PARTICIPATING ADDENDUM
for the State of Washington
(Washington State Department of Information Services Amendment Number 03-01)

WESTERN STATES CONTRACTING ALLIANCE

ALCATEL INTERNETWORKING, INC.
MASTER PRICE AGREEMENT
AR 1466

This Participating Addendum (**"PA"**) is entered into between the **State of Washington, Department of Information Services ("DIS" or "State"),** who is a Participating State in the Western States Contracting Alliance **("WSCA")** and **Alcatel Internetworking, Inc. ("Contractor" or "Alcatel")** who holds the state of Utah WSCA Master Price Agreement AR1466 for data communications equipment (routers, switches, LAN/WAN, CSU/DSU), and associated services. This PA is entered into for the purpose of making the data communications equipment and associated services under Master Price Agreement AR1466 available to Washington State Purchasers.

The Washington State Purchasers who are authorized to purchase under this PA shall be DIS and any other state agency, or political subdivision (including public schools, colleges or universities), or qualified non-profit organization of the state of Washington, who have a properly executed Interlocal Cooperative Agreement (Customer Service Agreement) with DIS. This agreement is not for personal use.

Recitals

The state of Utah, as the Lead State for WSCA, conducted a competitive solicitation process, specifically a Request for Proposals, for data communication equipment and associated services.

Alcatel was awarded a contract resulting from the competition and entered into a Master Price Agreement, Number AR1466, dated June 18, 2002 with the state of Utah on behalf of the participating members of WSCA, for data communication equipment and associated services.

Washington State, as a member of WSCA, is authorized to execute this PA that will make the data communications equipment and associated services under Master Price Agreement AR1466 available to Washington State Purchasers.

This PA is based on the terms and conditions of Utah's Master Price Agreement AR1466 and its Attachments (**"Master Price Agreement" or "Agreement"**). Contractor and the State want to enter into this PA to clarify certain of their respective rights and obligations under the Master Price Agreement. For ease of use, the applicable terms and conditions in the Master Price Agreement are restated in the PA so that the entire agreement between Contractor and the State with respect to the Products and Services, is contained in this PA.

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IN CONSIDERATION of the mutual promises as hereinafter set forth, the parties agree as follows:

1. Definitions

The following terms as used throughout this PA shall have the meanings set forth below.

"Acceptance Date" shall mean: (i) for Contractor-installed Products or Products undergoing formal acceptance testing, the date of Purchaser's written notification to Contractor of acceptance of the Products or the day following the written or default timeline for acceptance testing if no notice of deficiencies has been provided to Contractor pursuant to Section 20.1 below; (ii) for other Products, the tenth (10th) day after the date of delivery of the Products, if Purchaser has not notified Contractor of any error, defect or nonconformity pursuant to Section 17 **Drop Ship Inspection by Purchaser**.

"Alcatel Business Days" shall mean Monday through Friday, except as follows: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day plus the day before and the day after Thanksgiving Day, and all days from December 24th through December 31st.

"Business Days and Hours" shall mean Monday through Friday, from 8:00 a.m. until 5:00 p.m., Pacific Time, except for holidays observed by the state of Washington.

"Confidential Information" shall mean information that may be exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes. Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, Purchaser source code or object code, or Purchaser security information, or information identifiable to an individual that relates to any of these types of information.

"Contractor" shall mean Alcatel Internetworking, Inc., its employees and agents.

"Contractor Account Manager" shall mean a representative of Contractor who is assigned as the primary contact person whom the TSD Contract Administrator shall work with for the duration of this PA and as further defined in the section titled **Contractor Account Manager**.

"Customer" shall mean the same as Purchaser.

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

"Order Document"/"Order" shall mean any official State document and attachments thereto specifying Products and Services to be purchased or licensed from Contractor under this PA. Each Order shall specify on its face the types and quantities of Products and/or Services to be furnished by Contractor. If installation and/or maintenance Services are to be furnished to Purchaser, then the Order shall be accompanied by a Statement of Work (SOW) signed by Contractor and Purchaser. References to Order or Order Document in this PA shall be deemed to include the SOW when it is a required part of the Order.

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

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

"Product(s)" shall mean data communications equipment, specifically Alcatel routers, switches, and associated components, software and documentation, as more specifically described in Schedule A: *Authorized Products and Services Price List.*

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

"Purchaser" shall mean DIS and any other state agency, or political subdivision (including public schools, colleges or universities), or qualified non-profit organization of the state of Washington, who have a properly executed Interlocal Cooperative Agreement (Customer Service Agreement) with DIS. **"Purchaser"** shall mean the same as authorized Purchasing Entities, Participating Entities, Procuring Agencies, or Customer.

"Services" shall mean those services provided under this PA related to the Products being acquired and includes such things as installation services, maintenance, training, etc.

"Seller" shall mean the same as Contractor.

"State" shall mean DIS, any division, section, office, unit or other entity of DIS or any of the officers or other officials lawfully representing DIS. State may also include Purchaser.

"Statement of Work" or **"SOW"** shall mean a document setting forth the installation or maintenance to be accomplished by Contractor under the terms and conditions of this PA.

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

"Verizon" shall mean Verizon Northwest Incorporated or any of its Verizon affiliates.

2. Manufacturer Product Line(s):

Contractor is authorized to provide the following manufacturer's Products and associated Services, as listed by category, and more specifically described in Schedule A: *Authorized Products and Services Price List*:

Routers:	Alcatel
Switches:	Alcatel
LAN/WAN Wireless:	N/A
CSU/DSU:	N/A

No other Products or Services are authorized to be sold under this PA unless identified in an amendment to the Master Agreement. Alcatel will only promote and sell the OmniPCX 4400 products on this PA as non-stand alone telephony solutions that require ethernet infrastructure to operate.

3. Term of PA

The term of this PA shall commence upon the Effective Date and continue through May 31, 2004 unless the Master Price Agreement or this PA is terminated early or extended in accordance with the terms and conditions of the Master Price Agreement and this PA. This PA may be extended by up to four (4) additional years, concurrent with the Master Price Agreement.

4. Survivorship

All license and purchase transactions executed and Services provided pursuant to the authority of this PA shall be bound by all of the terms, conditions, prices and discounts set forth herein, notwithstanding the expiration of the initial term of this PA or any extension thereof. Further, the terms of the sections titled **Contractor's Commitments, Warranties and Representations; Protection of Purchaser's Confidential Information; Order of Precedence; Publicity; Review of Contractor's Records; Patent and Copyright Indemnification; Contractor's Proprietary Information; Disputes;** and **Limitation of Liability** shall survive the termination of this PA.

5. Electronic Commerce

Contractor shall provide and maintain an Internet website that contains the complete Products and Services available through the PA, as well as product specifications and options. Contractor's website shall provide Purchasers with guidance on product selection, electronic purchasing, and order status and tracking. Contractor's website will contain a price list identifying the prices available to state of Washington Purchasers (i.e., showing prices with the appropriate discount from the Manufacturer's List Price.

6. Internet Transmissions

Purchaser acknowledges that Internet transmissions are subject to errors beyond Contractor's control. No electronic transmission of data and/or information via Contractor's web site shall give rise to any liability or obligation by Contractor. Whether or not proper receipt of an electronic transmission has in fact occurred and the exact time at which proper receipt of an electronic transmission occurs shall be determined by Contractor by reference to its web site transaction records and applicable procedures.

7. Pricing

Contractor agrees to provide the Products and Services at the prices and discounts set forth in Schedule A: *Authorized Products and Services Price List.* Contractor may provide greater discounts or lower pricing during the term of the PA. If shipping is expedited, Purchaser shall pay the additional costs of shipping incurred.

