

Participating Addendum Number 2024-BUS-0123
for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES
between
State of Iowa Department of Management
and
Panasonic Connect North America

This Participating Addendum is entered into by State of Iowa Department of Management ("Participating Entity") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number 23019, executed by Contractor and the State of Minnesota ("Lead State") for Computer Equipment, Peripherals & Related Services ("Master Agreement"):

Panasonic Connect North America ("Contractor")
Division of Panasonic Corporation of North America
Two Riverfront Plaza, 9th Floor
Newark, NJ 07102-5490

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Solomon Surles III
Government Contracts Manager
Solomon.surlesIII@us.panasonic.com
775-895-2401

Participating Entity's contact for this Participating Addendum is:

Bryan Dreiling
IT Vendor Manager
ocioprocurement@iowa.gov

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below or February 1, 2024, whichever is later, and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- III. PARTICIPATION AND USAGE.** This Participating Addendum may be used by all state agencies, institutions of higher education, cities, counties, districts, and other political subdivisions of the state, and nonprofit organizations within the state if authorized herein and by law. Participating Entity has sole authority to determine which entities are eligible to use this Participating Addendum. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.
- IV. GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.
- V. SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to the Contractor and Participating Entity and Purchasing Entities.
- a. Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities.
- b. Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

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COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES**

Between **State of Iowa Department of Management** and **Panasonic Connect North America**

Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by the Participating Entity in writing to Contractor within ten (10) calendar days of the amendment's effective date and is documented thereafter via written amendment hereto. **Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.**

- VI. **ORDERS.** Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.
- VII. **PARTICIPATING ENTITY REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.** Contractor shall provide a 1.00% administrative fee on all sales made through this Participating Addendum without affecting authorized prices/rates. This 1.00% administrative fee shall be paid quarterly to the Department of Management, 200 E. Grand Ave, Des Moines, IA 50309, Attn: Business Services Division Administrator. Payment shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Fee Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

In addition, Contractor shall submit a report with each quarterly payment detailing all payments received and also identifying the particular agency making the purchase, the Purchasing Instrument number, and the project agency to which it is attributable.

- VIII. **FEDERAL FUNDING REQUIREMENTS.** Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.
- IX. **ATTACHMENTS.** This Participating Addendum includes the following attachments:
- a. Attachment A: State of Iowa General Terms and Conditions for Goods Contracts
- X. **NOTICE.** Any notice required herein shall be sent to the following:

For Contractor:

Panasonic Connect North America
Division of Panasonic Corporation of North America
Two Riverfront Plaza, 9th Floor
Newark, NJ 07102-5490

For Participating Entity:

Iowa Department of Management
Division of Information Technology
200 E. Grand Avenue
Des Moines, Iowa 50309
ocioprocurement@iowa.gov

- XI. **SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT.** Upon execution, Contractor shall email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. While Participating Entity will maintain the official record of this Participating Addendum, the Parties agree that this Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

CONTRACTOR:
Panasonic Connect North America

PARTICIPATING ENTITY:
State of Iowa Department of Management

Richard Elliott
Richard Elliott (Jan 24, 2024 12:01 EST)

Signature

Signature

Richard Elliott
Printed Name

Kraig Paulsen
Printed Name

President
Title

Director
Title

Jan 24, 2024
Date

1-26-24
Date

ATTACHMENT A: State of Iowa General Terms and Conditions for Goods Contracts

1.1 Definitions

The following words shall be defined as set forth below:

"Contract" means the collective documentation memorializing the terms of the Participating Agreement between the State and the Contractor and includes these General Terms for Goods Contracts and the Master Agreement.

"Contractor" means the provider of the goods under the Contract.

"Product" refers to any other products, goods, materials or items that are ordered, developed, produced, delivered, installed, licensed, performed, provided, or otherwise made available, under or through this Contract or Order. The term "Product" includes all related, provided, or supplied Documentation, updates, source code, upgrades, and enhancements.

"Purchasing Instrument" means the documentation issued by the State to the Contractor for a purchase of goods in accordance with the terms and conditions of the Contract. It may include an identification of the items to be purchased, the delivery date and location, the address where the Contractor should submit the invoices, and any other requirements deemed necessary by the State. Any pre-printed contract terms and conditions included on Contractor's forms or invoices shall be null and void.

