Office of Procurement & Contracts
900 S.W. Jackson St., Room 451 South
Topeka, KS 66612

Kansas
Department of Administration

Phone: (785) 296-2376
Fax: (785) 296-7240
http://admin.ks.gov/offices/procurement-and-contracts

Sarah Shipman, Secretary

Sam Brownback, Governor

CONTRACT AWARD

Date of Award:	September 28, 2017
Contract ID:	43257
NASPO ValuePoint:	05715
Replace Contract:	08722
Procurement Officer: **Telephone:** **E-Mail Address:** **Web Address:**	Stephanie Creed 785-296-7251 Stephanie.Creed@ks.gov http://admin.ks.gov/offices/procurement-and-contracts
Item:	Public Safety Communications Equipment - Radios
Agency/Business Unit:	Statewide
Period of Contract:	Date of Award through December 31, 2026 (With the option to renew for additional terms by mutual agreement of both parties)
Contractor: **Vendor ID:**	Nokia of America Corporation 601 Data Drive Plano, TX 75075 0000014771
Contact Person: **E-Mail:** **Local Telephone:**	Mayank Bhatia mayank.l.bhatia@nokia.com 818-746-7891
Amendments:	Amendment 1 – Contract renewed through June 30, 2021. In addition, Alcatel-Lucent name has changed to Nokia of America effective January 1, 2018. Amendment 2 – Contract renewed through December 31, 2026, with NASPO Participating Addendum Master Agreement #: 00318.

Payment Terms: Net 30

Political Subdivisions: Pricing **is** available to the political subdivisions of the State of Kansas.

Procurement Cards: Agencies **may** use a P-Card for purchases from this contract.

Administrative Fee: Administrative fees **have been** incorporated into the unit prices of this contract.

The above referenced contract award was recently posted to Procurement and Contracts website. The document can be downloaded by going to the following website: http://www.da.ks.gov/purch/Contracts/.

PARTICIPATING ADDENDUM {"Addendum")

NASPO ValuePoint (formerly WSCA-NASPO)
Public Safety Communication Support Equipment 05715 ("Master Agreement")
Lead by the State of Washington (hereinafter "Lead State")

PARTICIPATING ADDENDUM

Alcatel-Lucent USA, Inc. (part of Nokia Group)
(hereinafter "Contractor")

And

State of Kansas
(hereinafter "Participating State")
State Contract Number: 43257

1. Scope**:** This addendum covers the purchase of public safety communication equipment and is for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts.

Contractor has been awarded the following category/subcategory:

Microwave Radio, Carrier Grade, Packet Data
Microwave Radio, Network Grade

2. Participating State Modifications or Additions to Master Agreement:

a. The laws of the State of Kansas shall govern this Addendum.

b. Order of precedence is modified as follows:

1. State of Kansas Contractual Provisions Attachment (as modified), DA-146a attached and incorporated into this Addendum as Attachment A.
2. This Participating Addendum.
3. The Master Agreement 05715 and its Exhibits.
4. Contractor's NASPO contract proposal including best and final offer.

c. **Shipping and F.O.B. Point:** Prices shall be F.O.B. DESTINATION, PREPAID AND ALLOWED (included in the price), which means delivered to a state agency's receiving dock without additional charge. Shipments shall be made in order to arrive at the destination at a reasonable time for unloading during regular working hours between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

d. **Political Subdivisions**: Political subdivisions (State Agencies, Cities, Counties, School Districts and etc.) are permitted to utilize contracts administered by Procurement and Contracts. Conditions included in this contract shall be the same for political subdivisions. The State has no responsibility for payments owed by political subdivisions. The vendor must deal directly with the political subdivision.

e. **Business Procurement Card:** Agencies may use a Business Procurement Card (Visa) in lieu of a state warrant to pay for its purchases as mutually agreed upon, in writing, in advance. No additional charges will be allowed for using the card.

f. **State of Kansas Administrative Fee / Taxes:** Contractor must pay a 1/2% Administrative Fee to the Participating State on all purchases (including political subdivisions) made against this contract. The Administrative Fee is to be based upon the total dollars invoiced under the contract. The Administrative Fee shall be made in check form, payable to the "State of Kansas – Procurement and Contracts" and must be paid within 30 days following the end of each quarter.