8. Advance Payment Prohibited

No advance payment shall be made for Products or Services furnished by Contractor pursuant to this PA. Notwithstanding the above, payments for maintenance may be made in advance on a monthly, quarterly or annual basis, as agreed to by the parties.

9. Taxes

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

10. Invoice and Payment

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

a) The Master Price Agreement number, AR 1466;

b) Purchaser's name and address and Order Document number;

c) SOW number, if Services were provided;

d) Contractor name, address, phone number, e-mail address, fax number and Federal Taxpayer Identification Number;

e) Description of Products, including price, quantity ordered, model and serial numbers;

f) Date(s) of delivery or Products and/or Services;

g) Description of Services provided;

h) Price for each item, or manufacturer's list price for each item and applicable discounts;

i) Net invoice price for each item;

j) Applicable taxes;

k) DIS Administration Fee (0.5% or 0.005 of the total purchase price);

l) Other applicable charges;

m) Total invoice price; and

n) Payment terms, including any available prompt payment discounts.

10.2. Payments shall be due and payable within thirty (30) calendar days after provision and acceptance of Products or Services or thirty (30) calendar days after receipt of Contractor's properly prepared invoices, whichever is later. If Purchaser fails to make timely payment, Contractor may invoice Purchaser one percent (1%) per month on the amount overdue or a minimum of one dollar ($1). Payment will not be considered late if payment is deposited electronically in Contractor's bank account or if a check or warrant is postmarked within thirty (30) calendar days of acceptance of the Products or Services or receipt of Contractor's properly prepared invoice, whichever is later.

10.3. Payments for maintenance Services may be made in advance on a monthly, quarterly or annual basis, as agreed to by the parties.

11. E-Rate Requirement

Contractor shall participate in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications Commission Act of 1996. Participation

in, and implementation of, this program shall be provided without the addition of any service or administration fee by the Contractor.

12. Order Procedures

Contractor is solely responsible for fulfillment of the responsibilities under the terms and conditions of the PA. The procuring agencies will issue Purchase Orders and make payments to only the named Contractor, or Verizon, an approved Subcontractor. Contractor shall remain liable for any breach of the terms of such Purchase Order, notwithstanding that Contractor's name may not appear on such Purchase Order.

13. Cancellations and Returned Products

Authorization to return Products purchased from Contractor must be obtained from Contractor prior to any such return. All returned Products must be in the original, or substantially similar, packaging and container and shall conspicuously bear the return merchandise account number Purchaser obtains from Contractor prior to return. Credit shall be granted with respect to returned Products, less a fifteen percent (15%) restocking charge, applied at Contractor's sole discretion, provided that any returned Products must be shipped to Contractor in unopened boxes, freight prepaid, at Purchaser's risk. Products canceled by Purchaser within ten (10) days of the confirmed shipment date are subject to a cancellation charge of fifteen percent (15%) of the net value of the canceled portion of the order. Products canceled by Purchaser within eleven (11) to thirty (30) days of the confirmed shipment date, shall be subject a cancellation charge of ten percent (10%) of the net value of the canceled portion of the order. The parties agree that the cancellation charge is not imposed as a penalty, but as liquidated damages. Orders of non-standard Products or special Product configurations are not cancelable.

14. Title to Equipment

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

15. Shipping and Risk of Loss

Contractor shall ship all Products purchased pursuant to this PA, freight prepaid, FOB Purchaser's destination. The method of shipment shall be consistent with the nature of the Products and hazards of transportation. Regardless of FOB point, Contractor agrees to bear all risks of loss, damage, or destruction of the Products ordered hereunder that occurs prior to acceptance, except loss or damage attributable to Purchaser's fault or negligence; and such loss, damage, or destruction shall not release Contractor from any obligation hereunder. After acceptance, the risk of loss or damage shall be borne by Purchaser, except loss or damage attributable to Contractor's fault or negligence. Any and all claims by Contractor for damage or loss of products in transit shall be made by Contractor against the carrier. All costs of shipping, delivery, and insurance are included in the price of the Products, unless expedited shipping is requested. If shipping is expedited, Purchaser shall pay the additional costs of shipping incurred.

16. Delivery

16.1. Contractor shall deliver the Products ordered pursuant to this PA on or before the date specified on the Order Document and expressly agreed to by Contractor (the "Delivery Date"). Contractor shall respond to an Order Document within five (5) Alcatel Business Days for drop ship orders. Contractor shall not be liable for any damages associated with missing the Delivery Date unless Contractor has expressly agreed to such Delivery Date upon acknowledgement of Purchaser's Order Document. Contractor will make reasonable efforts to give notice of delay to Purchaser. Delivery may be made within a time period reasonably in advance of any scheduled Delivery Date.

16.2. All deliveries made pursuant to this PA must be complete. Unless Contractor has obtained prior written approval from Purchaser, which shall not be withheld unreasonably, incomplete deliveries or backorders will not be accepted. All packages must be accompanied by a packing slip that identifies all items included with the shipment and the Purchaser's Order Document number. Contractor's delivery receipt must be signed by an authorized representative of Purchaser for all deliveries made hereunder.

16.3. Any unique delivery instructions, e.g., truck not more than 28 feet in length, or no deliveries after 3:00 p.m., or must prearrange deliveries with specified person, etc., shall be specified on the Order Document.

17. Drop-Ship Inspection by Purchaser

Purchaser shall carefully inspect all deliveries of drop-ship Products as they are received by Purchaser and report to Contractor promptly (but in any event within ten (10) calendar days after receipt of shipment) any alleged error, defect or nonconformity of such Products. Any failure by Purchaser to so inspect and report shall constitute a waiver by Purchaser of any claim or right of Purchaser against Contractor arising with respect to any such error, , defect or nonconformity that was reasonably discoverable by such an inspection.

18. Demonstration Equipment

Products sold as "demonstration equipment" may include equipment used by Alcatel for engineering development and customer demonstration, or Products which have been traded-in by customers who are upgrading to new systems. Such demonstration equipment may be, in Alcatel's sole discretion, either new products or shall be completely refurbished by Alcatel's factory and include the same warranties outlined in Schedule D.

19. Installation and Set-up

When Purchaser requests installation from Contractor, the following requirements shall apply:

19.1. Purchaser shall prepare the environment to house the Products based upon written requirements provided by Contractor, as modified in writing and agreed to by the parties. Contractor's specialists shall be available to provide required consultation related to environment preparation at no extra cost to Purchaser. Any requirements for the environment specifically agreed to in writing by the parties will be completed by Contractor at no additional cost to Purchaser.

19.2. Contractor is hereby notified that fiber optic, communications, control systems, and other types of cable (collectively called "cabling") may be located within Purchaser's grounds and facilities.

19.3. Purchaser shall inform Contractor of any possible impact to Purchaser's cabling systems or underground utilities not owned by Purchaser if Contractor is to perform any Services on Purchaser's premises.

19.4. Upon request by Contractor, Purchaser will provide a detailed floor plan showing the location of each piece of existing equipment and desired mounting location for any new Products and/or power supply with the understanding that changes to the floor plan after submission to Contractor may result in additional charges.

19.5. Purchaser hereby permits Contractor to interface with such cabling and design engineering systems in support of the delivery of the Products and Services ordered under this PA .

19.6. When Purchaser provides inside wiring, all station cable, riser cable, distribution and feeder cable will be tested and identified by Purchaser at the main and any intermediate distribution frame(s). All telephone and data jacks will be properly labeled and a corresponding floor plan will be provided to Contractor by Purchaser. Any additional work required by Contractor due to improper or inadequate cable or labeling will be charged at Contractor's rates in Schedule A: *Price List* for material and regular time and overtime, as applicable, and as directed by Purchaser. Contractor shall not be liable to Purchaser for any failure to deliver or install the Products or Services which results from Purchaser's failure to properly and timely prepare Purchaser's site for Contractor's work.