"State" means the State of Iowa and all state agencies, boards, and commissions, and any political subdivisions making purchases off of this Contract as permitted.

1.2 Availability of Contract to Other Entities

All other agencies of the State of Iowa and all political subdivisions of the State of Iowa may make purchases pursuant to the Contract.

1.3 Duration of Contract

The term of the Contract shall begin and end on the dates specified herein, unless extended or terminated earlier in accordance with the applicable terms and conditions. The State may exercise any applicable extension by giving the Contractor written notice of the extension decision at least thirty (30) days prior to the expiration of the initial term or renewal term.

1.4 Description of Goods

1.4.1 Specifications in Competitive Bidding Documents

The Contractor shall provide goods that comply with the specifications contained in the Contract.

1.4.2 Product Shipment and Delivery

All products shall be shipped F.O.B. Destination. Destination shall be the location(s) specified in the Purchase Instrument. Contractor bears all risk of loss during shipment of goods. The Contractor shall properly package goods. The State will not accept noticeably damaged goods. The State reserves the right to inspect the goods at a reasonable time subsequent to delivery in the event the State is unable to perform an adequate inspection of the goods at the time of delivery. If the State discovers damaged or defective goods not readily apparent at the time of delivery, the State shall have the right to return goods at no cost to the State, regardless of when

the damage or defect is discovered.

1.4.3 Non-Exclusive Rights

The Contract is not exclusive. The State reserves the right to select other contractors to provide goods similar or identical to goods described in the Contract during the term of the Contract.

1.4.4 No Minimums Guaranteed

The Contract does not guarantee any minimum level of purchases.

1.5 Compensation

1.5.1 Pricing

The Contractor will be compensated in accordance with the payment terms outlined in the Master Agreement.

The Contractor shall submit, on the frequency established in the Contract an invoice for Deliverables rendered in accordance with this Contract. The invoice shall comply with all applicable rules concerning payment of such claims. The Agency shall verify the Contractor's furnished material or performance of the Deliverables outlined in the invoice before making payment. The Agency shall pay all approved invoices in arrears and in conformance with [Iowa Code 8A.514](#). The Agency may pay in less than sixty (60) days, but an election to pay in less than sixty (60) days shall not act as an implied waiver of Iowa Code § 8A.514.

Unless otherwise agreed in writing by the parties, the Contractor shall not be entitled to receive any other payment or compensation from the State for any Deliverables provided by or on behalf of the Contractor under this Contract. The Contractor shall be solely responsible for paying all costs, expenses and charges it incurs in connection with its performance under this Contract.

1.5.2 Billings

The Contractor shall submit, on a regular basis an invoice for goods supplied to the State under the Contract at the billing address specified in the Purchase Instrument. The invoice shall comply with all applicable rules concerning payment of such claims. The State shall verify the receipt of furnished materials or Contractor's performance of the services outlined in the invoice before making payment. The State shall pay all approved invoices in arrears and in accordance with the Master Agreement and applicable provisions of Iowa law.

1.5.3 Delay of Payment Due to Contractor's Failure

If the State determines that the Contractor has failed to perform or deliver any service or product as required by the Contract, the Contractor shall not be entitled to any compensation under the Contracts until such service or product is performed or delivered. In this event, the State may withhold that portion of the Contractor's compensation which represents payment for goods that were not delivered.

1.5.4 Setoff Against Sums Owed by the Contractor

In the event that the Contractor owes the State any sum under the terms of the Contract, pursuant to any judgment, or pursuant to any law, the State may set off the sum owed to the State against any sum owed by the State to the Contractor in the State's sole discretion, unless otherwise required by law. The Contractor agrees that this provision constitutes proper and timely notice under the law of setoff.

1.6 Termination

1.6.1 Immediate Termination by the State

The State may terminate this Contract for any of the following reasons effective immediately without advance notice:

1.6.1.1 In the event the Contractor is required to be certified or licensed as a condition precedent to providing goods, the revocation or loss of such license or certification will result in immediate termination of the Contract effective as of the date on which the license or certification is no longer in effect;

1.6.1.2 The State determines that the actions, or failure to act, of the Contractor, its agents, employees or subcontractors have caused, or reasonably could cause, a person's life, health or safety to be jeopardized;

1.6.1.3 The Contractor fails to comply with confidentiality laws or provisions in the Master Agreement;

1.6.1.4 The Contractor furnished any statement, representation or certification in connection with the Contract or the bidding process which is materially false, deceptive, incorrect or incomplete.