The State of Kansas and its agencies is exempt from federal, state and local taxes.

g. **Quarterly Reports:** The Contractor is required to submit a quarterly report to Participating State Procurement and Contracts (reports@ks.gov) detailing all acquisitions made by the Participating State from this Addendum. This report should include as a minimum the agency name, quantity, description and amount.

h. **Contract Reference Number:** Participating State Contract Number 43257 has been assigned to this Addendum and MUST be shown on all correspondence or other documents associated with this Addendum and MUST be referred to in all verbal communications.

i. **Termination for Convenience:** The Participating State Director of Purchases may terminate performance of work under this contract in whole or in part whenever, for any reason, if the Participating State Director of Purchases shall determine that the termination is in the best interest of the Participating State. In the event that the Participating State Director of Purchases elects to terminate this contract pursuant to this provision, it shall provide the Contractor written notice at least thirty (30) days prior to the termination date. The termination shall be effective as of the date specified in the notice. The Contractor shall continue to perform any part of the work that may have not been terminated by the notice.

j. **Rights and Remedies:** If this contract is terminated, the Participating State, in addition to any other rights provided for in this contract, may require the Contractor to transfer title and deliver to the State in the manner and to the extent directed, any completed materials. The Participating State shall be obligated only for those services and materials rendered and delivered prior to the date of termination.

If it is determined, after notice of termination for cause, that Contractor's failure was due to causes beyond the control of or negligence of the Contractor, the termination shall be a termination for convenience.

In the event of termination, the Contractor shall receive payment pro rated for that portion of the contract period services were provided to and/or goods were delivered to State subject to any offset by State for actual damages.

The rights and remedies of the State provided for in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

k. **Hold Harmless:** The Contractor shall indemnify the Participating State against any and all claims for injury to or death of any persons; for loss or damage to any property; and for infringement of any copyright or patent occurring in connection with or in any way incidental to or arising out of the occupancy, use, service, operations or performance of work under this contract. For the avoidance of doubt, in the event Contractor is notified in writing of an infringement claim, Contractor: (a) shall defend Participating Entity against any claim, action or proceeding brought against Participating Entity alleging an infringement or misappropriation of any United States patent, copyright, trade secret or other intellectual property right of any third party (other than an affiliate of Participating Entity) because of use, consistent with Contractor's specifications, of any Equipment manufactured by Contractor or Software owned by Contractor (an "Infringement Claim") and provided to Participating Entity under this Agreement; and (b) shall indemnify Participating Entity against, and hold Participating Entity harmless from, any and all costs and damages assessed against Participating Entity in a final judgment on such Infringement Claim, if: (i) Participating Entity gives Contractor prompt written notice of the Infringement Claim, (ii) Participating Entity grants to Contractor the sole authority to assume the defense, and the sole right to settle the Infringement Claim, through counsel chosen by Contractor, and (iii) Participating Entity furnishes all information and assistance requested by Contractor and reasonably cooperates with Contractor to facilitate the defense and settlement of the Infringement Claim. If Participating State's Participating Entity's use of any Product is enjoined as a result of any Infringement Claim, is subject to a Infringement Claim, or in Contractor's opinion is likely to be enjoined or to be subject to a Infringement Claim, then, at its expense, Contractor may: (a) procure for Participating Entity the right to continue to use the Product; or (b) replace or modify the Product with a functionally-equivalent or better Product so that Participating Entity's use is not subject to a Infringement Claim. If Contractor determines that it cannot accomplish either of the foregoing in a commercially reasonable manner, then, upon Contractor's request, (c) Participating Entity shall deliver the Product to Contractor, and (d) Contractor shall promptly credit to Participating Entity the Price of the Product less a reasonable allowance for use. Contractor has no obligations under this Section 2.k. with respect to a Infringement Claim to the extent that it: (a) arises from adherence to design modifications, specifications, drawings or written instructions which Participating Entity directs Contractor to follow, (b) relates to uses of any Product in combination with any item not provided directly by Contractor, if use of the Product alone would not have resulted in such infringement, (c) relates to the use of any Product in a manner not contemplated by this Agreement, or (d) relates to a modification of any Product by any person other than Contractor. Furthermore, Participating Entity shall defend Contractor against any such Infringement Claim, and indemnify Contractor against, and hold Contractor harmless from, any and all costs and damages incurred by Contractor arising from any such