19.7. Contractor assumes no responsibility for the operation of data, radio control, paging, alarm or other circuits that are not modified or installed by Contractorpursuant to an Order Document. Additionally, unless otherwise agreed to in an Order Document, Contractor shall not gather or input end user station database or routing and addressing information.

19.8. Contractor shall install the Products on or before the installation date that was mutually agreed upon by Purchaser and Contractor. Contractor shall not be liable for any damages associated with missing any installation date unless Contractor has expressly agreed to such installation date upon acknowledgement of Purchaser's Order.Failure to meet the agreed upon installation date may subject Contractor to termination of an Order, unless such failure is caused by acts or omissions of Purchaser.

19.9. If formal acceptance testing is required by Purchaser, Contractor shall certify to Purchaser in writing that the Products are ready for acceptance testing. Purchaser shall begin acceptance testing, as set forth in the section titled **Acceptance**.

20. Acceptance

20.1. Purchaser, at its sole option, may choose to require formal acceptance testing on Products. In that case, no payment will be authorized until the product has met the Standard of Performance and has been accepted, in writing, by Purchaser. If Purchaser chooses to conduct formal acceptance testing, Purchaser and Contractor shall agree to a standard of performance, testing timeline, effectiveness level criteria, and any other pertinent testing parameters in a SOW. Acceptance testing shall be conducted by Purchaser in accord with the timeline agreed to in the SOW, or, if no timeline is specified, according to a default acceptance testing period of ten (10) Business Days from the date of Contractor's written notice required in Section 19.9 above. Unless Purchaser notifies Contractor of any Product deficiencies within the timeline established for acceptance testing, all Products and/or Services shall be deemed accepted and Contractor shall invoice Purchaser for such Products and/or Services.

20.2. Products installed by Contractor are considered acceptable if they are installed and operate materially in accordance with the manufacturer's specifications or the standard of performance and effectiveness level criteria agreed to in a SOW. Contractor shall correct any portion of equipment or software Products that does not operate accordingly. Any portion that is not rejected may, if functionally divisible, be separately invoiced with payment required.

21. Site Security

While on Purchaser's premises, Contractor, its agents, employees, or Subcontractors shall conform in all respects with physical, fire, or other security regulations.

22. Warranties

Specific Warranty information is set forth in Schedule D: *Warranties.*

23. Maintenance and Training

Contractor's maintenance plans are described in Schedule B: *Maintenance.* Contractor's training Services are described in Schedule A: *Authorized Products and Services Price List.* Any maintenance, support or training Services that may be requested by Purchaser shall require the parties to enter into a separate agreement, which Services would then be provided at an additional charge.

24. Contractor Commitments, Warranties, and Representations

Any written commitment by Contractor within the scope of this PA shall be binding upon Contractor. Failure of Contractor to fulfill such a commitment may constitute breach and shall render Contractor liable for damages under the terms of this PA. For purposes of this section, a commitment by Contractor includes: (i) Prices, discounts, and options committed to remain in force over a specified period of time, and (ii) any warranty or representation made by Contractor in its Response or contained in any Contractor or manufacturer publications, written materials, schedules, charts, diagrams, tables,

descriptions, other written representations, and any other communication medium accompanying or referred to in its Response or used to effect the sale to Purchaser.

25. Protection of Purchaser's Confidential Information

25.1. Contractor acknowledges that some of the material and information that may come into its possession or knowledge in connection with this PA or its performance may consist of information that is exempt from disclosure to the public or other unauthorized persons under either chapter 42.17 RCW or other state or federal statutes ("Confidential Information"). Confidential Information includes, but is not limited to, names, addresses, Social Security numbers, e-mail addresses, telephone numbers, financial profiles, credit card information, driver's license numbers, medical data, law enforcement records, Purchaser source code or object code, or Purchaser security information, or information identifiable to an individual that relates to any of these types of information. Contractor agrees to hold Confidential Information in strictest confidence and not to make use of Confidential Information for any purpose other than the performance of this PA, to release it only to authorized employees or Subcontractors requiring such information for the purposes of carrying out this PA, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without Purchaser's express written consent or as provided by law. Contractor agrees to release such information or material only to employees or Subcontractors who are under agreement with Contractor to protect such Confidential Information in the same manner and to the same degree of care that Contractor uses to protect its confidential and Proprietary Information.

25.2. Immediately upon expiration or termination of this PA, Contractor shall, at Purchaser's or DIS' option: (i) certify to Purchaser or DIS that Contractor has destroyed all Confidential Information; or (ii) return all Confidential Information to Purchaser.

25.3. Violation of this section by Contractor or its Subcontractors may result in termination of this PA and demand for return of all Confidential Information. Additionally, Purchaser may seek all other remedies available to Purchaser, at law or in equity for such violation.

26. Software License

26.1. Upon acceptance of and payment for any software and/or documentation shipped by Contractor to Purchaser, and subject to the terms and conditions hereof, Purchaser shall have a worldwide, nonexclusive, nonsublicensable, nontransferable license to use such software and/or documentation. Purchaser may make one (1) copy of the software for back-up and disaster recovery purposes only. The license set forth in this Section shall terminate immediately upon Purchaser's discontinuance of the use of the equipment on which the software is installed. Purchaser understands and agrees that title to, and all rights of ownership in, any such software and/or documentation shall at all times remain with Contractor and relevant third parties.

26.2. Specific Software License Terms for Alcatel Products are attached as Schedule E.

27. Legal Notices

27.1. Any notice or demand or other communication required or permitted to be given under this PA or applicable law (except notice of malfunctioning Equipment) shall be effective only if it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid certified mail, return receipt requested, or via facsimile, to the parties at the addresses and fax numbers provided in this section. For purposes of complying with any provision in this PA or applicable law that requires a "writing," such communication, when digitally signed with a Washington State Licensed Certificate, shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form.

To Contractor at:
Alcatel Internetworking, Inc.

Attn: Dan Holden, Washington Account Manager

11707 E. Sprague Avenue
Spokane, WA 99206

Phone: 509-777-7272
Fax: 509-777-7001

With Copy to:
Alcatel Internetworking, Inc., Legal Department
26801 W. Agoura Road, Calabasas, CA 91301
Attn: General Counsel

Phone: 818-878-4775
Fax: 818-878-4980

To Participating State at:
State of Washington
Department of Information Services
Attn: TSD Contract Administrator

If via Overnight Courier:
2411 Chandler Court SW
Olympia, WA 98502-6038

If via U.S. Mail:
P.O. Box 42445
Olympia, WA 98504-2445

Phone: (360) 725-4200
Fax: (360) 664-0711

or to **Purchasers** at the addresses and fax number listed on their Order Documents.

27.2. Notices shall be effective upon receipt, or four (4) Business Days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

27.3. In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to this PA is served upon Contractor or Participating State, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and Participating State further agree to cooperate with the other party in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

28. Contractor Account Manager

Contractor shall appoint an Account Manager for the state of Washington, who will provide oversight of Contractor activities conducted hereunder. Contractor's Account Manager will be the principal point of contact for DIS and Purchasers concerning Contractor's performance under this PA. Contractor shall notify the TSD Contract Administrator in writing, when there is a new Contractor Account Manager

assigned to the State. The Contractor Account Manager contact information is provided in Section 27 above, **Legal Notices**.