1.6.2 Termination for Cause

The occurrence of any one or more of the following events shall constitute cause for the State to declare the Contractor in default of its obligations under its Contract.

1.6.2.1 The Contractor fails to deliver or has delivered nonconforming goods or fails to perform, to the State's satisfaction, any material requirement of its Contract or is in violation of a material provision of the Contract, including, but without limitation, the express warranties made by the Contractor;

1.6.2.2 The State determines that satisfactory performance of its Contract is substantially endangered or that a default is likely to occur;

1.6.2.3 The Contractor fails to make substantial and timely progress toward performance of the Base and/or Subsequent Contracts;

1.6.2.4 The Contractor becomes subject to any bankruptcy or insolvency proceeding under bankruptcy laws; the Contractor terminates or suspends its business; or the State reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;

1.6.2.5 The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Contract;

1.6.2.6 The Contractor has engaged in conduct that has or may expose the State or the State to liability, as determined in the State's sole discretion; or

1.6.2.7 The Contractor has infringed any patent, trademark, copyright, trade dress or any other intellectual property rights of the State, the State, or a third party.

1.6.3 Notice of Default

If there is a default event caused by the Contractor, the State shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the State's written notice) to the Contractor. If the breach or noncompliance is not remedied by the date of the written notice, the State may:

1.6.3.1 Immediately terminate its Contract without additional written notice; and/or,

1.6.3.2 Procure substitute goods from another source and charge the difference between the current contract and the substitute contract to the defaulting Contractor; and/or,

1.6.3.3 Enforce the terms and conditions of the Contract and seek any legal or equitable remedies.

1.6.4 Termination Upon Notice

Following 30 days' written notice, the State may terminate its Contract in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods provided under the Contract to the State up to and including the date of termination.

1.6.5 Termination Due to Lack of Funds or Change in Law

The State shall have the right to terminate its Contract without penalty by giving 30 days' written notice to the Contractor as a result of any of the following:

1.6.5.1 Adequate funds are not appropriated or granted to allow the State to operate as required and to fulfill its obligations under the Contract;

1.6.5.2 Funds are de-appropriated or not allocated or if funds needed by the State, at the State's sole discretion, are insufficient for any reason;

1.6.5.3 The State's authorization to operate is withdrawn or there is a material alteration in the programs administered by the State;

1.6.5.4 The State's duties are substantially modified.

1.6.6 Remedies of the Contractor in Event of Termination by the State In the event of termination of the Contract for any reason by the State, the State shall pay only those amounts, if any, due and owing to the Contractor for goods actually rendered up to and including the date of termination of the Contract and for which the State is obligated to pay pursuant to its Contract or Purchase Instrument. Payment will be made only upon submission of invoices and federal or state law to the extent allowed by applicable federal or state law including proper proof of the Contractor's claim. This provision in no way limits the remedies available to the State under the Contract in the event of termination. The State shall not be liable for any of the following costs:

1.6.6.1 The payment of unemployment compensation to the Contractor's employees;

1.6.6.2 The payment of workers' compensation claims, which occur during the Contract or extend beyond the date on which the Contract terminates;

1.6.6.3 Any costs incurred by the Contractor in its performance of the Contract, including, but not limited to, startup costs, overhead or other costs associated with the performance of the Contract;

1.6.6.4 Any taxes that may be owed by the Contractor in connection with the performance of the Contract, including, but not limited to, sales taxes, excise taxes, use taxes, income taxes or property taxes.

1.6.7 The Contractor's Termination Duties

Upon receipt of notice of termination or upon request of the State, the Contractor shall:

1.6.7.1 Cease work under the applicable Statement of Work and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the Contract, including, without limitation, results accomplished, conclusions resulting therefrom, and any other matters the State may require.

1.6.7.2 Immediately cease using and return to the State, any personal property or materials, whether tangible or intangible, provided by the State to the Contractor.

1.6.7.3 Comply with the State's instructions for the timely transfer of any active files and work product produced by the Contractor under the Contract.

1.6.7.4 Cooperate in good faith with the State, its employees, agents and contractors during the transition period between the notification of termination and the substitution of any replacement Contractor.

