Wrap," "Click-Wrap" or other terms and conditions or agreements ("Additional Terms") unilaterally provided with any products or software hereunder shall be binding on the Authorized User, even if use of such products and software requires an affirmative "acceptance" before access is permitted.

54. REPORTING

- 54.1** Contractors shall furnish calendar year and quarterly reports to the State Contract Manager.
- 54.2** Accurate and timely reports are due within thirty (30) calendar days of the close of each calendar quarter. Reports are required in the absence and regardless of billing activity. Failure to provide accurate and/or timely reports may result in cancellation of the Contract.
- 54.3** The reports shall include, but are not limited to the following:
- Name of Contractor
 - Dates the reporting covers
 - A column indicating "M" for "Municipality" or "S" for "State" for each listed line
 - Number of machines sold by manufacturer's part number
 - Make
 - Model
 - Product Description(s)
 - Serial number(s) for each product listed, when applicable
 - Price
 - Invoice number
 - Order date
 - Ship date
 - Delivery date
 - Total sales by line item
 - Total sales per month by agency, municipality, or school district
- 54.4** Contractors shall be required to furnish cost verification upon request.

55. DUPLICATES AND OVER SHIPMENTS

Upon notification by the Authorized User of a duplicate or over shipment, goods must be removed at the Contractor's expense. If such goods are not removed within fifteen (15) business days of receipt of written notification from the Authorized User, the Authorized User shall dispose of them at its discretion and will not be held liable for the cost.

56. RETURN POLICY FOR DEFECTIVE OR DAMAGED GOODS

56.1 NON-DEFECTIVE PRODUCT

Non-defective product(s) that conform to the specifications of an order may be returned within thirty (30) days of invoice date. There shall be no charge to the Authorized User, including restocking fees and shipping. Amount credited or refunded to the Authorized User shall be equal to the price of the non-defective product(s). If non-defective product(s) is not returned within thirty (30) days of invoice date, Contractor is allowed to charge Authorized Users a restocking fee of up to fifteen percent (15%) of the purchase price.

56.2 DEFECTIVE OR NON-CONFORMING PRODUCTS

Defective and/or non-conforming (based on the specifications of the order or Contract) products, as determined by the Authorized User, may be returned within thirty (30) days of receipt. There shall be no charge to the Authorized User, including restocking fees and shipping. Authorized User retains the option to request that the defective product be replaced or cancel the order. Amount credited or refunded, if necessary, to the Authorized User shall be equal to the price of the defective product(s).

57. ANNUAL REVIEW

For purposes of achieving competitive pricing during the entire Contract term, the State Contract Manager may review spend with the Contractor and negotiate changes to pricing and terms in the best interests of the State. Review and negotiation will occur annually, but may occur more frequently, as needed.

58. NOTICE OF CHANGE IN FINANCIAL CONDITION

If, during the Contract term, the Contractor experiences a change in its financial condition that may affect its ability to perform under the Contract, or experiences a change of ownership or control, the Contractor shall immediately notify the State in writing. Failure to notify the State of such a change in financial condition or change of ownership or control shall be sufficient grounds for Contract termination.

59. THIRD PARTY AGREEMENT; SOFTWARE

For Commodities and/or Services to the Contract during the term that would require a third party agreement, the Contractor must provide the agreement(s) to the State Contract Manager for review, negotiation and approval. The State retains the right to determine which agreements are in the best interest of the State and which shall be offered under the Contract. The State is the sole determinant of its best interest.

In the event Contractor provides any third party software to the Authorized User in connection with this Contract, the following shall apply:

- Contractor shall specifically identify in writing all third party software associated with the software; and
- Contractor shall attach editable electronic copies of all third party license agreements applicable to the Authorized User; and
- Contractor warrants that (i) it has the right to license third party software licensed to the Authorized User under this Agreement; (ii) to the best of Contractor' knowledge, the third party software does not, and the use of the third party software by the Authorized User as contemplated by the Contract, will not infringe any intellectual property rights of any third party; and (iii) unless specifically provided otherwise herein, the Authorized User shall have no obligation to pay any third party fees, royalties, or other payments for the Authorized User's use of any third party software in accordance with the terms of the Contract. Contractor shall support and maintain all such third party software to the same extent as its software.

60. INFRINGEMENT INDEMNIFICATION

To the best of Contractor's knowledge, the Authorized User's permitted use of licensed software shall not infringe the intellectual property rights of any third party. If a third party makes a claim against the Authorized User that any information, design, specification, instruction, software, data, or material furnished by Contractor and used by the Authorized User infringes its intellectual property rights, Contractor shall indemnify and at its own expense (including payment of attorney's fees, expert fees and court costs) defend the Authorized User against any loss, cost, damage, liability or expense from any and all third party claims that the license software infringes any patent, copyright, trade secret or other proprietary right of a third party and shall indemnify and hold harmless the Authorized User from any amounts assessed against them in a resulting judgment or amounts to settle such claims provided that the Authorized User does the following:

- notifies Contractor promptly in writing, not later than thirty (30) days after the Authorized User receives notice of the claim (or sooner if required by applicable law);
- gives Contractor sole control of the defense and any settlement negotiations; and
- gives Contractor the information, authority, and assistance the provider needs to defend against or settle the claim.