Infringement Claim. The rights and remedies set forth in this Section 2.k. are Participating Entity's exclusive rights and remedies with respect to third party claims of infringement and misappropriation.

The Participating State shall not be precluded from receiving the benefits of any insurance the Contractor may carry which provides for indemnification for any loss or damage to property in the Contractor's custody and control, where such loss or destruction is to state property. The Contractor shall do nothing to prejudice the Participating State's right to recover against third parties for any loss, destruction or damage to Participating State property.

l. **Retention of Records:** Unless the Participating State specifies in writing a shorter period of time, the Contractor agrees to preserve and make available all of its books, documents, papers, records and other evidence, as reasonable, involving transactions related to this Addendum for a period of five (5) years from the date of the expiration or termination of this Addendum.

Matters involving litigation shall be kept for one (1) year following the termination of litigation, including all appeals, if the litigation exceeds five (5) years.

m. **Antitrust:** If the Contractor elects not to proceed, the Contractor assigns to the Participating State all rights to and interests in any cause of action it has or may acquire under the anti-trust laws of the United States and the Participating State relating to the particular products or services purchased or acquired by the Participating State pursuant to this contract.

n. **Severability:** If any provision of this contract is determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Addendum shall not be affected and each provision of this contract shall be enforced to the fullest extent permitted by law.

o. **Mandatory Provisions:** The provisions found in Contractual Provisions Attachment (DA-146a) which is attached, are incorporated by reference and made a part of this Addendum.

p. Appendix C, 23. PAYMENT. Add the following invoicing clarification: Contractor will issue invoices as follows: (i) for Products, upon shipment; (ii) for non-recurring Services, including engineering and installation Services, as such Services are completed; and (c) for recurring Services, including maintenance, technical support, and network management Services, upon commencement of such Services and thereafter on a quarterly basis at the beginning of each quarter.

q. Appendix C, 31. TITLE TO PRODUCT. For the avoidance of doubt, title to all property furnished by Contractor (excluding title to Licensed Materials [defined below]) will pass to and vest in Purchasing Entity or the State (as the case may be) upon delivery of such property by the Contractor.

r. Appendix C, 28.(c), INSPECTION AND ACCEPTANCE. To clarify the Acceptance Testing process for the Products:

i. If the Purchasing Entity does not give written notice of Acceptance or rejection at the end of any Acceptance Testing period for a Product, Acceptance will be deemed to occur on the day following the end of such Acceptance Testing period. In any event, Acceptance will be deemed to occur on the day that the State or the Purchasing Entity places the Product into production use (other than for testing performed during the Acceptance Testing period).
ii. After a particular Product has gone through Acceptance Testing and achieved Acceptance, additional quantities of that Product will be deemed to have achieved Acceptance upon delivery of such additional Products to the Purchasing Entity.
iii. Acceptance of Services will be deemed to occur as Services are performed.

s. Appendix C, 8, CONFIDENTIALITY, NON-DISCLOSURE, AND INJUNCTIVE RELIEF. For the avoidance of doubt:

t. Each party acknowledges and agrees that this Participating Addendum and any and all information obtained by the State from the Contractor in connection with this Agreement are subject to the State's public records act. The State and each Purchasing Entity acknowledge that Contractor's and its affiliated companies' and their respective licensors' trade secrets, meaning confidential business records or information, including any formulae, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information (collectively, "Contractor's Trade Secrets") are exempt from disclosure.