1.6.7.5 Immediately return to the State any payments made by the State for goods that were not delivered or rendered by the Contractor.

1.7 Confidential Information

1.7.1 Access to Confidential Data

Access to Confidential Data shall be in accordance with the terms of the Master Agreement.

1.7.2 Ownership

The private or confidential data shall remain the property of the State at all times.

1.7.3 No Dissemination of Confidential Data

Dissemination of Confidential Data shall be in accordance with the terms of the Master Agreement.

1.7.4 Subpoena

In the event that a subpoena or other legal process is served upon the Contractor for records

containing confidential information, the Contractor shall promptly notify the State and cooperate with the State or the State in any lawful effort to protect the confidential information.

1.7.5 Reporting of Unauthorized Disclosure

The Contractor shall immediately report to the State any unauthorized disclosure of confidential information.

If Contractor requests confidential treatment with respect to any information or material and if a judicial or administrative proceeding is initiated to compel the release of such material, Contractor shall, at its sole expense, appear in the proceeding or otherwise obtain an order restraining the release of such material from a court of competent jurisdiction. Agency may release the information or material with or without advance notice to Contractor if no judicial or administrative proceeding is initiated and Agency determines the information or material is not confidential under Iowa or other applicable law, or if Contractor failed to properly request confidential treatment under the RFP, or if Contractor rescinds its request for confidential treatment.

1.7.6 Survives Termination

The Contractor's confidentiality obligation under the Contract shall survive termination of the Contracts.

1.8 Indemnification

Indemnification shall be in accordance with the terms of the Master Agreement. The indemnification obligation of the Contractor shall survive termination of the Contract.

1.9 Insurance

1.9.1 Insurance Requirements

Insurance requirements shall be in accordance with the terms of the Master Agreement.

1.9.2 Waiver of Subrogation Rights

The Contractor shall obtain a waiver of any subrogation rights that any of its insurance carriers might have against the State. The waiver of subrogation rights shall be indicated on the certificates of insurance coverage supplied to the State.

1.10 Warranties

All warranties shall be in accordance with the terms of the Master Agreement.

1.10.1 Warranty – Nonconforming Goods

All goods delivered by Contractor to the State shall be free from any defects in design, material, or workmanship. If any goods offered by the Contractor are found to be defective in material or workmanship, or do not conform to Contractor's warranty, the State shall have the option of returning, repairing, or replacing the defective goods at Contractor's expense. Payment for goods shall not constitute acceptance. Acceptance by the State shall not relieve the Contractor of its warranty or any other obligation under the Contract.

1.10.2 Compliance with Federal Safety Acts

Contractor warrants and guarantees to the State that the goods provided under the Contract are in compliance with Sections 5 and 12 of the Federal Trade Commission Act; the Fair Packaging

and Labeling Act; the Federal Food, Drug, and Cosmetic Act; the Consumer Product Safety Act; the Federal Environmental Pesticide Control Act; the Federal Hazardous Substances Act; the Fair Labor Standards Act; the Wool Products Labeling Act; the Flammable Fabrics Act; the Occupational Safety and Health Act; the Office of Management and Budget 2 CFR part 200 and the Anti-Kickback Act of 1986.

1.10.3 Concepts, Materials, and Goods Produced

Contractor represents and warrants that all the concepts, materials, and goods produced, or provided to the State pursuant to the terms of the Contract shall be wholly original with the Contractor or that the Contractor has secured all applicable interests, rights, licenses, permits or other intellectual property rights in such concepts, materials, and goods. The Contractor represents and warrants that the concepts, materials, and goods and the State's use of same and the exercise by the State of the rights granted by the Contract shall not infringe upon any other work, other than material provided by the Contract to the Contractor to be used as a basis for such materials, or violate the rights of publicity or privacy of, or constitute a libel or slander against, any person, firm or corporation and that the concepts, materials and works will not infringe upon the copyright, trademark, trade name, trade dress patent, literary, dramatic, statutory, common law or any other rights of any person, firm or corporation or other entity. The Contractor represents and warrants that it is the owner of or otherwise has the right to use and distribute the goods contemplated by the Contract.

1.10.4 Conformity with Contractual Requirements

The Contractor represents and warrants that the goods provided in accordance with the Contract will appear and operate in conformance with the terms and conditions of the Contract.

