

**STATE OF NEW JERSEY
PARTICIPATING ADDENDUM
Pursuant to
NASPO ValuePoint Contract for Temporary Employment Related Services
LEAD STATE CONTRACT 20-00000-21-00021AA, Solicitation #20-00000-21-00021**

This Participating Addendum is made by and between, 22nd Century Technologies, Inc., whose address is 220 Davidson Avenue Suite, Somerset, NJ 08873 ("Contractor"), and the State of New Jersey, Department of the Treasury, Division of Purchase and Property ("State") whose address is 33 West State Street, 8th Floor, P.O. Box 039, Trenton, New Jersey 08625, on behalf of the State of New Jersey and all "Authorized Purchasers", as defined below. For clarification of references throughout this document, the term "State," in any form, refers to the State and any Authorized Purchaser, unless otherwise indicated. Capitalized terms used but not defined shall have the meaning ascribed to them in the Master Agreement.

WHEREAS, pursuant to N.J.S.A. 52:34-6.2, the Director of the Division of Purchase and Property ("Director"), within the New Jersey Department of the Treasury ("Division") "may enter into cooperative purchasing agreements with one or more states for the purchase of goods and services;" and

WHEREAS, the State of New Mexico ("Lead State") and Contractor have entered into Master Agreement # 20-00000-21-00021AA in accordance with the State of New Mexico Solicitation for Temporary Employment Related Services; and

WHEREAS, under the Rehabilitation Facilities Set Aside Act, N.J.S.A. 30:6-23 et seq., and the implementing regulations set forth in N.J.A.C. 10:99-1.1 et seq., certain commodities and services have been set aside for purchase from approved rehabilitation facilities and the State is required to procure such commodities and services from the Central Non-Profit Agency, ACCSES NJ, Inc., CNA Services (the "CAN"); and

WHEREAS, N.J.A.C. 10:99-5.1 prohibits the State from purchasing approved set-aside commodities and services unless granted a formal waiver from the CNA; and

WHEREAS, the CNA has granted the State a formal waiver with respect to temporary staffing services, attached hereto as Exhibit E, pursuant to which the State may procure such services under this Participating Addendum, if CNA cannot provide acceptable candidates to fill a position within the North Region of the State of New Jersey (comprised of Bergen, Essex, Hudson, Morris, Passaic, Somerset, Union, and Warren Counties) within eight (8) business hours of receiving a request from the State; and

WHEREAS, the Director has determined that entering into a Participating Addendum with Contractor is the most cost effective method of procuring these products and services, and that it is in the best interest of the State to enter into a Participating Addendum with Contractor; and

WHEREAS, the parties seek to enter into this Participating Addendum to memorialize the terms of their contractual relationship;

NOW THEREFORE, for good and valuable consideration, receipt of which hereby acknowledged, the parties to this Participating Addendum hereby agree as follows:

1.0 Term and Extension Option; Order of Precedence; Entire Agreement:

- A. The term of this Participating Addendum shall be effective from the Effective Date, which is the last date signed below, and shall continue for a period ending on the Termination Date of the Master Agreement or when this Participating Addendum is terminated in accordance with the Master Agreement or this Participating Addendum, whichever shall occur first.
- B. The entire agreement, and all rights and obligations between the parties, shall consist of the following documents (which shall be collectively referred to as the "Participating Addendum"):
 1. This cover packet to the Participating Addendum;
 2. The State of New Jersey Standard Terms and Conditions, attached hereto as Exhibit A;
 3. The Master Agreement, including its attachments and exhibits, attached hereto as Exhibit B;
 4. The Solicitation, incorporated herein by reference as Exhibit C;

5. The Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State, incorporated herein by reference as Exhibit D; and
6. Future order specific documents, in the following order:
 - a. A Contractor supplied scope of work as applicable, approved in writing by the Authorized Purchaser;
 - b. A Purchase Order issued by an Authorized Purchaser against the Participating Addendum;

The documents comprising the Participating Addendum shall be read to be consistent and complimentary. In the event of any conflict between the terms of the documents comprising the Participating Addendum, the conflict shall be resolved by giving priority to the documents in the order listed above.

- C. The Participating Addendum sets forth the entire agreement between the parties and supersedes all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof.
- D. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Participating Addendum and the Master Agreement, shall not be added to or incorporated into this Participating Addendum or the Master Agreement by any subsequent purchase order, scope of work document or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected.
- E. Amendments – This Participating Addendum may not be amended except in a writing signed by both parties.

2.0 Scope of Services:

- A. The scope of products and services that may be purchased by Authorized Purchasers shall be those products and service offerings awarded under the Master Agreement. Notwithstanding the foregoing, Information Technology Professional Services are outside the scope and shall not be procured under this Participating Addendum.
- B. Any restrictions or limitations regarding the Executive Branch use of this Participating Addendum will be set forth in the Method of Operation, as may be amended from time to time and posted on the State's website.
- C. Financing, leasing, and renting is not permitted under this Participating Addendum for State agencies. Authorized Purchasers may finance their purchase, if permitted under law. If financing is through a lease agreement, that agreement is separate from this Participating Addendum and is between the Contractor and the respective Authorized Purchaser only.