Contractor authorizes the State and each Purchasing Entity to use Contractor's Trade Secrets, which Contractor in its discretion may disclose or make available to the State or a Purchasing Entity, solely to exercise the State's or the Purchasing Entity's rights and to perform its obligations under this Participating Addendum and the Master Agreement. The State and each Purchasing Entity shall hold and maintain all of Contractor's Trade Secrets in confidence for the sole and exclusive benefit of Contractor or the affiliated company of Contractor who provided the Contractor's Trade Secrets or made them available to the State or the Purchasing Entity. Appendix C, 29, WARRANTY. In lieu of providing a copy of the warranties at the time of equipment delivery as set forth in Section 7.3 of the Master Agreement, Contractor's warranties for the Products listed on the Price List and for Services are as follows (the "Warranty Provisions"):

(1) Warranty for Equipment. Contractor warrants to Purchasing Entity that, during the warranty period defined in this paragraph, the equipment on the Price List ("Equipment") will, under normal use and service, be free from defects in materials and workmanship and function substantially in accordance with Contractor's technical specifications in effect on the date of shipment. The warranty period for Equipment is 12 months from the date of shipment. If Contractor installs the Equipment, such 12-month warranty period will commence on the date of installation completion. Under no circumstances, however, will the warranty period commence later than 4 months after the shipment date of the Equipment in question. Repaired or replaced units and subassemblies will have a new warranty period of 3 months from shipment date or the end of the original warranty period, whichever is longer. Purchasing Entity must obtain from Contractor a return authorization number and pack and ship, at its own cost, the defective part, subassembly or unit (if applicable) to the facility designated by Contractor, together with a detailed description of the problem and the appropriate documentation required for such shipment and return shipment thereof. Purchasing Entity will perform the re-installation of the repaired or replacement part, subassembly or unit at its own cost. When repairing or replacing any Product or part thereof, Contractor may use new, remanufactured, reconditioned, refurbished, or functionally equivalent Products or parts.

(2) Warranty for Software. Contractor warrants to Purchasing Entity that, during the warranty period defined in this paragraph, Embedded Software and Non-Embedded Software (collectively, "Software") will, under normal use and service, function substantially in accordance with Contractor's technical specifications in effect on the date of shipment or on the date that the Software is first loaded on Purchasing Entity's equipment or other products (as applicable). Contractor makes no warranty that any Software will operate uninterrupted or error free. The warranty period for Software is 90 days from the date of shipment or from the date that the Software is first loaded on the Purchasing Entity's Equipment or other products in accordance with the provisions below (depending upon which is applicable). If Contractor installs the Software, such 90-day warranty period will commence on the date of installation completion. Software will be deemed to have been loaded on the shipment date. The warranty period for corrected Software is the remainder of the original warranty period.
This paragraph does not apply to Software supplied under license from third parties, for which the rights and guarantees given are those which Contractor is authorized to provide to its customers.
Upon notice from Purchasing Entity, Contractor undertakes to remedy defects discovered in Software during the warranty period as follows. As the first remedial measure in the case of a problem affecting the Software subsequent to the installation of an updated or new version of such Software, Purchasing Entity shall reload the most recent Software update or version to restore performance. If the foregoing is not applicable or does not correct the problem, Contractor shall remedy the defect in the Software by delivering a correction to Purchasing Entity by electronic means or by delivery to Purchasing Entity of suitable media chosen solely by Contractor. Notwithstanding the aforesaid, defects in a part of Embedded Software that is embedded on devices which are not readily reprogrammable or correctable as set out above may, in Contractor's discretion, be rectified through the repair or replacement of the applicable Equipment module under the warranty terms and conditions applicable to Equipment.

(3) Warranty for Services. Contractor warrants to Purchasing Entity that, during the warranty period defined in this paragraph, Services purchased under the Participating Addendum will be performed in accordance with Contractor's written standards, or in the absence of such standards, in a professional and workmanlike manner. The warranty period for Services is 30 days, beginning on the date of completion. Upon notice from Purchasing Entity that any Service is not as warranted, Contractor shall correct the Service. The warranty period for the corrected Service is the remainder of the original warranty period.