1.10.5 Authority to Enter into Contract

The Contractor represents and warrants that it has full authority to enter into the Contract and that it has not granted and will not grant any right or interest to any person or entity that might derogate, encumber or interfere with the rights granted to the State.

1.10.6 Obligations Owed to Third Parties

The Contractor represents and warrants that all obligations owed to third parties with respect to the activities contemplated to be undertaken by the Contractor pursuant to the Contract are or will be fully satisfied by the Contractor so that the State will not have any obligations with respect thereto.

1.10.7 Title to Property

The Contractor represents and warrants that title to any property assigned, conveyed or licensed to the State is good and that transfer of title or license to the State is rightful and that all property shall be delivered free of any security interest or other lien or encumbrance.

1.10.8 Industry Standards

The Contractor represents and expressly warrants that all aspects of the goods provided or used by it shall at a minimum conform to the standards in the Contractor's industry. This requirement shall be in addition to any express warranties, representations, and specifications included in the Contract, which shall take precedence.

1.11 Product Recall

In the event that any of the goods are found by the Contractor, the State, or any governmental agency or

court having jurisdiction to contain a defect, serious quality or performance deficiency, or not to be in compliance with any standard or requirement so as to require or make advisable that such goods be reworked or recalled, the Contractor will promptly communicate all relevant facts to the State and undertake all corrective actions, including those required to meet all obligations imposed by laws, regulations, or orders, and shall file all necessary papers, corrective action programs, and other related documents, provided that nothing contained in this section shall preclude the State from taking such action as may be required of it under any such law or regulation. The Contractor shall perform all necessary repairs or modifications at its sole expense except to any extent that the Contractor and the State shall agree to the performance of such repairs by the State upon mutually acceptable terms.

1.12 Contract Administration

1.12.1 Compliance with the Law; Nondiscrimination in Employment

The Contractor, its employees, agents, and subcontractors shall not engage in discriminatory employment practices which are forbidden by federal or state law, executive orders, and rules of the Iowa Department of Administrative Services. The Contractor, its employees, agents, and subcontractors shall comply with all applicable federal, state, and local laws, rules, ordinances, regulations, orders when performing under the Contract, including without limitation, all laws applicable to the prevention of discrimination in employment (e.g., Iowa Code chapter 216 and section 19B.7) and the use of targeted small businesses as subcontractors and suppliers.

Upon the State's written request, the Contractor shall submit to the State a copy of its affirmative action plan, containing goals and time specifications, and accessibility plans and policies as required under Iowa Administrative Code chapter 11—121.

The Contractor, its employees, agents and subcontractors shall also comply with all federal, state, and local laws, including any permitting and licensure requirements, in carrying out the work performed under this Contract.

In the event Contractor contracts with third parties for the performance of any of the Contractor obligations under this Contract as set forth in section 1.12.6, Contractor shall take such steps as necessary to ensure such third parties are bound by the terms and conditions contained in this section.

Notwithstanding anything in this Contract to the contrary, Contractor's failure to fulfill any requirement set forth in this section shall be regarded as a material breach of this Contract and the State may cancel, terminate, or suspend, in whole or in part, this Contract. The State may further declare Contractor ineligible for future state contracts in accordance with authorized procedures or the Contractor may be subject to other sanctions as provided by law or rule.

1.12.2 Amendments

The Contract may be amended in writing from time to time by mutual consent of the parties. All amendments to the Contract must be in writing and fully executed by the parties.

1.12.3 Third-Party Beneficiaries

There are no third-party beneficiaries to the Contract. The Contract is intended only to benefit the State and the Contractor.

1.12.4 Choice of Law and Forum

The laws of the State of Iowa shall govern and determine all matters arising out of or in connection with this Contract without regard to the choice of law provisions of Iowa law. Any and all litigation commenced in connection with this Contract shall solely be brought in the District Court for the State of Iowa in the county where venue is appropriate. Alternatively, if venue is proper in federal court, suit shall solely be brought in the United States District Court for the Northern or Southern District of Iowa, wherever jurisdiction is appropriate. Nothing contained in this provision shall be construed as waiving any immunity to suit or liability, including without limitation sovereign immunity or Eleventh Amendment immunity, which may be available to the State.

1.12.5 Assignment and Delegation

The Contract may not be assigned, transferred or conveyed in whole or in part without the prior written consent of the State. For the purpose of construing this clause, a transfer of a controlling interest in the Contractor shall be considered an assignment.

