

**PARTICIPATING ADDENDUM
WESTERN STATES CONTRACTING ALLIANCE
FOR DATA COMMUNICATIONS EQUIPMENT and
ASSOCIATED MAINTENANCE & TRAINING
Between the State of Minnesota and Enterasys Network Sales & Service**

**WSCA Contract No. AR1470
State of Minnesota Contract No. 429891**

1. Scope: The State of Minnesota, various state agencies and departments, and current cooperative purchasing venture members ("customer" - as defined in Minnesota Exhibit A) may purchase the products and services available in this Contract. This agreement is not a purchase order, nor does it guarantee any purchases to be made by the customer.
2. Changes: The additional terms and conditions contained in Minnesota Exhibit A, attached, are hereby incorporated by reference. In the event of a conflict between the terms contained within Minnesota Exhibit A and WSCA Master Price Agreement ("Price Agreement"), Minnesota Exhibit A shall control. The parties agree that this provision of the Participating Addendum supercedes the Standard Contract Terms and Conditions set forth in the Price Agreement. In the event that any provision of this Participating Addendum or Price Agreement is contrary to Minnesota law, such provision shall be null and void. This Agreement shall be governed by Minnesota law.
3. Primary Contact: The primary government contact individual for this participating addendum is as follows:

Name: Bernadette Vogel, CPPB
Title: Acquisition Management Specialist
Address: State of Minnesota
Department of Administration
Materials Management Division
50 Sherburne Ave., 112 Administration Bldg.
St. Paul, MN 55155
Telephone: 651.296.3778
Fax: 651.296.3996
E-mail: bernie.vogel@state.mn.us
4. Products and Product Discounts: see attached Exhibit B.
5. Resellers: see attached Exhibit D.

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

IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Government Entity: State of Minnesota

Materials Management Division

In accordance with Minn. Stat. § 16C.03, Subd. 3

By: _____
Name: _____
Title: _____
Date: _____

Contractor: Enterasys Network Sales & Service

By: _____
Name: _____
Title: _____
Date: _____

State of Minnesota - Commissioner of Administration

Or delegated representative

By: _____
Name: _____
Title: _____
Date: _____

Attorney General

As to form and execution

By: _____
Name: _____
Title: _____
Date: _____

Lead State: State of Utah

_____ Date: _____

Minnesota Exhibit A Minnesota General Conditions

1. DEFINITIONS.

a. CPV Program/Members. The Cooperative Purchasing Venture (CPV) program is established by Minn. Stat. § 16C.03, subd. 10, which authorizes the Commissioner to “enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities]..., as described in section 471.59, subd. 1.” Based on this authority, the Commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. Governmental entities joining the program are given an access code which identifies them as members and permits them to access the MMD web site to get information about State contracts. It is not legal for governmental entities who are not members of the CPV program to use “State contract prices.”

b. State Agencies. This term applies only to State of Minnesota agencies, as defined in Minn. Stat. §§ 15.01 and 15.021.

c. Customer. This term applies to any State of Minnesota agency or CPV member.

d. State. This term applies to all State of Minnesota agencies and CPV members.

2. **EFFECTIVE DATE.** Pursuant to Minnesota law this Participating Addendum shall be effective upon the date of final execution by the State.

3. **STATE AUDITS.** (Minn. Stat. § 16C.05, Subd. 5) The books, records, documents, and accounting procedures and practices of the Contract Vendor relevant to the Contract or transaction, are subject to examination by the contracting agency or its agents, the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract or transaction.

4. **ANTITRUST.** The Contract Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with the Contract resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State.

5. **INSURANCE.** The Contract Vendor will be required to provide a copy of a Certificate of Insurance, including workers' compensation insurance coverage requirements of Minn. Stat. Ch. 176 prior to execution of this Participating Addendum.

6. **INDEMNIFICATION AND HOLD HARMLESS.** The Contract Vendor shall indemnify, protect, save and hold harmless the State, its representatives and employees from any and all claims or causes of action, including all legal fees incurred by the State arising from the performance of this Contract by the Contract Vendor or its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contract Vendor may have for the State's failure to fulfill its obligations pursuant to the Contract.