(4) General Exclusions. The warranties of Contractor under these Warranty Provisions are valid only on condition that:
(a) Purchasing Entity has acted in conformity with the provisions of these Warranty Provisions;
(b) the Products have been transported, stored, installed and operated fully in accordance with the instructions and specifications of Contractor; and
(c) the Products have not been modified or repaired or reworked by anyone other than Contractor or its

designee or using any unauthorized parts, subassemblies or software without the prior written consent of Contractor; and

(d) Purchasing Entity has notified Contractor in writing during the warranty period of each defect discovered in the Products promptly upon its occurrence but in any event not later than 10 calendar days after it has been discovered; and

(e) Purchasing Entity has promptly provided any additional information concerning the defect and its occurrence, upon Contractor's reasonable request.

The Warranty Provisions do not cover:

(f) consumable, perishable or wearing parts or Products that have had their serial numbers or month and year of manufacture removed, altered, defaced or deleted; or

(g) any defects arising out of or in connection with (i) any improper handling or use, (ii) external reasons such as (but not limited to) excessive physical force, water, humidity or dust and other detrimental environmental or operating conditions beyond the limits specified for each Product, (iii) power failures, fires, explosions or any acts of God or other cause beyond Contractor's control, (iv) operator error, (v) use not in accordance with the Documentation, (vi) failure to implement any new releases or updates to Software, or (vii) use of the Product in conjunction with a non-Contractor product (except to the extent provided in the Documentation); or

(h) electromagnetic interference or malfunctions of interconnected equipment; or

(i) damage to property or equipment other than the Product itself.

Warranty does not include (1) Contractor assisting in diagnostic efforts, (2) access to Contractor's technical support web sites, databases, or tools, (3) Product integration, (4) on-site assistance, or (5) Documentation updates. These Services may be available for purchase during and after the warranty period at Contractor's published prices. The Warranty Provisions are non-transferable.

(5) Liability. Contractor's liability for any breach of warranty or otherwise under the Participating Addendum is strictly limited, at Contractor's sole discretion, to repair, correction or replacement of the defective Products or parts thereof or Services or the repayment of amounts paid with respect thereto (which repayment will take the form of a credit that can only be applied against the Purchasing Entity's future purchases and licenses under the Participating Addendum).

The fulfillment of the obligations set out in this Warranty Provision will be in full satisfaction of Contractor's liability for defects with regard to the Products and Services, and Purchasing Entity shall hold harmless and/or indemnify Contractor from any claim of third parties in this respect.

The above warranties are exclusive warranties. Contractor disclaims all other warranties, representations and conditions, express, implied and/or statutory, including all warranties, representations and conditions of merchantability, fitness for a particular purpose, and non-infringement. The remedies provided under paragraphs 1, 2, 3, and 5 are Purchasing Entity's exclusive remedies for failure of the Products and Services to conform to the warranties.

(6) Maintenance. If Purchasing Entity wishes Contractor to provide maintenance and support services in addition to these warranty services, the parties will enter into a separate written annual maintenance and support agreement on terms, conditions and prices to be agreed.

u. Appendix C, 19, LICENSE OF PRE-EXISTING INTELLECTUAL PROERTY.

Rights in Software. Notwithstanding anything to the contrary in this Participating Addendum and the Master Agreement, the Embedded Software and any software application program (in object-code form and excluding source code) that does not permanently reside on a computing device ("Non-Embedded Software") and any related documentation (collectively, "Licensed Material") are licensed to the Purchasing Entity and not sold. All rights, title and interest in and to the Licensed Material, including all intellectual property rights, remain vested in Contractor, its suppliers and licensors, and the Purchasing Entity is granted only a limited license to use the Licensed Material in conjunction with the equipment, as provided in this Section and in Section 31 of the Master Agreement (with respect to Embedded Software).