29. Participating State Contact

The TSD Contract Administrator shall be the contact for this PA, who will provide oversight of the activities conducted hereunder. The TSD Contract Administrator will manage this PA on behalf of the State and will be the principal contact for Contractor concerning business and contract matters under this PA. The contact information is:

State of Washington
Department of Information Services
Attn: TSD Contract Administrator

Mailing Address:	***Street Address:***
PO Box 42445	2411 Chandler Court SW
Olympia, WA 98504	Olympia, WA 98502

Phone: (360) 725-4200 Fax: (360) 664-0711 E-mail: mcadmin@dis.wa.gov

30. Order of Precedence

30.1. In the event of any inconsistency in this PA, the inconsistency shall be resolved in the following order of precedence:

a) Applicable federal and state statutes, laws, and regulations;

b) Sections of this PA, including its Schedules;

c) Master Price Agreement;

d) Contractor's Response to Request for Proposal (RFP) LW1907;

e) Utah's Request for Proposal LW1907;

f) The terms and conditions contained on Purchaser's Order Documents.

31. Authority for Modifications and Amendments

No modification, amendment, alteration, addition, or waiver of any section or condition of this PA shall be effective or binding unless it is in writing and signed by DIS and Contractor. Only the DIS Contracting Officer shall have the express, implied, or apparent authority to alter, amend, modify, add, or waive any section or condition of this PA.

32. Additional Services

Additional Services that are appropriate to the scope of this acquisition may be added to this PA by an instrument in writing, with the mutual consent of both parties. Such writing shall include a specific description of the additional Services, pricing and additional terms and conditions as relevant. The additional Services shall be available under the same terms and conditions established herein, unless otherwise agreed to in writing.

33. Independent Status of Contractor

In the performance of this PA, the parties will be acting in their individual, corporate or governmental capacities and not as agents, employees, partners, joint venturers, or associates of one another. The parties intend that an independent contractor relationship will be created by this PA. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever. Contractor shall not make any claim of right, privilege or benefit which would accrue to an employee under chapter 41.06 RCW or Title 51 RCW.

34. Governing Law

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

35. Export Laws and Regulations

Any obligation of Contractor to provide Products shall be subject in all respects to all United States laws and regulations governing the license and delivery of technology and products abroad by persons subject to the jurisdiction of the United States. Purchaser shall not export, directly or indirectly, any Products or related information without first obtaining all required licenses and approvals from the appropriate government agencies.

36. Toll Fraud

Contractor's Products ***do not*** provide immunity from fraudulent intrusion or toll fraud.

37. Subcontractors

Contractor may, with prior written permission from DIS, which consent shall not be unreasonably withheld, enter into subcontracts with third parties for its performance of any part of Contractor's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Contractor to Purchaser for any breach in the performance of Contractor's duties. For purposes of this PA, Contractor agrees that all Subcontractors shall be held to be agents of Contractor. Contractor shall be liable for any loss or damage to Purchaser, including but not limited to personal injury, physical loss, harassment of Purchaser employee, or violations of the **Patent and Copyright Indemnification,** and **Protection of Purchaser's Confidential Information** sections of this PA occasioned by the acts or omissions of Contractor's Subcontractors, their agents or employees. The **Patent and Copyright Indemnification**, **Protection of Purchaser's Confidential Information**, **Publicity** and **Review of Contractor's Records** sections of this PA shall apply to all Subcontractors. DIS hereby approves Verizon as a Subcontractor under this PA.

38. Assignment

38.1. With the prior written consent of DIS, which consent shall not be unreasonable withheld, Contractor may assign this PA including the proceeds hereof, provided that such assignment shall not operate to relieve Contractor of any of its duties and obligations hereunder, nor shall such assignment affect any remedies available to Purchaser that may arise from any breach of the sections of this PA, or warranties made herein including but not limited to, rights of setoff. Contractor may assign the PA to a parent, or subsidiary without the prior written consent of DIS, provided that the assignment does not increase the obligations of DIS.

38.2. DIS may assign this PA to any public agency, commission, board, or the like, within the political boundaries of the state of Washington, provided that such assignment shall not operate to relieve DIS of any of its duties and obligations hereunder.

39. Publicity

39.1. Entering into this PA with Contractor is not in any way an endorsement of Contractor or Contractor's Services by the State and shall not be so construed by Contractor in any advertising or other publicity materials.

39.2. Contractor agrees to submit to DIS, all advertising, sales promotion, and other publicity materials relating to this PA and Services furnished by Contractor wherein DIS' or Purchaser's name is mentioned, language is used, or Internet links are provided from which the connection of DIS' or Purchaser's name therewith may, in DIS' or Purchaser's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion materials, publicity or the like through print, voice, the World Wide Web, and other communication media in existence or hereinafter developed without the express written consent of DIS *prior* to such use.

40. Review of Contractor's Records

40.1. Contractor will maintain, or,in its sole discretion, supervise the maintenance of all records necessary to properly account for the payments made to the Contractor for costs authorized under this PA. Contractor shall retain all such records for six (6) years after the expiration or termination of this PA or until all audits initiated within the six (6) years have been completed, whichever is later. Records involving matters in litigation related to this PA shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this PA, whichever is later.

40.2. At Purchaser's expense, no more than once annually during the term of this PA, with thirty (30) calendar days advance written notice to Contractor, and during the normal business hours of Contractor, Contractor shall make its nonconfidential records, solely relating to the provison of Products and Services hereunder available to Purchaser for examination, inspection, copying, or audit by personnel so authorized by WSCA, the TSD Contract Administrator and/or the Office of the State Auditor and federal officials so authorized by law, rule, regulation or PA, when applicable. Contractor shall be responsible for any audit exceptions or disallowed costs agreed upon by the parties or determined in accordance with Section 53 below, **Disputes**, incurred by Contractor or any of its Subcontractors.

40.3. Contractor shall incorporate in its subcontracts this section's records retention and review requirements.

41. Patent and Copyright Indemnification

41.1. Contractor, at its expense, shall defend, indemnify, and save the state of Washington and any authorized Purchaser harmless from and against any claims against one of them that any Product supplied hereunder, or their use of the Product within the terms of this PA, infringes any patent, copyright, utility model, industrial design, mask work, trade secret, trademark, or other similar proprietary right of a third party worldwide. Contractor shall pay all costs of such defense and settlement and any penalties, costs, damages and attorneys' fees awarded by a court or incurred by the state of Washington or an authorized Purchaser provided that they:

a) Promptly notify Contractor in writing of the claim, but their failure to provide timely notice shall only relieve Contractor from its indemnification obligations if and to the extent such late notice prejudiced the defense or resulted in increased expense or loss to Contractor; and

b) Cooperate with and agree to use best efforts to encourage the Office of the Attorney General of Washington to grant Contractor sole control of the defense and all related settlement negotiations.

41.2. If such claim has occurred, or in Contractor's opinion is likely to occur, Purchaser and the State agree to permit Contractor, at its option and expense, either to procure for them the right to continue using the Products or to replace or modify the same so that they become noninfringing and functionally equivalent. If use of the Products is enjoined by a court and Contractor determines that none of these alternatives is reasonably available, Contractor, at its risk and expense, will take back the Product and provide the Purchaser a refund. Contractor shall refund to Purchaser(s) the Product's depreciated value. No termination charges will be payable on such returned Product, and Purchaser will pay only those charges that were payable prior to the date of such return. Depreciated value shall be calculated on the basis of a useful life of three (3) years commencing on the date of purchase and shall be an equal amount per year over said useful life. The depreciation for fractional parts of a year shall be prorated on the basis of three hundred sixty-five (365) days per year. In the event the Product has been installed less than one (1) year, all costs associated with the initial installation paid by Purchaser(s) shall be refunded by Contractor.

41.3. Contractor has no liability for any claim of infringement arising solely from:

a) Contractor's compliance with any designs, specifications or instructions of Purchaser(s);

b) Modification of the Product by Purchaser(s) or a third party without the prior knowledge and approval of Contractor; or

c) Use of the Product in a way not specified by Contractor;

unless the claim arose against Contractor's Product independently of these specified actions.