7. **LAWS AND REGULATIONS.** Any and all services, articles or equipment offered and furnished shall comply fully with all State and federal laws and regulations, including Minn. Stat. § 181.59 and Minn. Stat. Ch. 363 prohibiting discrimination.

8. **GOVERNMENT DATA PRACTICES ACT.** To the extent that the Contract Vendor takes possession of and/or has access to the private, nonpublic, protected nonpublic, or confidential data of the customer, the Contract Vendor will agree to comply with the requirements of the Minnesota Government Data Practices Act (Minn. Stat. Ch. 13) in providing services under this Contract. The Contract Vendor agrees that all materials submitted to the State are subject to the Minnesota Government Data Practices Act and provisions of Minn. Stat. Ch. 16C relating to disclosure of documents. The Contract Vendor agrees to indemnify, save, and hold the State of Minnesota, its

agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act, including legal fees and disbursements paid or incurred to enforce this provision of the Contract. In the event that the Contract Vendor subcontracts any or all of the work to be performed under the Contract, the Contract Vendor shall retain responsibility under the terms of this paragraph for such work.

9. **RISK OF LOSS OR DAMAGE.** The State shall be relieved of all risks of loss or damage to the goods and/or equipment during periods of transportation, installation (if installation is provided by the Contract Vendor), unless and until such time as unencumbered title is vested in the State and the goods and/or equipment is in the exclusive possession of the State.
10. **GOVERNING LAW.** This Contract shall be construed in accordance with, and its performance governed by, the laws of the State of Minnesota. Except to the extent that the provisions of the Contract are clearly inconsistent therewith, the Contract shall be governed by the Uniform Commercial Code (UCC) as adopted by the State. To the extent the Contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC, except when to so deem such services as "goods" is unreasonable.
11. **JURISDICTION AND VENUE.** This Contract, its amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. USA. Venue for all legal proceedings arising out of the Contract, or breach thereof, shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota.
12. **HUMAN RIGHTS (Reference Exhibit C).** The Contract Vendor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of this Contract.
13. **PAYMENT.** Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise or service, whichever is later. Purchasing entities other than State agencies will use best efforts to pay the Contract Vendor within 30 days of the date of such invoice.
14. **PURCHASE ORDERS.** The State requires that there will be no minimum order requirements or charges to process an individual purchase order. The Contract number and the PO number must appear on all documents (e.g., invoices, packing slips, etc.).
15. **PURCHASING CARD.** The Contract Vendor will accept a purchasing card for order placement in addition to accepting a purchase order, without passing the processing fees for the purchasing card back to the State.
16. **TAXES.** State agencies are subject to paying Minnesota sales and use taxes. DO NOT add sales tax to the prices being offered. For State agencies, taxes will be paid directly to the Department of Revenue using Direct Pay Permit #1114. Customers other than State agencies may or may not be subject to paying Minnesota Sales and Use Taxes. It is the responsibility of the customer to provide the Contract Vendor with the appropriate tax exemption information.
17. **PRICES.** All prices shall be FOB Destination, freight prepaid and allowed (with freight included in the price), to the ordering agency's receiving dock or warehouse. In those situations in which the "deliver-to" address has no receiving dock or agents, the Contract Vendor must be able to deliver to the person specified on the PO.
18. **DEFAULT.** A State purchase order constitutes a binding contract. All commodities furnished will be subject to inspection and acceptance by the requesting agency after delivery. No substitutions or cancellations are permitted without approval of the State contracting agency. Back orders, defaults in promised delivery, or failures to meet specifications in the purchase order and/or the Contract authorize the State contracting agency to cancel the Contract or purchase order, or any portion of it, purchase elsewhere, and charge the full increase, if any, in cost of administrative handling to the defaulting Contract Vendor. In the event of default, the State reserves the right to pursue any other

remedy available by law. A Contract Vendor may be removed from the vendor's list or suspended from receiving a contract for consistent failure to comply with the terms and conditions of the Contract, or for failure to pay the State for the cost incurred on defaulted contracts. This is in addition to any other penalties list in the RFP and the Contract. Any disputes between the customer and the Contract Vendor concerning penalties must be brought to the AMS for resolution.