a. License to Non-Embedded Software. Upon delivery of any Non-Embedded Software and subject to the Purchasing Entity's payment of the applicable fees for such Non-Embedded Software, Contractor hereby grants the Purchasing Entity a limited, nonexclusive, nontransferable license (a) to use those portions and features of the Non-Embedded Software for which Contractor has authorized the activation solely on or with the single unit or arrangement of equipment for the Purchasing Entity's internal use in the United States; and (b) to copy the Non-Embedded Software as reasonably necessary for backup and archival purposes provided the copies contain all of Contractor's proprietary notices contained in the original Non-Embedded Software. The Purchasing Entity acknowledges and agrees that (c) Contractor may have encoded within the software optional functionality, features and/or capacity, which may be accessed only through the purchase of the applicable license extension

from Contractor at an additional price (no licenses are granted to such functionality, features and/or capacity unless the Purchasing Entity purchases the applicable license extension); and (d) the Purchasing Entity may need to obtain a new or additional application key from Contractor to use such software. This Section applies to all updates, upgrades, maintenance releases, revisions, and enhancements for the Non-Embedded Software.

b. Restrictions. The Purchasing Entity shall not directly or indirectly: (a) modify, copy (other than as permitted above), transmit, alter, merge, decompile, disassemble, reverse engineer or adapt any Licensed Material or portion thereof; (b) encumber, time-share, rent or lease the rights granted herein; (c) manufacture, adapt, create derivative works of, localize, port or otherwise modify any Licensed Material or portion thereof; (d) disclose or otherwise make available any Licensed Material or portion thereof to any third party; (e) enable any software functionality, feature or capacity which Contractor licenses as a separate product, without Contractor's prior written consent; (f) take any action that may result in the software becoming subjected to the terms of a license that requires it to be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge; or (g) use any Licensed Material or portion thereof except in accordance with this Section and Section 31 of the Master Agreement.

c. FOSS. If the Embedded Software or Non-Embedded Software contains free or open source software (FOSS) that is packaged separately or integrated with the Software, and to which third party license obligations apply, information will be available in the FOSS itself, on the website from which the download is available, or from Contractor upon Purchasing Entity's request, indicating the license under which such FOSS was released, and containing required acknowledgements, legends and/or notices. Unless otherwise dictated by a FOSS license (such as GPL, LGPL, and Affero GPL) that requires Contractor to grant the same rights to the parties to whom we distribute the FOSS, the Purchasing Entity's rights to use, copy, and further distribute (if applicable) the FOSS are governed by this license, and not by the FOSS license originally applicable to the FOSS. If Purchasing Entity modifies any FOSS then notwithstanding any other provisions to the contrary, Contractor will have no further liability or obligation to provide support, maintenance, warranty or indemnity with respect to the modified FOSS or any Contractor products with which the modified version of the FOSS interacts.

d. Additional License. Certain Software may be delivered with its own specific license ("Additional License"). In such a case, the terms of the Additional License will be delivered to Purchasing Entity, such as in a separate license .txt file or as part of a separate click-to-accept agreement, and will govern use of the Software by Purchasing Entity to the extent Contractor does not have a right to supersede them. Contractor's licensors are third party beneficiaries of these license provisions (and those in the Master Agreement) with respect to their software and documentation.

3. Primary Contacts: The primary contact individuals for this participating addendum are as follows (or their named successors):

Contractor

Name	Todd Theillman
Address	
Telephone	(952) 221-7361
Fax	N/A
E-mail	Todd.Theillman@nokia.com

Participating Entity

Name	Brienne Wilkins
Address	Procurements and Contracts
	900 SW Jackson Street, LSOB, 4th Fl, Rm 451 South
	Topeka, KS 66612
Telephone	785-296-2770
Fax	785-296-7240
E-mail	brienne.wilkins@ks.gov

4. Subcontractors:
All Contractor dealers/resellers/distributers authorized in the Participating State, as shown on the NASPO ValuePoint website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The **Contractor** dealer's/resellers/distributers participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