1.12.6 Use of Third Parties

The State acknowledges that the Contractor may contract with third parties for the performance of any of the Contractor obligations under the Contract. All subcontracts shall be subject to prior approval by the State. The Contractor may enter into these contracts provided that the Contractor remains responsible for all goods delivered under the Contract and for the acts and omissions of all subcontractors, agents, and employees. All restrictions, obligations and responsibilities of the Contractor under the Contract shall also apply to the subcontractors. Any contract with a subcontractor must also preserve the rights of the State. The State shall have the right to request the removal of a subcontractor from the Contract for good cause.

1.12.7 Integration

The Contract represents the entire Contract between the parties. The parties shall not rely on any representation that may have been made which is not included in the Contract.

1.12.8 Headings or Captions

The paragraph headings or captions used in the Contract are for identification purposes only and do not limit or construe the contents of the paragraphs.

1.12.9 Not a Joint Venture

Nothing in the Contract shall be construed as creating or constituting the relationship of a partnership, joint venture, (or other association of any kind or agent and principal relationship) between the parties thereto. Each party shall be deemed to be an independent contractor contracting for goods and acting toward the mutual benefits expected to be derived herefrom. No party has the authority to enter into any contract or create an obligation or liability on behalf of, in the name of, or binding upon another party to the Contract.

1.12.10 Joint and Several Liability

If the Contractor is a joint entity, consisting of more than one individual, partnership, corporation or other business organization, all such entities shall be jointly and severally liable for carrying out the activities and obligations of the Contract, and for any default of activities and obligations.

1.12.11 Supersedes Former Contracts or Agreements

Unless otherwise specified in the Contract, this Contract supersedes all prior contracts or agreements between the State and the Contractor for the goods provided in connection with

the Contract.

1.12.12 Waiver

Except as specifically provided for in a waiver signed by duly authorized representatives of the State and the Contractor, failure by either party at any time to require performance by the other party or to claim a breach of any provision of the Contract shall not be construed as affecting any subsequent right to require performance or to claim a breach.

1.12.13 Notice

Any and all notices, designations, consents, offers, acceptances or any other communication provided for herein shall be given in writing by a reliable carrier which shall be addressed to the person identified in Section XI of the Participating Addendum. Each such notice shall be deemed to have been provided:

1.12.13.1 At the time it is actually received; or,

1.12.13.2 Within one day in the case of overnight hand delivery, courier or services such as Federal Express with guaranteed next day delivery; or,

1.12.13.3 Within five (5) days after it is deposited in the U.S. Mail in the case of registered U.S. Mail. From time to time, the parties may change the name and address of a party designated to receive notice. Such change of the designated person shall be in writing to the other party and as provided herein.

1.12.14 Cumulative Rights

The various rights, powers, options, elections and remedies of any party provided in the Contract shall be construed as cumulative and not one of them is exclusive of the others or exclusive of any rights, remedies or priorities allowed either party by law, and shall in no way affect or impair the right of any party to pursue any other equitable or legal remedy to which any party may be entitled as long as any default remains in any way unremedied, unsatisfied or undischarged.

1.12.15 Severability

If any provision of the Contract is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity or enforceability of any other part or provision of the Contract. Further, if any provision of the Contract is determined to be unenforceable by virtue of its scope, but may be made enforceable by a limitation of the provision, the provision shall be deemed to be amended to the minimum extent necessary to render it enforceable under the applicable law.

1.12.16 Authorization

Contractor represents and warrants that:

1.12.16.1 It has the right, power and authority to enter into and perform its obligations under the Contract.

1.12.16.2 It has taken all requisite action (corporate, statutory or otherwise) to approve execution, delivery and performance of the Contract, and the Contract constitutes a legal, valid and binding obligation upon itself in accordance with its terms.

1.12.17 Successors in Interest

All the terms, provisions, and conditions of the Contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives.

1.12.18 Record Retention and Access

Record retention and access shall be in accordance with the terms of the Master Agreement.

1.12.19 Solicitation

The Contractor warrants that no person or selling agency (except bona fide employees or selling agents maintained for the purpose of securing business) has been employed or retained to solicit and secure the Contract upon an agreement or understanding for commission, percentage, brokerage or contingency.

