



**STATEWIDE CONTRACT**  
**State of Utah, Division of Purchasing & General Services**

**AMENDMENT # 3 to CONTRACT # AR1476**

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract between the State of Utah, Division of Purchasing & General Services, referred to as STATE, and, National LAN Exchange, Inc., referred to as Contractor.

**THE PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:**

September 3, 2002 (original starting date of contract)

May 31, 2006 (current ending date)

May 31, 2007 **new ending date**

**Other changes** to the contract include:

**Effective Date of Amendment:** March 1, 2006

The State of Utah Terms and Conditions still apply to the Contract. All other conditions and terms in the original contract remain the same.

IN WITNESS WHEREOF, the parties sign and cause the amendment to be executed.

**CONTRACTOR**

**STATE**

  
Contractor's signature

  
Douglas G. Richins

Eric Wigegar, President  
Type or Print Name and Title

FEB 21 2006  
Date

2-16-2006  
Date



# STATE OF UTAH CONTRACT AMENDMENT

AMENDMENT # 2 To CONTRACT # AR1476

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract by and between the State of Utah, WSCA Administrator referred to as STATE and, National LAN Exchange, Inc. referred to as CONTRACTOR.

### THE PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

1. **Contract period:**

September 3, 2002 (original starting date)

May 31, 2004 (current ending date)

May 31, 2006 **new ending date**

2. **Contract amount:**

\_\_\_\_\_ (current contract amount)

\_\_\_\_\_ (amendment amount)

-0- **new contract amount**  
(add current amount to amendment amount)

3. **Other changes:** (attach other sheets if necessary):

None

4. **Effective Date of Amendment:** As soon as both parties sign.

All other conditions and terms in the original contract and previous amendments remain the same.

IN WITNESS WHEREOF, the parties sign and cause the amendment to be executed.

**CONTRACTOR**

[Signature]  
Contractor's signature \_\_\_\_\_ Date \_\_\_\_\_  
Type or Print Name and Title

**STATE**

[Signature] 2/24/04  
Douglas G. Richins \_\_\_\_\_ Date \_\_\_\_\_  
Director, Division of Purchasing

**STATE OF UTAH**  
**STATEWIDE CONTRACT AR1476**

1. CONTRACTING PARTIES: This Statewide Contract is between the **Division of Purchasing and General Services**, an agency of the State of Utah, and the following CONTRACTOR:

National LAN Exchange, Inc  
Name

1276 South 1380 West  
Address

Orem, UT 84058  
City State Zip

LEGAL STATUS OF CONTRACTOR

- Sole Proprietor  
 Non-Profit Corporation  
 For-Profit Corporation  
 Partnership  
 Government Agency

Federal Tax ID# 87-0533543 Vendor # 94837A Commodity Codes: 20464, 20621, 20623

Vendor Contact Person: Eric Winegar Vendor Phone #: 801-377-0074

Vendor Fax #: 801-377-0078 Vendor email address: ewinegar@nle.com

2. GENERAL PURPOSE OF CONTRACT: The general purpose of this Contract is to provide:  
Data Communications Equipment and Associated OEM Maintenance & Training
3. CONTRACT PERIOD: Effective date September 3, 2002 Termination date May 31, 2004, unless terminated early or extended in accordance with the terms and conditions of this contract.  
Renewal option: Renewable for one or two year terms up to four additional years.
4. PRICING AS PER ATTACHMENT A (Addendum 1)  
PAYMENT TERMS: Net 30  
DAYS REQUIRED FOR DELIVERY: 10 business days  
MINIMUM ORDER: \$500  
FREIGHT TERMS: F.O.B. Destination, Freight Prepaid
5. ATTACHMENT A: Addendum 1; Exhibits A, B, and C  
ATTACHMENT B: WSCA Standard Terms and Conditions  
ATTACHMENT C: N/A  
**Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.**
6. DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:  
a. All other governmental laws, and regulations applicable to the goods and/or services authorized by this contract.  
b. Utah State Procurement Code, Procurement Rules, RFP LW1907, and CONTRACTOR'S proposal response to RFP LW1907 dated 07-17-01.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

**CONTRACTOR**

**STATE OF UTAH**

Signature on file  
Contractor's signature

Signature on file  
Douglas G. Richins  
Director, Division of Purchasing

\_\_\_\_\_  
Type or Print Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**ATTACHMENT A**  
**ADDENDUM 1**

This Addendum serves to clarify terms and conditions of the contract between the State of Utah, referred to as STATE, and National LAN Exchange, Inc, referred to as Contractor. The State of Utah is acting as the Lead State for the procurement process resulting in **WSCA Contracts for Data Communications Equipment, associated OEM Maintenance and Training.**