5. Purchase Orders:
All orders should contain the following (1) Mandatory Language "PO is subject to NASPO ValuePoint Contract 05715 (2) State of Kansas Contract Number: **43257** (3) Your Purchasing Entity Name, Address, Contact, & Phone-Number (4) Purchase order amount. Unless otherwise directed by Contractor, please send your Purchasing Entity PO to Contractor so Contractor can arrange for proper ordering and installation of the ordered items. During Addendum performance, Contractor may identify and make available to Purchasing Entities upon request a list of subcontractors, dealers, and distributors who will supply products or perform services in fulfillment of Contract requirements. If applicable, the information shall include subcontractor's, dealer's, and distributor's name, the nature of services to be performed or products to be sold by product category/subcategory, address, telephone, facsimile, email, and federal tax identification number (TIN) (if the company is authorized to sell and invoice for products and services). For the avoidance of doubt, each Order is a firm offer and must (i) identify the State by full name and address; (ii) itemize the quantity, part number and description of the Equipment that State desires to purchase, the Licensed Materials that State desires to license, and/or the Services that State desires to engage Contractor to perform; (iii) state the price of the itemized Products and Services determined under Section 3 of the Master Agreement (the "Price"), (iv) identify the "bill-to" address, (v) identify the "ship-to" address, (vi) set forth the requested delivery dates (and any shipping instructions) and/or performance dates, consistent with Contractor's standard published intervals, (viii) provide a State contact name and telephone number, and (ix) explicitly refer to the number of this Addendum State's "bill-to" and "ship-to" address must be located within the United States. All Orders are subject to review and written acceptance by Contractor. Each Order is subject only to the terms and conditions of this Addendum and the applicable quotation. Terms and conditions contained in an Order, which are inconsistent with this Participating Addendum or applicable quotation, including any pre-printed terms and conditions on such Order, are ineffective and void, unless such other Order terms and conditions have been mutually agreed in writing by the parties.

By submitting to Contractor an order under this Addendum, a Purchasing Entity represents and warrants that it has funding, appropriations, limitation, allotments, and/or other expenditure authority sufficient to allow Purchasing Entity to meet its payment obligations under such order.

6. Price Agreement Number:
All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: **43257** and the Lead State master price agreement number: 05715.

7. Individual Participating Entity:
Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Participating Entity. Except to the extent modified by a Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

This Addendum and the Master Agreement number 05715 (administered by the State of Washington) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

State of Kansas
Department of Administration
DA-146a (Rev. 06-12)

CONTRACTUAL PROVISIONS ATTACHMENT

Important: This form contains mandatory contract provisions and must be attached to or incorporated in all copies of any contractual agreement. If it is attached to the vendor/contractor's standard contract form, then that form must be altered to contain the following provision:

"The Provisions found in Contractual Provisions Attachment (Form DA-146a, Rev. 06-12), which is attached hereto, are hereby incorporated in this contract and made a part thereof."

The parties agree that the following provisions are hereby incorporated into the contract to which it is attached and made a part thereof, said contract being the _____ day of _____, 20_____.

1. **Terms Herein Controlling Provisions**: It is expressly agreed that the terms of each and every provision in this attachment shall prevail and control over the terms of any other conflicting provision in any other document relating to and a part of the contract in which this attachment is incorporated. Any terms that conflict or could be interpreted to conflict with this attachment are nullified.

2. **Kansas Law and Venue**: This contract shall be subject to, governed by, and construed according to the laws of the State of Kansas, and jurisdiction and venue of any suit in connection with this contract shall reside only in courts located in the State of Kansas.

3. **Termination Due To Lack Of Funding Appropriation**: If, in the judgment of the Director of Accounts and Reports, Department of Administration, sufficient funds are not appropriated to continue the function performed in this agreement and for the payment of the charges–hereunder, State may terminate this agreement at the end of its current fiscal year. State agrees to give written notice of termination to contractor at least 30 days prior to the end of its current fiscal year, and shall give such notice for a greater period prior to the end of such fiscal year as may be provided in this contract, except that such notice shall not be required prior to 90 days before the end of such fiscal year. Contractor shall have the right, at the end of such fiscal year, to take possession of any equipment provided State under the contract. State will pay to the contractor all regular contractual payments incurred through the end of such fiscal year, plus contractual charges incidental to the return of any such equipment. Upon termination of the agreement by State, title to any such equipment shall revert to contractor at the end of the State's current fiscal year. The termination of the contract pursuant to this paragraph shall not cause any penalty to be charged to the agency or the contractor.