3.0 Definitions

- A. "Authorized Purchasers" under this Participating Addendum shall mean:
 1. Any government agency, department, office, instrumentality, division, unit or other entity of the State;
 2. Any county, borough, city, municipality, town, township, special purpose district, or other political subdivision of the State;
 3. Quasi-state agencies as defined in N.J.S.A. 52:27B-56.1 as any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member;
 4. School districts per N.J.S.A. 52:25-16.1;
 5. Volunteer fire departments, volunteer first aid squads and rescue squads per N.J.S.A. 52:25-16.2; and
 6. Independent institutions of higher education per N.J.S.A. 52:25-16.5;
 7. County colleges per N.J.S.A. 18A:64A-25.9;
 8. State colleges per N.J.S.A. 18A:64-60; or
 9. Any legal successor in interest to any entity above.

Each Authorized Purchaser is responsible for the full cost of purchases made under this Participating Addendum.

- B. "Intrastate Cooperative Purchasing Participants" shall mean political subdivisions, including any county, borough, city, municipality, town, township, special purpose district, volunteer fire departments and first aid squads, and independent institutions of higher education and school districts pursuant to N.J.S.A. 52:25-16.1 *et seq.*, State and county colleges pursuant to N.J.S.A. 18A:64-60 and 18A:64A-25.9, quasi-State agencies and independent authorities pursuant to N.J.S.A. 52:27B-56.1, and other New Jersey public entities having statutory authority to utilize select State contracts issued by the Division.

4.0 Modifications to the Terms of the Master Agreement

- A. Section 5.2, Payment, of the Master Agreement No. 20-00000-21-00021AA is hereby revised to reflect that the State shall make all payments to 22nd Century under the provisions of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 *et seq.*, as stated in Paragraph 6.5 of the State's Standard Terms and Conditions (attached hereto as Exhibit A).
- B. The service area for the State of New Jersey will be divided into the following three zones.
1. The North Region is comprised of the following counties: Bergen, Essex, Hudson, Morris, Passaic, Somerset, Sussex, Union, and Warren.
 2. The Central Region is comprised of the following counties: Burlington, Hunterdon, Mercer, Middlesex, and Monmouth.
 3. The South Region is comprised of the following counties: Atlantic, Camden, Cape May, Cumberland, Gloucester, Ocean, and Salem.
- C. 22nd Century is required to use the CNA as a sub-contractor in the manner set forth below:
1. The CNA will be the primary vendor in the North Region and shall have a minimum of eight (8) business hours in order to provide acceptable candidates to fill the position. If eight (8) hours expire without the CNA providing the requesting using agency(ies) with acceptable candidates, the job request will be opened to all participating vendors.
 2. For any work that CNA provides to the State in any region of the State (North, Central, or South), CNA is permitted to add a surcharge of up to 15% at the time of invoicing for temporary employees provided by the CNA. This surcharge will be clearly indicated at the time of ordering.

5.0 Miscellaneous

- A. No Waiver - No term or provision of this Participating Addendum shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or any subsequent breach, except as may be expressly provided in the waiver or consent.
- B. Dispute Resolution - The State and Contractor will attempt to resolve any dispute through face-to-face negotiation with persons fully authorized to resolve the dispute or through non-binding mediation utilizing a mediator agreed to by the parties, rather than through litigation. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 *et seq.*, may begin until either such persons conclude, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely.
- C. Arbitration or Mediation - Any provision regarding arbitration or binding mediation within the Master Agreement is deleted in its entirety.
- D. Pursuant to N.J.A.C. 17:12-1B.2, notwithstanding anything to the contrary in the Master Agreement, under no circumstances will the State indemnify Contractor and any such provision in the Master Agreement shall be of no force and effect.
- E. Notwithstanding anything to the contrary in the Master Agreement, the State shall not be responsible for the Contractor's attorney fees and/or expenses.
- F. Notwithstanding anything to the contrary in the Master Agreement, the State does not agree to auto-renewal of maintenance, technical support, service fees, subscription fees or any other product or service requiring periodic renewal.