**A. Manufacturer Product Line(s)**

This contract authorizes the Contractor to provide the following manufacturer's Data Communications Equipment, Maintenance, and Training, as listed by category. No other equipment or maintenance will be covered under this contract, unless identified in an amendment to the contract. Products covered under this agreement are:

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

**B. State of Utah/WSCA Contract Manager**

Debbie Gundersen  
State of Utah  
Division of Purchasing and General Services  
State Office Building, Capitol Hill  
Room 3150  
Salt Lake City, UT 84114-1061

email: [dgundersen@utah.gov](mailto:dgundersen@utah.gov)  
Voice: (801) 538-3150  
Fax: (801) 538-3882

**C. Remittance Address**

National LAN Exchange, Inc  
PO Box Q  
Provo, UT 84603

**D. Special Terms and Conditions**

The parties agree to amend the terms and conditions as follows:

1. Order of Precedence  
The order of precedence for the contract terms will be as follows:
  1. Addendum 1
  2. WSCA Terms and Conditions
  3. Contractor's Proposal Response to RFP LW1907
  4. RFP LW1907

2. Included Documents  
The documents listed in Number 1 are included in the contract. It is agreed that any reference to the “Entire Agreement” includes these documents.
3. Public Information  
The contract, including the price lists and the Response to the RFP, will be considered public documents and will be subject to government records policies in each state. The Contractor gives the STATE express permission to make copies of the information specified to provide to other STATE government entities that may use the contract, and to the public, in accordance with general STATE policies, including copies of said information that may be identified as confidential, proprietary, or copyrighted.
4. Arbitration  
The 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 contract issues.
5. Contract Period  
The contract period, including renewal options, is listed on the STATE OF UTAH - Statewide Contract cover page. Renewals will be agreed to upon written authorization from both parties. All references to automatic renewals will be null and void.
6. Governing Law  
This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the State of Utah. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity’s State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity’s State.
7. Revisions to the WSCA Standard Terms and Conditions  
The WSCA Standard Terms and Conditions will be revised as follows:
  - A. Item 16, CONFLICT OF TERMS, will have the following added for clarification: The WSCA (Western States Contracting Alliance) Standard Contract Terms and Conditions will have precedence over the Contractor’s response to the RFP, including the National LAN Exchange Terms and Conditions.
  - B. There are no additional changes to the WSCA Standard Contract Terms and Conditions.
8. Revisions to Contractor’s Response to the RFP  
Note: The changes below may be listed in multiple locations throughout the response. The changes will apply to all instances of similar terms.  
The Contractor’s Response to the RFP will be revised as follows:
  - A. The National LAN Exchange Terms and Conditions will be revised with the changes identified on the attached Exhibit A. [Note: References to Buyer is referring to the State of Utah.]
  - B. There are no additional changes, except the changes identified in this Addendum, to the Contractor's Response to the RFP.
9. State of Utah Only Requirement  
Attachment C from the RFP will apply to the State of Utah only. This term is as follows:

**E-PROCUREMENT:** The State of Utah has awarded an e-procurement system contract that has a transaction fee of 1% per order with a ceiling of \$500 for any one order of products/services. There are expected cost savings to the Contractors with implementation of the system. The successful vendor must agree to terms as described in the following subparagraphs:

a. The Contractor must agree to integrate its catalog of products/services into the e-procurement system. Once implemented, the Contractor must pay the transaction fees for orders placed against the contract. In the event, the Contractor fails to make payments, the State may: (i) eliminate the Contractor from the system in accordance with an escalation and review process developed by the State and its e-procurement vendor and (ii) terminate the State contract and award the contract to the next acceptable bidder.

b. At the time that the Contractor will be required to offer products/services through the e-procurement system, the State will negotiate an equitable adjustment in unit prices to account for the expected supplier fees on orders placed on the system. The State will negotiate a single pricing structure for contract purchases and (i) prohibit discounting off-system purchases or otherwise offering discriminatory pricing or preferences for orders placed off-system; and (ii) require the Contractor to manually track and report the ordering volume of off-system purchases of supplies/services.

## **E. Contractor Requirements**

### 1. Contractor Responsibility

Contractor is solely responsible for fulfillment of the responsibilities under the terms and conditions of the contract. The procuring agencies will issue purchase orders and make payments to only the named contractors.

### 2. Servicing Subcontractors

If using servicing subcontractors for the performance of local marketing, maintenance and/or technical support services in accordance with the terms and conditions of the contract. Servicing subcontractors may not directly accept purchase orders or payments for products or services from procuring agencies under the terms and conditions of the contract. The authorized procuring agency has the option of choosing whether to purchase the associated OEM maintenance and/or training to support the equipment purchased.