If licensed software is, or is likely to be, the subject of an infringement claim, or Contractor believes or it is determined that any of the material may have violated someone else's intellectual property rights, Contractor, at its expense, shall choose to either (i) modify the material to be non-infringing (while substantially preserving its utility or functionality) (ii) obtain a license to allow for the Authorized User's continued use, or (iii) replace the licensed software with another system or components of comparable quality and functionality. If Contractor is unable to provide one of these remedies in (i) nor (ii) within sixty (60) days of notice of the claim (unless such period is extended by the State), Contractor shall have the right to terminate this Contract and refund all fees paid hereunder for the licensed software.

61. WISBUY

WISBuy is the branded name of the e-catalog system utilizing SciQuest. Authorized Users with access to WISBuy log-in to a web ordering system which includes catalogs from numerous state contracts. Authorized Users can search and compare Products and pricing on State contracted items, add items from multiple suppliers into one cart, and place an order with multiple Contractors at one time. SciQuest then sends the orders to the appropriate Contractors for fulfillment and billing. More information can be found at wisbuy.wi.gov, www.sciquest.com, and starproject.wi.gov.

1. Upon request of the State, Contractor shall develop a hosted or punchout catalog Product and related files as mutually agreed upon by both parties, depending on business need, to be available in WISBuy with Contract pricing and current Products. A hosted catalog Product will include development and maintenance of a Microsoft Excel spreadsheet with Product and pricing information and URL's to Product images. Support is available from SciQuest and an internal WISBuy Help Desk staffed with State Procurement employees.
2. Hosted price file shall include all Tier 1/Core List items, which shall be identified as such in the item description. Hosted price file may include additional items within the scope of the contract. Items outside of the scope of the contract shall not be included in the price file.
3. Contractor shall include accurate and complete Product information in the Product content file. Required information includes Product Category, Contractor Part Number, Product Description, Packaging UOM, Product Size, Manufacturer Part Name and Part Number, link to SDS, link to image, and a Long Description used to include details of the Product.
4. Contractor shall maintain Product catalog and price file with accurate state pricing and available Products. WISBuy price files shall be updated once each quarter and, more often as necessary to reflect price decreases and approved price increases.
5. Contractor shall accept orders and payments via SciQuest. P-card payments containing the full purchasing card number shall be transmitted securely via XML or Fax. Encrypted P-card number and information may be submitted via email, when contractor's billing system provides secure ability to link up orders with saved, encrypted payment information.

62. SHOP@UW

Shop@UW is the branded name of the business-to-business (B2B) e-commerce platform utilizing SciQuest. All orders are placed, invoiced and credited (if necessary) electronically through Shop@UW using server to server cXML communication of pertinent order, delivery and invoice information.

The information below is meant to inform bidders of operational efficiencies in the form of payment, delivery and customer management that Shop@UW provides to suppliers enabled on Shop@UW. By providing these Services centrally to all Shop@UW customers and Shop@UW suppliers, MDS (Material Distribution Services) is able to reduce a supplier's cost to serve when compared to the traditional business model.

1. **Centralized Customer Management.** Shop@UW currently maintains approximately 10,000 active accounts. All login information, order history, funding and shipping information is managed by Shop@UW. This eliminates the need for the supplier to set up and manage any individual accounts for Shop@UW customers. In addition, the Shop@UW customer service team serves as the main point of contact for issues concerning items such as, but not limited to: missing packages, order failures, and back orders.
2. **Centralized Receiving.** Shop@UW orders destined for delivery in the greater Madison area will be coded to be drop shipped to the MDS warehouse in Verona, Wisconsin. MDS handles delivering of each order to the Authorized User's specified location. This eliminates the need for the Contractor (or the Contractor's freight provider) to service approximately 100 buildings on the UW-Madison campus alone, which offers little consideration for sufficient loading dock area, temporary parking and traffic flow (construction, student pedestrian activity, bikes, scooters, etc.).
3. **The MDS receiving process includes bar code scanning of all packages delivered and bar code scans of all packages re-delivered.** Each final destination delivery is GPS stamped with a location. This process ensures easy communication and resolution of missing or Product delivery complaints.
4. **Custom Payment Terms.** All Shop@UW e-invoiced orders are consolidated twice per month (minimum) and one payment (less any applicable discount) for all orders is made by check or ACH (no credit cards). MDS pays 100% of all Shop@UW invoices within twenty (20) days for all end user purchases; disputed charges are corrected via credits submitted electronically through the SciQuest eSettlement process. Electronic invoices are receipted on a daily basis, and no credit cards are utilized. Historically, Prime Contractors' receivables are 95% paid within thirty (30) days. This minimizes Contractors' accounts receivable processes and alleviates payments to a bank for credit card processing.

63. SERVICES PERFORMED IN UNITED STATES

Pursuant to s. 16.705(1r), Wis. Stats., Services must be performed within the United States.

Exceptions can be found in s. 16.705(1r) and include:

- a. Contractual services that are not available to be performed within the United States,
- b. Contractual services if the payment for any part of the contractual services is made from federal moneys,
- c. The renewal, modification, or extension of any contract in effect on March 18, 2010,

- d. Contractual services purchased by the Board of Regents of the University of Wisconsin System with moneys appropriated under s. 20.285 (1) (j), (ja), (jm), (u), or (w) or (5) (j).

Countries party to the World Trade Organization Government Procurement Agreement may not be subject to this requirement.

For Authorized Users which are not subject to this Statute, this requirement may be waived.