42. Save Harmless

Contractor shall defend, indemnify, and save WSCA and the State, harmless from and against any claims, including reasonable attorneys' fees resulting from such claims, by third parties for any or all injuries to persons or damage to property of such third parties arising from intentional, willful or

negligent acts or omissions of Contractor, its officers, employees, or agents, or Subcontractors, their officers, employees, or agents.

43. Insurance

43.1. Contractor shall, during the term of this PA, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the state of Washington and having a rating of A-, Class VII or better, in the most recently published edition of *Best's Reports*. In the event of cancellation, non-renewal, revocation or other termination of any insurance coverage required by this PA, Contractor shall provide written notice of such to DIS within two (2) weeks of Contractor's receipt of such notice. Failure to buy and maintain the required insurance may, at DIS' sole option, result in this PA's termination.

43.2. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

a) Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than $1 million per occurrence/$2 million general aggregate;

b) Business Automobile Liability (owned, hired, or non-owned) covering the risks of bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of not less than $1 million per accident;

c) Employers Liability insurance covering the risks of Contractor's employees' bodily injury by accident or disease with limits of not less than $1 million per accident for bodily injury by accident and $1 million per employee for bodily injury by disease;

d) Umbrella policy providing excess limits over the primary policies in an amount not less than $1 million;

43.3. Contractor shall pay premiums on all insurance policies. Such insurance policies shall name DIS as an additional insured on all general liability, automobile liability, and umbrella policies. Such policies shall also reference the Master Price Agreement number AR1466 and this PA number, 03-01, and shall have a condition that they not be revoked by the insurer until thirty (30) calendar days after notice of intended revocation thereof shall have been given to DIS by the insurer.

43.4. All insurance provided by Contractor shall be primary as to any other insurance or self-insurance programs afforded to or maintained by the State and shall include a severability of interests (cross-liability) provision.

43.5. Contractor shall include all Subcontractors as insured under all required insurance policies, or shall furnish separate certificates of insurance and endorsements for each Subcontractor. Subcontractor(s) shall comply fully with all insurance requirements stated herein. Failure of Subcontractor(s) to comply with insurance requirements does not limit Contractor's liability or responsibility.

43.6. Contractor shall furnish to DIS copies of certificates of all required insurance within thirty (30) calendar days of this PA's Effective Date, and copies of renewal certificates of all required insurance within thirty (30) days after the renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement

specified in this section. Failure to provide evidence of coverage may, at DIS' sole option, result in this PA's termination.

43.7. By requiring insurance herein, DIS does not represent that coverage and limits will be adequate to protect Contractor. Such coverage and limits shall not limit Contractor's liability under the indemnities and reimbursements granted to the State in this PA.

44. Industrial Insurance Coverage

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

45. OSHA/WISHA

45.1. Contractor represents and warrants that its Products, when shipped, are designed and manufactured to meet then-current federal and state safety and health regulations. Contractor agrees to indemnify and hold Purchaser harmless from all damages assessed against Purchaser as a result of the failure of the Products furnished under this PA to so comply.

45.2. Contractor and Purchaser will adhere to all applicable health, safety and environmental laws, rules and regulations, including the Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency (EPA) rules and regulations (collectively, Safety Regulations). Unless specified in the Order Document, Contractor will not work in any area where a Hazardous Substance is present. "Hazardous Substance" means a substance regulated by any Safety Regulation and includes, but is not limited to, asbestos. Contractor may work in an area containing non-friable asbestos if Contractor determines, in its sole judgment, that the work will not disturb or cause the asbestos to become friable.

45.3. Except as it discloses to Contractor, in writing, Purchaser is not aware of any asbestos or other hazardous substance, as defined by any applicable state, federal or local hazardous waste or environmental protection law, as enacted or subsequently amended, with which Contractor will come into contact on Purchaser's premises in the course of perfoming work necessary to provide the Services. If during the performance of its obligations under this PA Contractor's employees, agents or subcontractors encounter any such substance on Purchaser's premises, Purchaser agrees to take whatever steps are necessary, at its own expense, to remove or contain the asbestos or other hazardous substance and to ensure the premises are tested by a certified contractor to confirm that exposure does not exceed any applicable permissible exposure limit. Removal or containment shall comply with all applicable laws and regulations, and Contractor's employees or subcontractors shall not be required to continue performance under this PA until abatement and/or encapsulation has been completed by a certified contractor. Performance by Contractor of its obligations under this PA shall be extended day for day for any delay caused by any such removal or containment. Purchaser's failure to remove or contain hazardous substances shall be sufficient justification for Contractor to terminate this PA without further liability. In the event of such termination, Purchaser

agrees to reimburse Contractor for its actual expenses, if any, incurred in performing this PA until termination, in addtion to charges for Services rendered.

45.4. Purchaser is responsible for informing Contractor of the existence, location and condition of any Hazardous Substances that may be in or around the Contractor's work area of which Purchaser has knowledge. Purchaser indemnifies and holds Contractor harmless from any fines or other liability of Contractor arising from Purchaser's failure to inform Contractor of Hazardous Substances of which Purchaser has knowledge.

45.5. Contractor may, without affecting Purchaser's informational duties and indemnification, suspend work from the time it reasonably identifies areas where Hazardous Substances may be present until the work area is in compliance with then-constituted Safety Regulations. Any such suspension is not a default of the PA, and any delays from the suspension may result in a similar delay in work completion, without penalty to Contractor. If the Parties cannot agree whether the work can be performed through completion without a violation of Safety Regulations, or cannot agree to payment of added costs, if any, either Party may terminate the Order without penalty. Such termination shall not affect Purchaser's obligation to pay for Products and Services provided by Contractor prior to the effective date of termination.

46. FCC Certifications

Contractor agrees that hardware supplied by Contractor meets all applicable FCC certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of the PA.

47. Antitrust Violations

Contractor and Purchaser recognize that, in actual economic practice, overcharges resulting from antitrust violations are usually borne by Purchaser. Therefore, Contractor hereby assigns to Purchaser any and all claims for such overcharges as to Products and Services purchased in connection with this PA, except as to overcharges not passed on to Purchaser resulting from antitrust violations commencing after the date of the bid, quotation, or other event establishing the price under this PA.

48. Compliance with Civil Rights Laws

During the performance of this PA, Contractor shall comply with all federal and applicable state nondiscrimination laws, including but not limited to: Title VII of the Civil Rights Act, 42 U.S.C. §12101 *et seq.*; the Americans with Disabilities Act (ADA); and Title 49.60 RCW, Washington Law Against Discrimination. In the event of Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation or policy, this PA may be rescinded, canceled, or terminated in whole or in part under the **Termination for Default** sections, and Contractor may be declared ineligible for further contracts in the state of Washington.

49. Severability

If any term or condition of this PA or the application thereof is held invalid, such invalidity shall not affect other terms, conditions, or applications which can be given effect without the invalid term, condition, or application; to this end the terms and conditions of this PA are declared severable.

50. Waiver

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

51. Contractor's Proprietary Information

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

52. Arbitration

Washington State will not accept mandatory, binding arbitration. If there are any references to binding arbitration in the Contractor's Response to the RFP, they will be null and void. The parties may agree, on a case-by-case basis, to voluntary arbitration to resolve the PA or Master Price Agreement issues.

53. Disputes

53.1. In the event a bona fide dispute concerning a question of fact arises between Purchaser and Contractor and it cannot be resolved between the parties, or with the help of the TSD Contract Administrator, either party may initiate the dispute resolution procedure provided herein.