### 3. WSCA Administration Fee

The contractor must pay a WSCA administration fee of one tenth of one percent (.10%) in accordance with the terms and conditions of the contract. The WSCA administration fee is not negotiable.

### 4. Usage Reporting Requirement

Contractor must submit quarterly usage reports to the contract manager. Initiation and submission of the quarterly report is the responsibility of the contractor without prompting or notification by the contract manager. The due dates of each quarterly contract usage report are April 30, July 31, October 31 and January 31. Quarterly usage reports must contain total dollar usage figures for each WSCA member-state (and non-member state), per product category, per manufacturer, respectively. Usage figures must be provided per maintenance option.

### 5. Change in Contractor Representatives

The State of Utah/WSCA reserves the right to require a change(s) in contractor representatives if the assigned representative(s) is not, in the opinion of the State of Utah's contract manager, meeting its needs adequately.

6. Website Development and Maintenance  
Contractor must maintain said website and keep the information current and correct on a timely basis.
7. Rollout and Marketing  
Contractor may conduct a marketing effort as described in Contractor's proposal.
8. Right to Publish  
Contractor must secure prior approval from the contract manager for permission to release any information that pertains to the potential work or activities relating to this contract. Failure to adhere to this requirement may result in termination of the contract for cause.
9. Contractor's Scope of Equipment and Services  
Contractor may only fill contract orders from the scope of equipment and services under contract. Any sale made under this contract by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described in Section E may result in contract termination for cause.
10. E-Rate Requirement  
Contractor must 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 must be provided without the addition of any service or administration fee by the contractor.
11. Freight Terms of Sale F.O.B. Destination, Freight Prepaid  
Contractor will ship all products F.O.B. destination, freight included in the product price. Contractor may not include freight charges on invoicing. Failure to comply with this requirement may result in contract termination for cause.

Whenever a procuring agency does not accept any product and returns it to the contractor, all related documentation furnished by the contractor shall be returned also. The contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the procuring agency. Contractor is responsible for the pick-up of returned equipment.

12. Price Guarantee Period  
Percentage discount depth from list is not subject to a "price increase request" that would result in a less attractive discount; discounts may only be adjusted by the contractor to reflect a deeper discount(s). The discount is applied to manufacturers current published list price schedule(s).

Maintenance and any training related costs are guaranteed for two years.

13. Product Revision Requests  
Contractor must submit updated price list(s) upon publication, or any other product model changes, addition of new products, product upgrades or services in a timely manner.

Contractor agrees to delete obsolete and discontinued products from the contract price list(s) on a timely basis. Major product model changes will be incorporated into the contract as soon as

possible after product introduction, to be offered at the same rate of discount for the appropriate price list and its discount.

14. **Maintenance of Current Price List with Discount(s) Applied**

Manufacturer’s price list(s) must be tailored for WSCA with the WSCA contract discount(s) applied; this must be created and maintained by the contractor on an Internet website hosted by the contractor, at no additional charge(s) to the State of Utah or WSCA. This website will be listed as a link from the WSCA website.

**F. Contract Scope of Equipment and Related Services**

Any sale by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described below may result in contract termination for cause.

1. Discounts of Manufacturers Price List

a. Pricing Discounts  
**(Section 3 pg. 11)**

<b>File Name</b>	<b>Description</b>	<b>Discount Levels</b>
July NEW 2001.xls	Enterprise Solutions Data Products – Unrestricted	40% off Manufacturer’s Suggested List Price (MSLP)
July REFURB 2001.xls	Nortel Networks Remarketing Price List (Data Products)	34% off MSLP
R-PL-UT.xls	Enterprise Solutions Data Products – Restricted – July 2001	30% off MSLP
OPTera July01.xls	OPTera Products Price List	S = 31% off MSLP K = 43% off MSLP
ES-SV-EU.xls	Global Enterprise Services End User Service Pricing for North America – July 1, 2001	MSLP

b. Discount Structures Based on Volume (per order or progressive cumulative volume)  
N/A

c. WSCA Member-State coverage  
**Section I-7**

Alaska, California, Colorado, Hawaii, Idaho, Minnesota, Nevada, New Mexico, Oregon, Utah, Washington

2. Resolution of Customer Problems  
**Section 3 pg. 4**

National LAN Exchange's methodology for problem and complaint resolution is broken down into two categories: Pre-Sales consultation and Post-Sales support. Initial pre-sales problem resolution will be handled by the NLE primary account representative. All correspondence should be funneled through the primary account representative. It is the responsibility of the primary account representative to successfully resolve all problems and concerns. If the pre-sales problem is not resolved to the satisfaction of the WSCA representative, the matter should be escalated to the marketing supervisor, Eric Winegar, NLE Founder, Chairman, President and CEO.