1.12.20 Public Records

The laws of the State of Iowa require procurement records to be made public unless otherwise provided by law.

1.12.21 Clean Air and Water Certification

Contractor certifies that none of the facilities it uses to produce goods provided under the Contract are on the Environmental Protection Agency (EPA) List of Violating Facilities. Contractor will immediately notify the State of the receipt of any communication indicating that any of Contractor's facilities are under consideration to be listed on the EPA List of Violating Facilities

1.12.22 Debarred, Suspended, and Ineligible Status

Contractor certifies that the Contractor and/or any of its subcontractors have not been debarred, suspended, or declared ineligible by any agency of the State of Iowa or as defined in the Federal Acquisition Regulation (FAR) 48 C.F.R. Ch.1 Subpart 9.4. Contractor will immediately notify the State if Contractor is debarred by the State or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors by a federal entity.

1.12.23 Use of Name or Intellectual Property

Contractor agrees it will not use the name or any intellectual property, including but not limited to, any State trademarks or logos in any manner, including commercial advertising or as a business reference, without the expressed prior written consent of the specific State agency involved.

1.12.24 Taxes

The State is exempt from Federal excise taxes, and no payment will be made for any taxes levied on Contractor's employee's wages. The State is exempt from State and local sales and use taxes on the Deliverables.

1.12.25 Certification Regarding Sales and Use Tax

By executing the Contract, the Contractor certifies it is either (a) registered with the Iowa Department of Revenue, collects, and remits Iowa sales and use taxes as required by the Iowa Code chapter 423; or (b) not a "retailer" or a "retailer maintaining a place of business in this state" as those terms are defined in Iowa Code subsections 423.1(47) & (48). The Contractor also acknowledges that the State may declare the Contract void if the above certification is false. The Contractor also understands that fraudulent certification may result in the State or its

representative filing for damages for breach of contract.

1.12.26 Contractor Assignments of Rights -Antitrust Claims

In consideration of the mutual promises contained herein, Contractor, through its duly authorized agent, conveys, sells, assigns, and transfers to the State of Iowa all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the anti-trust laws of the United States and the State of Iowa relating to the subject of the Contract.

1.12.27 Delays or Impossibility of Performance

Neither party shall be in default under the Contract if performance is prevented, delayed or made impossible to the extent that such prevention, delay, or impossibility is caused by a "force majeure." The term "force majeure" as used in this Contract includes an event that no human foresight could anticipate or which if anticipated, is incapable of being avoided. Circumstances must be abnormal and unforeseeable, so that the consequences could not have been avoided through the exercise of all due care, such as acts of God, war, civil disturbance and other similar causes. The delay or impossibility of performance must be beyond the control and without the fault or negligence of the parties. "Force majeure" does not include: financial difficulties of the Contractor or any parent, subsidiary, affiliated or associated company of Contractor; claims or court orders that restrict Contractor's ability to deliver the Deliverables contemplated by this Contract; strikes; labor unrest; or supply chain disruptions. If delay results from a subcontractor's conduct, negligence or failure to perform, the Contractor shall not be excused from compliance with the terms and obligations of the Contract unless the subcontractor or supplier is prevented from timely performance by a "force majeure" as defined in this Contract. If a "force majeure" delays or prevents the Contractor's performance, the Contractor shall immediately use its best efforts to directly provide alternate, and to the extent possible, comparable performance. Comparability of performance and the possibility of comparable performance shall be determined solely by the Agency. The party seeking to exercise this provision and not perform or delay performance pursuant to a "force majeure" shall immediately notify the other party of the occurrence and reason for the delay. The parties shall make every effort to minimize the time of nonperformance and the scope of work not being performed due to the unforeseen events. Dates by which performance obligations are scheduled to be met will be extended only for a period of time equal to the time lost due to any delay so caused.

1.12.28 Obligations Beyond Contract Term

The Contract shall remain in full force and effect to the end of the specified term or until terminated or canceled pursuant to the Contract. All obligations of the Contractor incurred or existing under the Contract as of the date of expiration, termination or cancellation will survive the termination, expiration or conclusion of the Contract.

1.12.29 Counterparts

The parties agree that the Contract has been or may be executed in several counterparts, each of which shall be deemed an original and all such counterparts shall together constitute one and the same instrument.

1.12.30 Further Assurances and Corrective Instruments

The parties agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of the Contract.