53.2. The initiating party shall reduce its description of the dispute to writing and deliver it to the responding party. The responding party shall respond in writing within three (3) Business Days. The initiating party shall have three (3) Business Days to review the response. If after this review a resolution cannot be reached, both parties shall have three (3) Business Days to negotiate in good faith to resolve the dispute.

a) If the dispute cannot be resolved after three (3) Business Days, a Dispute Resolution Panel may be requested in writing by either party who shall also identify the first panel member. Within three (3) Business Days of receipt of the request, the other party will designate a panel member. Those two panel members will appoint a third individual to the Dispute Resolution Panel within the next three (3) Business Days.

b) The Dispute Resolution Panel will review the written descriptions of the dispute, gather additional information as needed, and render a decision on the dispute in the shortest practical time.

c) Each party shall bear the cost for its panel member and share equally the cost of the third panel member.

53.3. Both parties agree to be bound by the determination of the Dispute Resolution Panel.

53.4. Both parties agree to exercise good faith in dispute resolution and to settle disputes prior to using a Dispute Resolution Panel whenever possible

53.5. Purchaser and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this PA that are not affected by the dispute.

53.6. If the subject of the dispute is the amount due and payable by Purchaser for Services being provided by Contractor, Contractor shall continue providing Services pending resolution of the dispute provided Purchaser pays Contractor the amount Purchaser, in good faith, believes is due and payable, and places in escrow the difference between such amount and the amount Contractor, in good faith, believes is due and payable.

54. Attorneys' Fees and Costs

54.1. If any litigation is brought to enforce any term, condition, or section of this PA, or as a result of this PA in any way, the prevailing party shall be awarded its reasonable attorneys' fees together with expenses and costs incurred with such litigation, including necessary fees, costs, and expenses for services rendered at both trial and appellate levels, as well as subsequent to judgment in obtaining execution thereof.

54.2. In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

55. Limitation of Liability

55.1. In no event shall Contractor be liable to Purchaser for any indirect, punitive, special, incidental, or consequential damages in connection with or related to this PA or the Products or Services provided in connection herewith (including loss of profits, use, data, or other economic advantage), however arising, whether for breach of this PA, including breach of warranty or in tort, even if that party has been previously advised of the possibility of such damage. The damages specified in Section 40 **Review of Contractor's Records** are not consequential, incidental, indirect, or special damages as those terms are used in this Section.

55.2. Except for the obligations set forth under Section 41, **Patent and Copyright Indemnification**, and Section 42, **Save Harmless**, the liability of Contractor to Purchaser arising out of, or in connection with, the sale or use of the Products or Services sold hereunder, the transactions contemplated hereby, or Contractor's or Purchaser's conduct or actions in relation to any of the same or to each other shall not exceed the amount(s) actually received by Contractor from Purchaser as purchase price for the Products or Services that give rise to Contractor's liability.

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

the delays must be beyond the reasonable control and without fault or negligence of Contractor, DIS or Purchaser, or their respective Subcontractors.

55.4. If delays are caused by a Subcontractor without its fault or negligence, Contractor shall not be liable for damages for such delays, unless the Services to be performed were obtainable on comparable terms from other sources in sufficient time to permit Contractor to meet its required performance schedule.

55.5. No party shall be liable for personal injury, including death, to the another party or damage to the other party's property except personal injury or death or damage to tangible property proximately caused by such party's willful misconduct or negligence.

56. Failure to Perform

If Contractor fails to perform any substantial obligation under this PA, Purchaser or DIS shall give Contractor written notice of such Failure to Perform. If after thirty (30) calendar days from the date of Contractor's receipt of the written notice Contractor has neither performed, nor disputed the allegations contained in such notice of Failure to Perform, then Purchaser or DIS may withhold all monies due and payable to Contractor, without penalty to Purchaser or DIS, until such Failure to Perform is cured or otherwise resolved. In the event Contractor has disputed such notice of Failure to Perform, then the parties shall resolve the dispute in accordance with Section 53 of this PA.

57. Termination for Default

57.1. If Contractor violates any material term or condition of this PA or fails to fulfill in a timely and proper manner its material obligations under this PA, then the TSD Contract Administratoror Purchaser shall give Contractor written notice of such failure or violation, and the failure or violation shall be corrected by Contractor within thirty (30) calendar days or as otherwise mutually agreed. If such breach is not capable of cure within thirty (30) days, Contractor must commence cure within such thirty (30) day period and diligently pursue completion of such cure. If Contractor's failure or violation is not corrected, Purchaser or DIS may pursue immediate termination of an Order or this PA, as appropriate. In such event, this PA may be terminated immediately by written notice from the DIS Contracting Officer to Contractor, or Purchaser's Order may be terminated by written notice to Contractor.

57.2. In the event of termination of this PA by DIS, DIS shall have the right to procure the Products and Services that are the subject of this PA on the open market and Contractor shall be liable for all damages, including, but not limited to, the cost difference between the original PA price for the Services and the replacement costs of such Services acquired from another Contractor. DIS and Purchasers shall have the right to deduct from any monies due to Contractor, or that thereafter become due, an amount for damages that Contractor will owe DIS and Purchasers for Contractor's default.

57.3. If either Purchaser or DIS violates any material term or condition of this PA or fails to fulfill in a timely and proper manner its obligations under this PA, then Contractor shall give Purchaser or DIS, as appropriate, written notice of such failure, which shall be corrected by Purchaser or DIS within thirty (30) calendar days, or as otherwise mutually agreed. If such failure to perform is not so corrected, Purchaser's Order may be terminated by written notice from Contractor to Purchaser or, if the violation or failure to perform relates to DIS' obligations, this PA may be terminated by written notice from Contractor to DIS.

57.4. If the Failure to Perform is without the defaulting party's control, fault, or negligence, the termination shall be deemed to be a **Termination for Convenience**.

57.5. This section shall not apply to any failure(s) to perform that results from the willful or negligent acts or omissions of the aggrieved party.

58. Termination for Convenience

When, at the sole discretion of DIS, it is in the best interest of the State, the DIS Contracting Officer may terminate this PA, in whole or in part, by thirty (30) calendar days written notice to Contractor. If this Contract is so terminated, Purchaser shall be liable for payments required by the terms of this Contract for Products and Services received by Purchaser prior to the effective date of termination and Contractor shall refund to Purchaser any monies paid for Products or Services not received by Purchaser.

59. Termination for Withdrawal of Authority

In the event that DIS' or Purchaser's authority to perform any of its duties is withdrawn, reduced, or limited in any way after the commencement of this PA or any Order and prior to normal completion, DIS may terminate this PA, or a Purchaser may terminate its Order, by thirty (30) calendar days written notice to Contractor. If this Contract or an Order is so terminated, Purchaser shall be liable for payments required by the terms of this Contract for Products and Services received by Purchaser prior to the effective date of termination and Contractor shall refund to Purchaser any monies paid for Products or Services not received by Purchaser. No penalty shall accrue to DIS and Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this PA, or a Purchaser to terminate its Order in order to acquire similar Products or Services from a third party.

60. Termination for Non-Allocation of Funds

If funds are not allocated to DIS or a Purchaser to continue this PA or Order in any future period, DIS may terminate this PA, or Purchaser may terminate its Order by thirty (30) calendar days written notice to Contractor or otherwise work with Contractor to arrive at a mutually acceptable resolution of the situation. If this Contract is so terminated, Purchaser shall be liable for payments required by the terms of this Contract for Products and Services received by Purchaser prior to the effective date of termination and Contractor shall refund to Purchaser any monies paid for Products or Services not received by Purchaser. DIS or Purchasers will not be obligated to pay any further charges for Products or Services including the net remainder of agreed to consecutive periodic payments remaining unpaid beyond the end of the then-current period. DIS or Purchaser agrees to notify Contractor in writing of such non-allocation at the earliest possible time. No penalty shall accrue to DIS or Purchasers in the event this section shall be exercised. This section shall not be construed to permit DIS to terminate this PA, or a Purchaser to terminate its Order in order to acquire similar Products or Services from a third party.