This escalation process has been extremely successful for NLE in the past. NLE maintains a 90% customer retention rate.

Post-sales problem resolution will be handled through our partnership with Nortel Networks. NLE has contracted with Nortel Networks to provide post-sales technical support. The process and escalation procedures once Nortel is engaged is described in detail throughout our response, as well as in Appendix I – Customer Service Documentation.

### 3. Escalation Procedures

#### **Appendix I – Customer Service Documentation**

##### **Technical Escalation Guidelines**

Nortel Networks Customer Service and Engineering are committed to resolving our customers technical issues in a timely manner. Because of the growing complexity and increased variables involved in the problem diagnosis and resolution process, it is difficult to define exact time frames for solution delivery once an issue has been reported.

The purpose of this document is to ensure that we as a company and as a support organization are focused on bringing technical escalations and issues to full closure in the shortest time possible. Our Technical Escalation Guidelines are intended to provide as follows:

- Management awareness of issues that impact the business operations of our customers or the future deployment of Nortel Networks products.
- Appropriate Nortel Networks Management resources to understand the issues and how they are impacting our customer.
- Nortel Networks Technical Support utilizes resources to obtain and evaluate the data necessary to reproduce and ultimately resolve our customers problem.
- Engineering resources to define, assess, and implement the necessary changes to resolve our customers' problem.

Nortel Networks will follow internal escalation per severity level as described in this guideline. However customers may wish to escalate any reported technical issues when:

- The problem is critical to your business operations.
- Problem resolution time is too long.

- Normal procedures are not meeting your business goals.
- You are not satisfied for any reason.

## **Priority Levels**

Nortel Networks Technical Support Center is responsible for assessing the situation and determining the impact of the problem on the business operation of our customer. The following hierarchy will be used for technical and management attention, and escalation, to a reported problem.

Regular status updates will be provided until the technical issue has been resolved to the customers' satisfaction. These updates will be provided to the Regional Customer Support Manager, Area SE Manager, Sales Team, and Customer as outlined below.

<b><u>Level</u></b>	<b><u>Description of Problem</u></b>
<b>Priority 1</b>	<p>Production network is down or inoperative or major software problem exists, causing critical impact to customer business operations. No viable workaround is available. Nortel Networks and the customer are willing to commit significant full-time resources around the clock until the problem is resolved. Customer shall provide Nortel Networks TSC access to the network in order to facilitate the diagnosis and resolution of the problem. If access cannot be granted, then customer shall monitor problem in order to provide Nortel Networks real time information for purposes of diagnosis and resolution.</p> <p>Status updates will be given to the Customer every 4 hours until the technical issue is resolved. Appropriate Nortel Networks personnel will be given daily status updates. These updates may be delivered direct, or via voice mail, email, or some other reliable mechanism.</p>
<b>Priority 2</b>	<p>Production network is severely degraded or serious software problem exists, causing significant impact to customer business operations. No viable workaround is available. Nortel Networks and the customer are willing to commit full-time resources during business hours or as scheduled until the problem is resolved. Customer shall provide Nortel Networks TSC access to the network in order to facilitate the diagnosis and resolution of the problem. If access cannot be granted, then customer shall monitor problem in order to provide Nortel Networks real time information for purposes of diagnosis and resolution.</p> <p>Status updates will be delivered to the customer daily using the medium that is the most convenient for the customer. Appropriate Nortel Networks people will be given twice a week updates until the technical issue is resolved.</p>
<b>Priority 3</b>	<p>Network performance is degraded or minor software problem exists. Network functionality is noticeably impacted or product is usable with limitations that are not critical to overall operations, and most business operations continue.</p>

Status updates will be delivered to the customer twice a week using the medium that is the most convenient for the customer. Appropriate Nortel Networks people will be given weekly updates until the technical issue is resolved.

**Priority 4** Customer requires information or assistance and advice on Nortel Networks products.

Status updates will be delivered to the customer once a week using the medium that is the most convenient for the customer. Appropriate Nortel Networks people will be given once a week updates until the technical issue is resolved.

**Nortel Networks Escalation Matrix**

If a problem reported to the Technical Support Engineer cannot be resolved in the time frame outlined below, Nortel Networks will escalate using the following priority based matrix. It is the “Priority” of a Clarify case in the Nortel Networks TSC that drives the internal escalation process. Problems diagnosed as hardware failures will result in module replacement. Time frames for replacing hardware are dependent upon contract coverage.