19. ASSIGNMENT. The Contract Vendor shall not sell, transfer, assign, or otherwise dispose of the Contract or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. Such consent shall not be unreasonably withheld. The Contract Vendor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of the Contract. Failure to do so may result in the Contract Vendor being held in default. This consent requirement includes reassignment of the Contract due to a change in ownership, merger, or acquisition of the Contract Vendor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contract Vendor's right to assign the Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contract Vendor shall remain solely liable for all performance required and provided under the terms and conditions of the Contract.

20. INTELLECTUAL PROPERTY INDEMNIFICATION. The Contract Vendor warrants that any materials or products provided or produced by the Contract Vendor or utilized by the Contract Vendor in the performance of the Contract will not infringe or violate any patent, copyright, trade secret, or any other proprietary right of any third party. In the event of any such claim by any third party against the State, the State shall promptly notify the Contract Vendor. The Contract Vendor, at its own expense, shall indemnify the State against any losses, cost, expense, or liability (including legal fees) arising out of such a claim, whether or not such claim is successful against the State.

If such a claim has occurred, or in the Contract Vendor's opinion is likely to occur, the Contract Vendor shall either procure for the State the right to continue using the materials or products or replacements or modified materials or products. If an option satisfactory to the State is not reasonably available, the State shall return the materials or products to the Contract Vendor, upon written request of the Contract Vendor and at the Contract Vendor's expense. This remedy is in addition to any other remedy provided by law.

21. PARTICIPATING ADDENDUM AMENDMENTS. Except as provided herein, the Participating Addendum shall be modified only by written amendment duly executed by an authorized representative of the State and the Contract Vendor. No alteration or variation of the terms and conditions of the Participating Addendum shall be valid unless made in writing and signed by the parties as required by law. Every amendment shall specify the date on which its provisions shall be effective. An approved Participating Addendum amendment means one approved by the authorized signatories of the Contract Vendor as required by law.

22. TERMINATION OF THE PARTICIPATING ADDENDUM. The Participating Addendum may be canceled by the State or the Commissioner of Administration at any time, with or without cause, upon 30 days written notice to the Contract Vendor. In the event the Contract Vendor is in default, the contract is subject to immediate cancellation to the extent allowable by applicable law. In the event of such a cancellation, the Contract Vendor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted. The Participating Addendum may be canceled by the Contract Vendor upon 60 days written notice to the AMS.

23. ADMINISTRATIVE PERSONNEL CHANGES. After execution of this Participating Addendum the State must be notified of intended changes in the Contract Vendor's administrative personnel as soon as practicable.

24. PUBLICITY. Any publicity given to the program, publications or services provided resulting from the Contract, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contract Vendor, or its employees individually or jointly with others, or any subcontractors, shall identify the State as the sponsoring

agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract, prior to its approval by the Acquisition Management Specialist.

The Contract Vendor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Contract without the prior written consent of the AMS. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

- 25. NOTICES.** If one party is required to give notice to the other under the Contract, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. Either party must notify the other of a change in address for notification purchases. All notices to the State shall be addressed as follows:

Bernadette Vogel, CPPB
Acquisition Management Specialist
50 Sherburne Avenue
112 Administration Bldg.
St. Paul, MN 55155

Fax: 651.297.3996
E-mail: bernie.vogel@state.mn.us

- 26. NONVISUAL ACCESS STANDARDS.** Not Applicable.

- 27. MINNESOTA REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.** On a quarterly basis, the Contract Vendor shall return to the Department of Administration, Materials Management Division, a fee of .25% (.0025, one-quarter of one percent) of the total sales during that quarter, to assist with the cost of administering the Contract. The administrative fee shall be remitted to the State within 30 days of the end of the quarter. The quarter periods are January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31 of any given year. The Contract Vendor must provide a report detailing the total sales to State agencies and CPV members. The report must be submitted with the check on or before the required 30 days after the end of the quarter.