61. Termination for Conflict of Interest

DIS may terminate this PA, or Purchaser its Order, by written notice to Contractor if DIS or Purchaser determines, after due notice and examination, that any party has violated chapter 42.52 RCW, Ethics in Public Service, or any other laws regarding ethics in public acquisitions and procurement and performance of contracts. In the event this PA or any Order is so terminated, DIS and Purchasers shall be entitled to pursue the same remedies against Contractor as it could pursue in the event Contractor breaches this PA or any Order.

62. Termination Procedure

62.1. Upon termination of this PA or any Order, DIS and Purchaser, in addition to any other rights provided in this PA and applicable Order, upon payment of all fees due Contractor, may require Contractor to deliver to Purchaser any property specifically produced or acquired for the performance of such part of this PA or Order as has been terminated.

62.2. Unless otherwise provided herein, Purchaser shall pay to Contractor the agreed-upon price, if separately stated, for the Services received by Purchaser, provided that in no event shall Purchaser pay to Contractor an amount greater than Contractor would have been entitled to if this PA or Order had not been terminated. Failure to agree with such determination shall be a dispute within the meaning of the **Disputes** section of this PA. Purchaser may withhold from any amounts due Contractor such sum as Purchaser determines to be necessary to protect Purchaser from potential loss or liability.

62.3. Contractor shall pay amounts due Purchaser as the result of termination within thirty (30) calendar days of notice of the amounts due. If Contractor fails to make timely payment, Purchaser may charge interest on the amounts due at one percent (1%) per month until paid in full.

63. DIS Administration Fee

63.1. All purchases made under this PA are subject to a DIS Administration Fee, to be collected by Contractor and remitted to DIS.

63.2. The Administration Fee is one half of one percent (.5% or .005) of the purchase price. The purchase price is defined as total invoice price less sales tax.

63.3. The Administration Fee shall be invoiced by Contractor to all Purchasers as a separate detailed line item on Purchaser's invoice.

63.4. Contractor shall remit the Administration Fee directly to the TSD Contract Administrator, along with the PA Activity Report. The check shall be payable to Department of Information Services.

64. DIS Activity Reporting

64.1. Contractor shall submit to the TSD Contract Administrator a monthly Activity Report of all Product and Service purchases made under this PA. The report shall identify:

a) The Master Price Agreement (AR1466);

b) Each Purchaser making purchases during that month;

c) The total invoice price, excluding sales tax for each Purchaser;

d) The sum of all invoice prices, excluding sales tax, for all Purchasers; and

e) The DIS Administration Fee.

64.2. The Activity Report and the DIS Administration Fee shall be submitted by the 15th calendar day of the second (2nd) month following the month in which Contractor invoiced Purchaser.

64.3. Contractor shall submit this report according to the layout specified by the TSD Contract Administrator.

64.4. This report may be corrected or modified by the TSD Contract Administrator with subsequent written notice to Contractor.

64.5. Monthly reports are required even if no activity occurred.

64.6. Upon request by DIS, Contractor shall provide, in the format requested, the contact information for all Purchasers during the term of the PA.

65. Failure to Remit Reports/Fees

Failure of Contractor to remit the Activity Report together with the Administration Fee may be considered a failure to perform on the part of Contractor, which may result in DIS terminating this PA with Contractor.

66. Authority to Bind

The signatories to this PA represent that they have the authority to bind their respective organizations to this PA.

67. Counterparts

This PA may be executed in counterparts or in duplicate originals. Each counterpart or each duplicate shall be deemed an original copy of this PA signed by each party, for all purposes.

In Witness Whereof, the parties hereto, having read this PA in its entirety, including all attachments, do agree in each and every particular and have thus set their hands hereunto.

Approved

State of Washington
Department of Information Services

Signature

Michael D. McVicker
Print or Type Name

Assistant Director 11/26/02
Title Date

Approved

Alcatel Internetworking, Inc.

Signature

GENE SPIES
Print or Type Name

VICE PRESIDENT November 25, 2002
Title Date

Approved as to Form

State of Washington

Office of the Attorney General

Chip Holcomb
Approved via email

Signature

Chip Holcomb

Print or Type Name

Senior Counsel, AGO 11-25-02

Title Date

Contractor Information
Contractor's UBI Number: 601637516
Minority or Woman Owned Business Yes _____ No ☒ (Certification Number)

Kirk, Marie (DIS)

From: Holcomb, Chip (ATG)
Sent: Monday, November 25, 2002 4:12 PM
To: Kirk, Marie (DIS)
Subject: RE: final WA Alcatel PA

Consider it approved.
Need more, let me know,
Chip Holcomb
Senior Counsel, Attorney General's Office
P.O. Box 40108
905 Plum St., Bldg. 3
Olympia, WA 98504-0108
voice: (360)753-9671
fax: (360) 586-3593
email: chiph@atg.wa.gov

-----Original Message-----
From: Kirk, Marie (DIS) [mailto:MarieK@DIS.WA.GOV]
Sent: Monday, November 25, 2002 11:03 AM
To: Holcomb, Chip (ATG); Chip Holcomb (E-mail 2)
Subject: FW: final WA Alcatel PA
Importance: High

Chip, I am looking for your approval as to form on the attached document. this is one of those Utah WSCA datacom Master Price Agreements that we are adopting as a WA Master Contract. Hoping you can provide your approval in person (always glad to see you) or via email (probably more practical) sometime tomorrow. The rush is mostly because we delayed it a week with some internal policy considerations and I will be out of town from Wednesday through December 5th. I'll call you with a heads up too. Thanks.

Marie

-----Original Message-----
From: Kirk, Marie (DIS)
Sent: Monday, November 25, 2002 10:56 AM
To: James Waese (E-mail)
Cc: Josephs, Dana (DIS)
Subject: final WA Alcatel PA

James, here's the final document in pdf format.

<< File: Final Alcatel WA PA.pdf >>

I hope to receive a signed copy from you tomorrow and be able to fax a signed copy back to you.

If you have any questions while I'm gone, contact Dana Josephs at (360) 725-4245, danaj@dis.wa.gov.

Marie Kirk
Contracts Manager
Department of Information Services
Telecommunication Services Division
voice: 360.725.4241
fax: 360.664.0711

Schedule A
Authorized Products and Services Price List

as of

November 2002

from Master Price Agreement AR 1466
with
Alcatel Internetworking, Inc.

for

Washington State Purchasers

1. **Discounts off Manufacturer's List Prices for Products**

Products	**Discount**
OmniSwitch, OmniSwitch/Router, OmniStack 1000-5000	52% off list
OmniAccess 408 and 512's	52 % off list
OmniCore 5000, OmniStack 6000, OmniStack 8008	47% off list
OmniSwitch 7700, 7800, and 8800	25% off list
OmniPCX 4400 Products	42% off list

No additional discounts will be given based on volume.
No discounts will be given on Services.

2. Services

Services can be purchased under this PA in several ways: (i) from Alcatel , off of the Alcatel price list; or (ii) from Verizon, as negotiated in a Statement of Work (SOW), based on Verizon's labor rates provided below; or (iii) in some combination from Alcatel and Verizon.

Verizon Labor Rates -

	Business Hours	After Hours	Sunday/Holiday
Data Tech	$135.00	$202.50	$270.00
Engineering	$150.00	$225.00	$300.00

3. Training

Training class outlines can be provided upon enrollment into a specific class. Class schedules are continually updated and can be viewed on our corporate web site at:
www.ind.alcatel.com/support/training/index.html.

Alcatel has two on-site training options available to Purchasers. On-site training options available are 1 day "Basic" or 1 day "Advance" training sessions and each training class requires the customer to provide the necessary networking equipment.

Alcatel Engineers can also provide on-site, customized training. This training includes hands-on labs, teaching material, and Alcatel provided equipment on an "as needed" basis. Deliverables include leader-led instruction, training material, and might include equipment for training class use.