ELAPSED TIME	PRIORITY 1	PRIORITY 2	PRIORITY 3	PRIORITY 4
2 Hours	Consult ASE			
4 Hours	TSC to ASE			
8 Hours		Consult ASE		
24 Hours	Consult Sustaining			
72 Hours		TSC to ASE	Consult ASE	
As Needed		Consult Sustaining	TSC to ASE Consult Sustaining	TSC to ASE Consult Sustaining

4. Technical Services (Equipment Warranty, Installation, Training, Maintenance Options, Replacement Parts)

1. **Equipment Warranty**

**Exception:** Nortel Networks product warranty periods vary from product to product (ranging from 90-days to one-year) and the warranty period for each product is as specified in the Price List currently in effect on the date that a customer’s order is received. The warranty period begins on the date that the product is shipped to the customer. Nortel Networks standard warranty provides for Return to Factory, 20-day turnaround, repair or replacement of the failed component. Nortel Networks equivalent to extended warranty programs for extended parts and labor is an annual maintenance service agreement.

The proposed Nortel Networks Passport 6400 and Passport 4400 feature a one-year warranty on hardware components and a 90-day software warranty, and the Nortel Networks Passport 2430 features a 90-day warranty on both hardware and software. Following is Nortel Networks warranty policy as stated in Article 6. Warranty of the standard Nortel Networks “Purchase and License Agreement”.

a) Nortel Networks warrants that Hardware i) is free from defects in materials and workmanship and ii) substantially conforms to Nortel Networks’ published specifications. If Hardware does not function as warranted during the warranty period, Nortel Networks will determine to either i) make it do so, or ii) replace it with equivalent Hardware.

b) Nortel Networks warrants that when Software is used in the specified operating environment it will substantially conform to its published specifications. If Software does not function as warranted during the warranty period, Nortel Networks will provide a suitable fix or workaround or will replace the Software; provided Software is within one software release level of the then-current software.

c) Services will be performed in a professional and workmanlike manner. If Services are not performed as warranted and Nortel Networks is notified in writing by Customer within 30 days, Nortel Networks will re-perform the non-conforming Services.

d) The warranty period for Hardware and Software shall be the warranty period identified in the Nortel Networks warranty matrix in effect at the time of Customer's Order. In the event Nortel Networks determines that repair or replacement as set forth in Section 6 cannot be made using commercially reasonable efforts, Nortel Networks will refund to Customer the price paid for the Product, less applicable.

e) No warranty is provided for i) supply items normally consumed during Product operation; ii) failures caused by non-Nortel Networks products; iii) failures caused by a Product's inability to operate in conjunction with other Customer hardware or software; or iv) performance failures resulting from services not performed by Nortel Networks or Customer's failure to purchase all necessary Products under this Agreement. Warranty will be voided by misuse, accident, damage or modification, failure to maintain proper physical or operating environment or improper Customer maintenance. Software is not warranted to operate uninterrupted or error free. THESE WARRANTIES AND LIMITATIONS ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND SOLE REMEDIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

f) Nortel Networks provides Third Party Vendor Items on an "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, unless Nortel Networks specifies otherwise. However, such Third Party Vendor Items may carry their own warranties and Nortel Networks shall pass through to Customer any such warranties to the extent authorized.

## 2. **Installation**

Please refer to **Exhibit B – Implementation and Engineering Services**.

This section is located in Attachment ES-SV-EU under July 2001 Price Lists in the RFP response.

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## 3. **Training**

All official Nortel Networks training has been subcontracted to ARG Global Knowledge (<http://www.globalknowledge.com>) Updated Course information and updated pricing is available online.

## 4. **Maintenance Options**

Please refer to **Exhibit C -Appendix G Maintenance Contracted Services**.

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## 5. **Replacement Parts**

National LAN Exchange is a national leader for Nortel Networks in this area. There are several choices in replacement parts.

1. Repair Service ( Next Day, or 30 day Repair)
2. Purchasing a new replacement unit
3. Purchasing a refurbished unit with 1 year warranty

Your National LAN Exchange representative will be able to assist in choosing the best fit for the situation.

National LAN Exchange prides itself in being able to keep our customers systems running long after the manufacturer has abandoned its own platform. For contract purposes, the products proposed in the WSCA RFP have a minimum 5 year availability, post discontinuation from the manufacturer.



**ATTACHMENT B**  
**Standard Contract Terms and Conditions**  
**Western States Contracting Alliance (WSCA)**

**1. PARTICIPANTS:** Western States Contracting Alliance (“WSCA”) is a cooperative group contracting consortium for state government departments, institutions and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming. Obligations under this contract are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting price agreement(s) will be permissive.

**2. DEFINITIONS:**

“Lead State” means the State conducting this cooperative solicitation and centrally administering any resulting price agreement.