- 28. SEVERABILITY.** If any provision of the Contract, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both the State and the Contract Vendor shall be relieved of all obligations arising under such provisions. If the remainder of the Contract is capable of performance it shall not be affected by such declaration or finding and shall be fully performed.

- 29. ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT METHOD AND STRUCTURE.** In accordance with Minn. Stat. § 16A.40 the Contract Vendor is required to provide their bank routing information to the Minnesota Department of Finance to enable payments to be made through EFT.

PRODUCTS AND PRODUCT DISCOUNTS

<u>Product</u>	<u>WSCA Discount</u>
Switching Products	A minimum of 38%, a maximum of 45% (on specific products)
Wireless Products	A minimum of 23% (low end radio cards), a maximum of 38% (access point)
Network Management Products (To manage the hardware products above)	23%

State Of Minnesota – Affirmative Action Data Page (For responses in excess of \$100,000 only)

If your response to this solicitation is in excess of \$100,000, please complete the information requested below to determine whether you are subject to the Minnesota Human Rights Act (Minnesota Statutes 363.073) certification requirement, and to provide documentation of compliance if necessary. *It is your sole responsibility to provide this information and—if required—to apply for Human Rights certification prior to the due date and time of the bid or proposal and to obtain Human Rights certification prior to the execution of the contract.*

How to determine which boxes to complete on this form:

	B O X A	B O X B	B O X C	B O X D
Then you must complete these boxes...	X	X	X	X
On any single working day within the past 12 months, if your company...	A	B	C	D
Employed more than 40 full-time employees in Minnesota	●			●
Did not employ more than 40 full-time employees in Minnesota, but did employ more than 40 full-time employees in the state where you have your primary place of business		●		●
Did not employ more than 40 full-time employees in Minnesota or in the state where you have your primary place of business.			●	●

BOX A - For companies which have employed more than 40 full-time employees within Minnesota on any single working day during the previous 12 months

Your response will be rejected unless your business:

- has a current Certificate of Compliance issued by the Minnesota Department of Human Rights (MDHR)
- or-
- has submitted an affirmative action plan to the MDHR, which the department received prior to the date and time the responses are due.

Check one of the following statements if you have employed more than 40 full-time employees in Minnesota on any single working day during the previous 12 months:

- We have a current Certificate of Compliance issued by the MDHR. **Proceed to BOX D.** Include a copy of your certificate with your response.
- We do not have a current Certificate of Compliance. However, we submitted an Affirmative Action Plan to the MDHR for approval, which the Department received on _____(date) at _____(time). [If you do not know when the Department received your Plan, contact the Department.] We acknowledge that the plan must be approved by the MDHR before any contract or agreement can be executed. **Proceed to BOX D.**
- We do not have a Certificate of Compliance, nor has the MDHR received an Affirmative Action Plan from our company. *We acknowledge that our response will be rejected.* **Proceed to BOX D. Call the Minnesota Department of Human Rights for assistance.**

Please note: Certificates of Compliance must be issued by the Minnesota Department of Human Rights. Affirmative Action Plans approved by the Federal government, a county, or a municipality must still be reviewed and approved by the Minnesota Department of Human Rights before a certificate can be issued.

BOX B - For companies which have not had more than 40 full-time employees in Minnesota but have

RESELLERS

Pioneer Standard Electric Inc.
7625 Golden Triangle Drive, Suite G
Eden Prairie, MN 55344
Contact: Cathy Backes
Phone: 952.829.2262
Fax: 952.829.2233
Email: BACKESC@PIOS.com

CompuNet International, Inc.
5001 Cedar Lake Road
St. Louis Park, MN 55416-1682
Contact: Tom Luman
Phone: 952.377.7979
Fax: 952.377.7989
Email: sales@compunetinc.com