4. **Disclaimer Of Liability**: No provision of this contract will be given effect that attempts to require the State of Kansas or its agencies to defend, hold harmless, or indemnify any contractor or third party for any acts or omissions. The liability of the State of Kansas is defined under the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.).

5. **Anti-Discrimination Clause**: The contractor agrees: (a) to comply with the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and the Kansas Age Discrimination in Employment Act (K.S.A. 44-1111 et seq.) and the applicable provisions of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) (ADA) and to not discriminate against any person because of race, religion, color, sex, disability, national origin or ancestry, or age in the admission or access to, or treatment or employment in, its programs or activities; (b) to include in all solicitations or advertisements for employees, the phrase "equal opportunity employer"; (c) to comply with the reporting requirements set out at K.S.A. 44-1031 and K.S.A. 44-1116; (d) to include those provisions in every subcontract or purchase order so that they are binding upon such subcontractor or vendor; (e) that a failure to comply with the reporting requirements of (c) above or if the contractor is found guilty of any violation of such acts by the Kansas Human Rights Commission, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration; (f) if it is determined that the contractor has violated applicable provisions of ADA, such violation shall constitute a breach of contract and the contract may be cancelled, terminated or suspended, in whole or in part, by the contracting state agency or the Kansas Department of Administration.

   Contractor agrees to comply with all applicable state and federal anti-discrimination laws.

   The provisions of this paragraph number 5 (with the exception of those provisions relating to the ADA) are not applicable to a contractor who employs fewer than four employees during the term of such contract or whose contracts with the contracting State agency cumulatively total $5,000 or less during the fiscal year of such agency.

6. **Acceptance Of Contract**: This contract shall not be considered accepted, approved or otherwise effective until the statutorily required approvals and certifications have been given.

7. **Arbitration, Damages, Warranties**: Notwithstanding any language to the contrary, no interpretation of this contract shall find that the State or its agencies have agreed to binding arbitration, or the payment of damages or penalties. Further, the State of Kansas and its agencies do not agree to pay attorney fees, costs, or late payment charges beyond those available under the Kansas Prompt Payment Act (K.S.A. 75-6403), and no provision will be given effect that attempts to exclude, modify, disclaim or otherwise attempt to limit any damages available to the State of Kansas or its agencies at law, including but not limited to the implied warranties of merchantability and fitness for a particular purpose.

8. **Representative's Authority To Contract**: By signing this contract, the representative of the contractor thereby represents that such person is duly authorized by the contractor to execute this contract on behalf of the contractor and that the contractor agrees to be bound by the provisions thereof.

9. **Responsibility For Taxes**: The State of Kansas and its agencies shall not be responsible for, nor indemnify a contractor for, any federal, state or local taxes which may be imposed or levied upon the subject matter of this contract.

10. **Insurance**: The State of Kansas and its agencies shall not be required to purchase any insurance against loss or damage to property or any other subject matter relating to this contract, nor shall this contract require them to establish a "self-insurance" fund to protect against any such loss or damage. Subject to the provisions of the Kansas Tort Claims Act (K.S.A. 75-6101 et seq.), the contractor shall bear the risk of any loss or damage to any property in which the contractor holds title.

11. **Information**: **No provision of this contract shall be construed as limiting the Legislative Division of Post Audit from having access to information pursuant to K.S.A. 46-1101 et seq.**

12. **The Eleventh Amendment**: "The Eleventh Amendment is an inherent and incumbent protection with the State of Kansas and need not be reserved, but prudence requires the State to reiterate that nothing related to this contract shall be deemed a waiver of the Eleventh Amendment."

13. **Campaign Contributions / Lobbying:** Funds provided through a grant award or contract shall not be given or received in exchange for the making of a campaign contribution. No part of the funds provided through this contract shall be used to influence or attempt to influence an officer or employee of any State of Kansas agency or a member of the Legislature regarding any pending legislation or the awarding, extension, continuation, renewal, amendment or modification of any government contract, grant, loan, or cooperative agreement.