“Offer” or “Bid” or “Proposal” refers to the offer submitted in response to a solicitation, whether denominated as an invitation for bid, request for proposal, or otherwise. “Bidder” or “Offeror” similarly refers to the person, company, or other entity submitting the bid or proposal that constitutes an offer capable of acceptance, regardless of the solicitation method used.

“Permissive price agreement” means that placement of orders through the price agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the price agreement without using statutory or regulatory procedures (e.g. invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the price agreement so long as applicable procurement statutes and rules are followed.

“Participating Addendum” means a bilateral agreement executed by the contractor and a Participating State that clarifies the operation of the price agreement for the State concerned, e.g. ordering procedures specific to a State, and may add other state-specific language or other requirements.

“Participating State” means a member of WSCA who has indicated its intent to participate as disclosed on the solicitation, or who subsequently signs a Participating Addendum where contemplated by the solicitation.

“Purchasing Entity” means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and Participants authorized to purchase the goods and/or services described in this solicitation.

**3. QUANTITY ESTIMATES:** Estimated quantities are informational and not to be construed as a warranty of accuracy of historical or anticipated volumes or a guarantee to purchase any amount.

**4. SPECIFICATIONS:** Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the solicitation says "no substitute." Offers will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

**5. ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS:** The Lead State reserves the right to accept or reject any or all bids or proposals, or parts of bids or proposals, and to waive informalities therein.

**6. SAMPLES:** Generally, when required, samples will be specifically requested in the solicitation. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated during testing, samples will be returned at an offeror's request, transportation collect.

**7. CASH DISCOUNT TERMS:** Offeror may quote a cash discount based upon early payment; however discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

**8. TAXES:** Offered prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

**9. MODIFICATION OR WITHDRAWAL OF BIDS AND PROPOSALS:** Bids and proposals may be modified or withdrawn prior to the time set for receipt of bids or proposals. After the time set for receipt of bids or proposals, no proposal may be modified or withdrawn.

**10. PATENTS, COPYRIGHTS, ETC:** The Contractor shall release, defend, indemnify, and hold harmless WSCA, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities, from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, process, patented or unpatented invention, article or appliance furnished or used in performance of this contract.

**11. AWARD:** Multiple contracts may be awarded as a result of this solicitation. Awards in requests for proposals (competitive sealed proposals) shall be made to the responsible offeror(s) whose proposals are determined to be the most advantageous to the Participating States, taking into consideration price and the other evaluation factors set forth in the solicitation. Unless otherwise stated in the solicitation, an award in an solicitation denominated as an invitation to bid will be made to the lowest responsive and responsible bidder(s) meeting specifications and all bid terms and conditions. The Participating States reserve the right to award items separately or by grouping items, or by total lot.

**12. NON-COLLUSION:** By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the solicitation, designed to limit independent bidding or competition.

**13. TERMINATION:** Unless otherwise stated in the solicitation, any contract entered into as a result of this solicitation may be terminated by either party upon 60-days notice, in writing, prior to the effective date of the termination. Further, any Participating State may terminate its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Any termination under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order.”

**14. DEFAULT AND REMEDIES:**

A. Any of the following shall constitute cause to declare the contract or any order under this contract in default:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this contract.

B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire agreement), a Participating State (in the case of a breach of the Participating Addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.

C. If the default remains after the opportunity for cure, the non-defaulting party may:

- (1) Exercise any remedy provided by law or equity;
- (2) Terminate the contract or any portion thereof, including any orders issued against the contract;
- (3) Impose liquidated damages, as specified in the solicitation or contract;
- (4) In the case of default by the contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend contractor from receiving future solicitations.

**15. LAWS AND REGULATIONS:** Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

**16. CONFLICT OF TERMS:** In the event of any conflict between these standard terms and conditions and any special terms and conditions in the solicitation, the special terms and conditions shall govern.

**17. REPORTS:** The contractor shall submit quarterly reports to the Lead State contract administrator, and upon request to any Participating State, showing the quantities and dollar volume of purchases by each Purchasing Entity.

**18. HOLD HARMLESS:** The contractor shall release, defend, indemnify and hold harmless WSCA, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities, from and against any damage, cost or liability, including reasonable attorneys fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, its employees or subcontractors or volunteers.

**19. ORDER NUMBERS:** Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

**20. GOVERNING LAW AND VENUE:** This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's State.

**21. DELIVERY:** The prices offered shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

**22. WARRANTY:** As used herein "Purchasing entity" refers to any WSCA state agency or political subdivision. The CONTRACTOR agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the PURCHASING ENTITY under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The CONTRACTOR (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the PURCHASING ENTITY apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the CONTRACTOR warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used,

(4) the product will be suitable for any special purposes that the PURCHASING ENTITY has relied on the CONTRACTOR'S skill or judgment to consider when it advised the PURCHASING ENTITY about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the PURCHASING ENTITY has not been warned. Remedies available to the PURCHASING ENTITY include the following: the CONTRACTOR will repair or replace (at no charge to the purchasing entity) the product whose nonconformance is discovered and made known to the CONTRACTOR in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the CONTRACTOR will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the PURCHASING ENTITY may otherwise have under this contract with respect to defects.