G. Quarterly Sales Reporting And Supplier Convenience Fee

1. Quarterly Sales Reporting - The Contractor shall submit a Sales Report documenting all sales made under the Participating Addendum. The Sales Report shall be submitted directly to Periscope using the [NJSTART](#) system no later than thirty (30) calendar days after the end of each calendar quarter. The calendar quarters will end March 31, June 30, September 30, and December 31. The Sales Report must contain the following information:
 - Complete and accurate details of all sales, credits, returns, refunds, and the like for the reporting quarter;
 - Purchasing entity;
 - Total of Supplier Convenience Fee amount due for the reporting quarter;
 - Such other information as the State may reasonably request; and
 - If no sales were made to the State during the reporting quarter, then a report shall be submitted showing zero sales and zero Supplier Convenience Fee due.
2. Supplier Convenience Fee - The Contractor shall remit the Supplier Convenience Fee in the amount of one percent (1%) of all Purchases made under the Participating Addendum.
3. Remittance of the Supplier Convenience Fee - On a quarterly basis, the Contractor shall remit the Supplier Convenience Fee directly to Periscope Holdings, Inc. (Periscope) no later than thirty (30) days after the end of each calendar quarter. The calendar quarters will end March 31, June 30, September 30, and December 31. Failure to remit the Supplier Convenience Fee timely and accurately may result in Contractor's goods and/or services being made ineligible for purchase through the [NJSTART](#) Marketplace.
4. Quarterly Sales Reporting and remittance of the Supplier Convenience Fee shall begin on the first calendar quarter starting after the effective date of the Participating Addendum.
5. Retention and Inspection of Records and Audit - The Contractor shall keep records of all sales made to Using Agencies and Intrastate Cooperative Purchasing Participants in sufficient detail to enable the State to determine the Supplier Convenience Fee payable by the Contractor. The State and/or Periscope may examine and audit, at its own expense, Contractor's sales records and Sales Reports for completeness and accuracy. If such examination reveals underpayment of the Supplier Convenience Fee, the Contractor shall immediately pay to Periscope the amount of deficiency. If the examination reveals an underpayment of 5% or more, then the Contractor shall reimburse the State and/or Periscope for the cost of the audit.
6. Catalog Enablement - The Contractor shall cooperate with the State and/or Periscope as requested to upload catalog items and pricing consistent with the awarded Participating Addendum to the [NJSTART](#) Marketplace module within thirty days (30) of the Participating Addendum award.

H. Delivery Guarantees - In the event delivery of goods or services is not made within the number of days stipulated, the State shall be authorized to obtain the product or service from any available source.

6.0 The State of New Jersey Mandatory Certification Requirements

The following are the State of New Jersey standard procurement forms and requirements that Contractor agrees to fulfill prior to the Effective Date. Some Authorized Purchasers may have additional requirements when placing an order and Contractor shall comply with same as necessary.

- A. [Ownership Disclosure](#) (N.J.S.A. 52:25-24.2);
- B. [Disclosure of Investment Activities in Iran](#) (N.J.S.A. 52:32-55 et. seq.);
- C. [Disclosure of Investigations and Actions Involving Bidder Form](#);
- D. [MacBride Principles](#) (N.J.S.A. 52:34-12.2);
- E. [Source Disclosure Certification](#) (N.J.S.A. 52:34-13.2);
- F. [Completed Contractor Certification and Disclosure of Political Contributions](#) (N.J.S.A. 19:44A-20:13 et. seq.);
- G. [Vendor Certification](#) (P.L. 2005, c.271);
- H. New Jersey Business Registration (N.J.S.A. 52:32-44);
- I. Proof of insurance as specified herein;
- J. [Proof of compliance with New Jersey Affirmative Action requirements](#) (N.J.A.C. 17:27-1.1 et. seq.):
 - New Jersey Form AA-302 Affirmative Action Employee Information Report; or
 - New Jersey Affirmative Action Certificate; or
 - Federal Affirmative Action Approval Letter.
- K. [Disclosure of Prohibited Activities in Russia / Belarus Form](#)

7.0 Primary Contacts

Any notice between the parties provided for in this Participating Addendum, or elsewhere in the Master Agreement shall be in writing, and shall be sent both via regular certified mail return receipt requested and via email to the addresses provided. The Parties should give prompt notice to each other if the appropriate person or address changes. The primary contacts for this Participating Addendum are as follows:

State of New Jersey – Department of the Treasury – Division of Purchase and Property	
Name	Jennifer Loughran
Title	Procurement Specialist
Address	33 West State Street, 8 th Floor, PO Box 230 Trenton, New Jersey 08625-0230
Telephone	609-943-4634
Fax	
Email	Jennifer.Loughran@treas.nj.gov

State of New Jersey – Agency Name	
Name	Each Using Agencies Fiscal Officer
Title	State Contract Manager
Address	
Telephone	
Fax	
Email	

22nd Century Technologies Inc.	
Name	Sandeep Singh
Title	Business Head- Operations & Client Relations
Address	500 College Road East Princeton, NJ 08540
Telephone	(703) 286-7655
Fax	(732) 537-0888
Email	sandeeps@tscti.com

IN WITNESS WHEREOF, The Contractor and the State have caused this Participating Addendum to be executed by their authorized representatives and agree that this Participating Addendum may be executed in counterparts, each original signed page to become part of the original document.

22nd Century Technologies, Inc.



Caroline Rist

Digitally signed by Caroline Rist
Date: 2023.01.05 15:11:10 -05'00'

Signature

January 5, 2023

Date

Caroline Rist, Vice President, Compliance

Print Name and Title

The State of New Jersey

Department of the Treasury - Division of Purchase and Property

DocuSigned by:



Amy F. Davis, Acting Director

January 17, 2023

Date