Formal registration is required for all courses and should be completed at least three weeks prior to the class start date. To begin the registration process, complete the online application form for either basic (http://www.ind.alcatel.com/support/training/form-training.html) or advanced (http://www.ind.alcatel.com/support/training/form-training.html) classes. An Alcatel Training Representative will contact you to complete your registration.

For more information, send email to Training@ind.alcatel.com or call US and Canada: 1-800-999-9526 x4768

Schedule B
Maintenance

a. Maintenance Options

Alcatel offers its customers maintenance on a time and materials basis as well as through the following four (4) maintenance options, allowing customers to choose a package that best suits their business model.

I. SUPPORT basic

- Provides the customer with access to 7 x 24 technical support and 7 x 24 remote diagnostics
- Provides the customer with access to support over the Internet **
- Provides the customer with software updates features
- This service does not include replacement of defective hardware

** ***Access to support over the Internet is not available when support Services are provided by Verizon***

II. SUPPORT plus Program

- Provides the customer with access to our technical response center 7 days a week, 24 hours a day
- Alcatel places no restrictions on the number or qualification of the customer's personnel eligible to place telephone calls to report product-related questions or problems
- Customers purchasing this level of support received priority over callers requesting technical support under standard warranty
- Provides software updates including monthly maintenance releases, patch releases, and enhancements
- Next Alcatel Business Day hardware component replacement

III. SUPPORT premier Program (where available)

- All the features of SUPPORT plus, and
- 4-hour on-site replacement of network hardware components. Monday through Friday from 8am to 5pm, Alcatel will dispatch a certified service engineer to arrive on site within four hours of diagnosis.

IV. SUPPORT total Program (where available)

- All the features of SUPPORT plus, and
- 4- hour on-site replacement of network hardware components. Seven days a week, 24 hours a day, Alcatel will dispatch a certified service engineer to arrive on site within four hours of diagnosis.

b. Replacement Parts Availability

If in the future a business decision is made to discontinue a product or product line, Alcatel is committed to provide software support (resolve customer issues and bug fixes) for up to two years, and hardware support for up to 5 years after discontinuance. Existing customers with current maintenance contracts will be notified of any decision to EoL (End of Life) a product within their network. Alcatel will work with the Purchaser to ensure existing commitments are fulfilled and a suitable substitute solution is attained. Notwithstanding the foregoing, Alcatel shall be required to provide repair or replacement parts for only a period of five (5) years from the date of an announced End of Life for a product.

Schedule C
Escalation Procedures

Problem Resolution and Escalation

The table below shows the escalation procedures in place at Alcatel. This table (condensed form) shows the problem, amount of time to resolve and who is involved is the decision process. After the table is a more in-depth breakdown of Alcatel's "Technical Escalation Guidelines". Senior management will have visibility into all problem reports and resolutions. This escalation procedure is a standard part of Alcatel's maintenance program.

Escalation contact begins with Alcatel Technical Support at 1-800-995-2696. Technical Support will then follow the procedure outlined below. Steve Tufts, Alcatel's VP of Service and Support, can be contacted at 818-878-4880.

Class of Problem	Time To Resolve	Escalation To
(1) Network down	After 2 hours	Support Mgmt.
	After 4 hours	Engineering Mgmt
	After 24 hours	President
(2) Network severely hampered, but still operational	After 8 hours	Support Mgmt.
	After 24 hours	Engineering Mgmt.
	After 36 hours	President
(3) Network is experiencing moderate problems	After 72 hours	Support Mgmt.
	After 1 week	Engineering Mgmt
(4) Network is experiencing minor problems	After 1 week	Support Mgmt
	After 2 weeks	Engineering Mgmt

Schedule D
Warranties

a. Equipment Warranty

Alcatel hardware warranty is for twenty-four (24) months and the software warranty is for twelve (12) months.

Alcatel's Internetworking Division Customer Service: (800) 995-2696

- Hardware Dead on Arrival (DOA) Warranty
  If hardware fails within the first 30 days after delivery, call Alcatel's Internetworking Division Customer Service by 2:00 p.m. (Pacific Standard Time) and they will send a replacement part overnight.
- Twenty-Four (24) Month Hardware Warranty
  After the first 30 days, call Alcatel's Internetworking Division Customer Service for a Return Material Authorization (RMA) and ship the part back to them for factory repair. The repaired unit will be shipped back to you from our facility within 10 business days. Next day, advanced replacement is available for a $350.00 expedite fee.
- All-in-One Maintenance
  All maintenance fix releases will be provided free of charge during the first 12 months.

a. Post Warranty

After factory warranty expires, Purchasers should call Alcatel Customer Service department (800-995-2696) for a RMA. The repair or replacement cost will be calculated at 30% of the then current list price of the unit being returned. The repaired or replaced unit will be shipped back to the Purchaser within ten to fourteen (10-14) Alcatel Business Days. Next day advanced replacement is available for an additional $350.00 fee per product.

c. Additional Warranty Provisions:

Contractor warrants only to Purchaser that its hardware Products shall be free from material manufacturing and materials defects under conditions of normal use for a period of twelve (12) months from shipment by Contractor to Purchaser. Contractor's Products obtained from Contractor which do not comply with the above warranty and are returned by Purchaser to Contractor during the warranty period (as shown by appropriate documentation) will be repaired or replaced at Contractor's option, at no cost to Purchaser. Purchaser will bear the cost of freight and insurance of returned Contractor's Products, and Contractor shall bear the

cost of freight and insurance of repaired Contractor's Products. All returned Products must be in the original, or substantially similar, packaging and container and shall conspicuously bear the Returned Material Authorization number Purchaser obtains from Contractor prior to return. If Contractor cannot, or determines that it is not practical to, repair or replace the returned product, the price therefor paid by Purchaser will be credited and applied to future orders. Contractor will make available to Purchaser spare parts for purchase at prices set forth in Contractor's then current price list. Upon return of such repaired Products, the warranty with respect to such Products will continue for the remaining unexpired warranty or sixty (60) days, whichever is longer.

Contractor will provide Purchaser with software bug fixes for Products during the first twelve (12) months after product is purchased from Contractor. During this period, Contractor may offer maintenance releases on new software releases ("Software Releases"), at its sole discretion, to Purchaser for software fixes. Outside of the period set forth herein, software fixes shall only be available through Software Releases.

Contractor warrants to Purchaser that Services will be performed in a professional and workmanlike manner.

It is the sole and exclusive responsibility of Purchaser to determine the suitability of any and all Products of Contractor for Purchaser's intended purposes and uses. Contractor warrants that the Products sold hereunder conform to Contractor's applicable specifications for such Products (subject to Contractor's standard tolerances for variations) as in effect at the time of shipment by Contractor, or, if applicable, specifications provided by Purchaser and expressly accepted by Contractor in writing provided that Contractor shall not have any liability whatsoever for any damage to or defect in Products resulting directly or indirectly from events occurring after the shipment of such Products by Contractor.

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Limitation on Contractor's Liability:

Purchaser acknowledges that no guarantees or assurances have been made as to the results that may be obtained from the use of the Products or Services sold under this PA. To the extent Purchaser is purchasing Services, the terms and conditions under which those Services are provided (to the extent not covered herein) shall be subject to a separate SOW entered into by Purchaser and Contractor or Verizon. Purchaser acknowledges that it does not rely

on, and waives any claim relating to, any recommendation or instruction given to Purchaser by Contractor or any of its representatives regarding the specification, storage, handling or use of Products purchased and sold hereunder, which recommendation or instruction shall be followed by or acted upon Purchaser entirely at Purchaser's own risk.

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Schedule E
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I. OmniSwitch 7700, 7800 and 8800

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