**23. AMENDMENTS:** The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Contract Administrator of the Lead State.

**24. ASSIGNMENT/SUBCONTRACT:** Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the Contract Administrator of the Lead State.

**25. NONDISCRIMINATION:** The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

**26. SEVERABILITY:** If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

**27. INSPECTIONS:** Goods furnished under this contract shall be subject to inspection and test by the Purchasing Entity at times and places determined by the Purchasing Entity. If the Purchasing Entity finds goods furnished to be incomplete or in compliance with proposal specifications, the Purchasing Entity may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Purchasing Entity, the Purchasing Entity may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Purchasing Entity's rights including the rights and remedies under the Uniform Commercial Code.

**28. PAYMENT:** Payment for completion of an contract is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a Purchasing Entity's "Purchasing Card".

**29. FORCE MAJEURE:** Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Lead State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

**30. HAZARDOUS CHEMICAL INFORMATION:** The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the Purchasing Entity agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

**31. FIRM PRICE:** Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of receipt of bids or proposals. Prices must remain firm for the full term of the contract.

**32. EXTENSION OF PRICES:** In the case of error in the extension of prices in the proposal, the unit prices will govern.

**33. PROPOSAL PREPARATION COSTS:** WSCA is not liable for any costs incurred by the offeror in preparation of the bid or proposal.

**34. CERTIFICATION REGARDING CONFLICT OF INTEREST:** Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any Participating State to any officer or employee of WSCA or Participating States to secure favorable treatment with respect to being awarded this contract.

**35. INDEPENDENT CONTRACTOR:** Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind the Participating States to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

**36. POLITICAL SUBDIVISION PARTICIPATION:** Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the WSCA participating states shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

**37. E-RATE COMPLIANCE:** Contractor agrees to participate in the Federal Communication Commission's E-rate discount program established pursuant to the Telecommunications Act of 1996, and

in accordance with any State and local government E-rate related requirement(s) of the authorized procuring agency.

**38. CERTIFICATION REGARDING DEBARMENT:** The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by WSCA.

**39. RECORDS ADMINISTRATION:** The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this contract. These records will be retained by the contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

**40. AUDIT OF RECORDS:** The contractor agrees to allow WSCA, State and Federal auditors, and state agency staff access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

**41. PRICES AS CEILING:** Price agreement prices represent ceiling prices for the supplies and services priced in the price agreement. The vendor shall report to the Lead State any price reduction or discount, or other more favorable terms, offered to any Purchasing Entity, and the awarded vendor agrees to negotiate in good faith to reestablish ceiling prices or other more favorable terms and conditions applicable to future orders.

**42. STATE PARTICIPATION/UNIQUE TERMS AND CONDITIONS:** Apart from the Lead State conducting the solicitation, the States indicated on Attachment A have signified their intent to enter into a price agreement and, except where Attachment A or the solicitation requires execution of a Participating Addendum, are considered Participating States for purposes of this solicitation and the resulting contract. Attachment A of the Solicitation includes any significant State-specific provisions required by the laws, regulations, or procurement practices of the State(s).

Additional States may be added with the consent of the contractor and the Lead State (on behalf of the WSCA Participating States) through execution of a Participating Addendum.

**Revision Date: April 2001**

**EXHIBIT A**  
**National LAN Exchange**  
**Terms and Conditions**

- 1. TITLE/RISK OF LOSS.** The Goods shall be delivered F.O.B. destination.
- 2. PRICING.** All price lists are subject to change without advance notice. During the contract period, pricing discounts may only be adjusted by the Seller to reflect a deeper discount(s). Some items may be altered or discontinued without advance notice. All freight charges from Orem, Utah are included in the list price, except for expedited freight charges which shall be paid by the Buyer. Applicable sales tax will be added for orders shipped within the state of Utah, unless a Sales Tax Exemption is supplied by Buyer.
- 3. PAYMENT.** Payment shall be made to 1276 South 1380 West Orem, Utah 84058, within 30 days of invoice. National LAN Exchange terms are C.O.D., Pre-Pay, MasterCard/Visa, and Net 30 days. Net 30 is available for customers with approved credit. If any invoice is not paid when due, interest will be added to and payable on all overdue amounts at 12 percent per annum, or the maximum percentage allowed under applicable laws, whichever is less. Buyer shall pay all costs of collection, including without limitation, reasonable attorney fees. In addition to any other right or remedy provided by law, if the Buyer fails to pay for the Goods when due, the Seller at its option may treat such failure to pay as a material breach of this Contract, and may terminate this Contract and/or seek legal remedies with the Participating Entity that is in default.
- 4. ADJUSTMENTS.** All shortages, claims/requests for adjustment must be made within 5 business days of receipt of goods.
- 5. DELIVERY.** Time is of the essence in the performance of this Contract. Seller will arrange for delivery by carrier chosen by Seller, unless otherwise agreed in writing between parties.
- 6. PAYMENT OF TAXES.** Buyer agrees to pay all taxes of every description, federal, state, and municipal, that arises as a result of this sale, excluding income taxes, unless a Sales Tax Exemption is supplied by Buyer.
- 7. WARRANTIES.** Seller warrants that the Goods shall be free of substantive defects in material and workmanship for a period of 365 days from date of shipment or as listed in product specifications or as specified on the invoice. Routing products and special orders are subject to a 90-day warranty period. Alterations, abuse or misuse of any product voids all warranties. This limited warranty shall be limited to repair or replacement of parts at the election of National LAN Exchange. All items will need an RMA number prior to the return. Some products have extended warranties in excess of the standard warranty. Many products have extended warranties available. Please check with your sales representative for pricing.
- 8. INSPECTION.** The Buyer, upon receiving possession of the Goods, shall have 5 business days to inspect the Goods. If the Buyer, in good faith, determines that all or a portion of the Goods are non-conforming, the Buyer may return the Goods to the Seller at the Seller's expense. The Buyer must provide written notice to the Seller of the reason for rejecting the Goods. The Seller will have 30 days from the return of the Goods to remedy such defects.
- 9. DEFAULT.** The occurrence of any of the following shall constitute a material default under this contract:
- a. The failure to make a required payment when due.
  - b. The insolvency or bankruptcy of either party.
  - c. The subjection of any of either party's property to any levy, seizure, general assignment for the benefit of creditors, application or sale for or by any creditor or government agency.
  - d. The failure to make available or deliver the Goods in the time and manner provided for in this contract.
- 10. REMEDIES ON DEFAULT.** In addition to any and all other rights available according to law, if either party defaults by failing to substantially perform any material provision, term or condition of this Contract (including without limitation the failure to make a monetary payment when due), the other party may elect to terminate this Contract if the default is not cured within 45 days after providing written notice to the defaulting party. The notice shall describe with sufficient detail the nature of the default.
- 11. RETURNS.** Please call our customer service department. A return authorization number will be issued to assure that your account is credited, or your product replaced promptly. Returns must be shipped prepaid to National LAN Exchange. Returnable items will be subject to restocking fee of 20%. All returns must be in new condition, with all original packing. Custom cables, bulk cable, connectors, tools, software, special orders, and items held over 10 days are not returnable.
- 12. REMEDIES ON DEFAULT.** In addition to any and all other rights available according to law, if either party defaults by failing to substantially perform any material provision, term or condition of this Contract (including without limitation the failure to make a monetary payment when due), the other party may elect to terminate this Contract if the default is not cured within 45 days after providing written notice to the defaulting party. The notice shall describe with sufficient detail the nature of the default.

**13. FORCE MAJEURE.** If performance of this Contract or any obligation under this Contract is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars.

The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

**14. CONFIDENTIALITY.** Both parties acknowledge that during the course of this Contract, each may obtain confidential information regarding the other party's business. Both parties agree to treat all such information as confidential and to take all reasonable precautions against disclosure of such information to unauthorized third parties during and after the term of this Contract. Upon request by an owner, all documents relating to the confidential information will be returned to such owner. The terms and pricing of this Contract shall not be considered confidential.

**15. NOTICES.** Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the addresses listed above or to such other address as one party may have furnished to the other in writing. The notice shall be deemed received when delivered or signed for, or on the third day after mailing if not signed for.

**16. ASSIGNMENT.** Neither party may assign or transfer this Contract without prior written consent of the other party, which consent shall not be unreasonably withheld.

**17. ENTIRE CONTRACT.** This Contract, including the State of Utah Contract Number AR-1476 contains the entire agreement of the parties regarding the subject matter of this Contract, and there are no other promises or conditions in any other agreement whether oral or written.

**18. AMENDMENT.** This Contract may be modified or amended if the amendment is made in writing and signed by both parties.

**19. SEVERABILITY.** If any provision of this Contract shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**20. WAIVER OF CONTRACTUAL RIGHT.** The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Contract.

**21. APPLICABLE LAW.** This Contract shall be governed by the laws of the State of Utah.