

STATE OF NEW JERSEY
PARTICIPATING ADDENDUM STANDARD TERMS AND CONDITIONS
Under
Western States Contracting Alliance ("WSCA")
Contract for Data Communications Products and Services 14-19
("WSCA Master Agreement")
[State of Utah Contract Ref. No. AR623, RFP#JP14001]

This Participating Addendum is made as of the effective date of the WSCA Master Agreement or the last date of signature below, whichever is later (the "Effective Date"), by and between, MITEL BUSINESS SYSTEMS, INC., whose address is 1146 North Alma School Road, Mesa, Arizona, 85201 ("Contractor"), and the State of New Jersey, Department of the Treasury, Division of Purchase and Property ("Participating State" or "State") whose address is 33 West State Street, 8th Floor, P.O. Box 039, Trenton, New Jersey 08625, on behalf of the State of New Jersey and all "Authorized Purchasers" (as defined below). For clarification of references throughout this document, the term "State," in any form, refers to the State and any Authorized Purchaser, unless otherwise indicated.

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

WHEREAS, the State of Utah and Contractor have entered into Contract #AR623 (the "WSCA Master Agreement"), which may be found at the following URL: <http://www.aboutwsca.org/content.cfm/id/miteldatacomm>, awarded in accordance with the Data Communications Products and Services 14-19 RFP #JP14001; and

WHEREAS, the State of New Jersey participated in the publicly advertised, competitive bidding process with four other states and evaluated the proposals; and

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

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

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

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

1. The term of this Participating Addendum shall be effective from the Effective Date and shall continue for a period ending on the Termination Date of the WSCA Master Agreement or when this Participating Addendum is terminated in accordance with the WSCA Master Agreement or this Participating Addendum, whichever shall occur first. Notwithstanding anything to the contrary contained in the WSCA Master Agreement, the State reserves the right, in its sole discretion, to extend this Participating Addendum upon an extension of the WSCA Master Agreement under the same terms and conditions as stated in this Participating Addendum. Notwithstanding anything to the contrary contained in the WSCA Master Agreement, there shall be no automatic renewals of the Participating Addendum.
2. The order of precedence governing this Participating Addendum is set forth in Section 1 of WSCA-NASPO Master Agreement Terms and Conditions - Attachment A to the WSCA Master Agreement ("WSCA Master Agreement Terms and Conditions").
3. This Participating Addendum and the WSCA Master Agreement, as amended by the Participating Addendum, set forth the entire agreement between the parties and supersede 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 Participating Addendum and the WSCA Master Agreement, as amended by the Participating Addendum, shall not be added to or incorporated into this Participating Addendum or the WSCA Master Agreement 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 Participating Addendum and the WSCA Master Agreement, as amended by the Participating Addendum, shall prevail and govern in the case of any such inconsistent or additional terms.
4. Consistent with Section 1 of WSCA-NASPO Master Agreement Terms and Conditions - Attachment A to the WSCA Master Agreement, in the event of any conflict between the terms of this Participating Addendum and the terms of the WSCA Master Agreement or any documents constituting part of the WSCA Master Agreement, the terms of this Participating Addendum shall prevail.

2.0 Scope of Services:

1. The WSCA Master Agreement, together with its exhibits, as now or hereafter amended, made by the original parties thereto during the term of this Participating Addendum, is incorporated herein as if set forth at length. For the avoidance of doubt, the term "WSCA Master Agreement," as used herein, includes the WSCA Master Agreement, its exhibits, the Solicitation (RFP #JP14001), any Statement of Work, and Contractor's response to the Solicitation, as expressly accepted, in

writing, into the WSCA Master Agreement, as an exhibit or attachment. All rights and obligations between the parties are governed by the terms of the WSCA Master Agreement, as amended by this Participating Addendum (collectively, the "Agreement").

2. The suite of products and services available under this Participating Addendum to any Authorized Purchaser (as hereinafter defined) are as set forth in the price lines in New Jersey Contract Number 87725. The full suite of product and service offerings available under the WSCA Master Agreement may be procured under this Participating Addendum.
3. The Contractor shall deliver a copy of the required Quarterly Volume Reports (February 28th, May 31st, August 31st, and November 30th) described in the WSCA Master Agreement to the State Primary Contact set forth below. The Participating State will accept such reports directly from Contractor's Fulfillment Partners, as defined below.

3.0 Termination of Contract:

1. For Convenience-
Notwithstanding any provision or language in the WSCA Master Agreement to the contrary, the Director may terminate at any time, in whole or in part, this Participating Addendum any contract entered into pursuant to this Participating Addendum, for the convenience of the State, upon no less than forty-five (45) days written notice to the Contractor.
2. For cause-
 - A. Where the Contractor fails to perform or comply with the Agreement or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17: 12-4.2 et seq., the Director may terminate this Participating Addendum, in whole or in part, upon ten (10) days' notice to the Contractor with an opportunity to respond.
 - B. Where in the reasonable opinion of the Director, the Contractor continues to perform poorly under the Agreement as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the Contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint the Director may terminate this Participating Addendum, in whole or in part, upon ten (10) days' notice to the Contractor with an opportunity to respond.
 - C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
 - D. In the event of termination under this section, the Contractor will be compensated for work performed or goods supplied in accordance with the Agreement, up to the date of termination. Such compensation may be subject to adjustments.

E. The Contractor shall not have the right to terminate this Participating Addendum. Any provisions in the WSCA Master Agreement regarding the Contractor's right to terminate or cancel this Participating Addendum are superseded by and replaced in their entirety by this Section 3.0 of this Participating Addendum. However, in the event that an Authorized Purchaser violates its obligations under Sections 17 (License of Pre-Existing Intellectual Property), or Section 15 of Exhibit 2, Additional Vendor Terms and Conditions (Export Control) of the WSCA Master Agreement or Section 12.0 Miscellaneous - Confidentiality of this Participating Addendum, Contractor may refuse to accept or process orders from such Authorized Purchaser immediately upon written notice to the State and such Authorized Purchaser, until such time as Authorized Purchaser submits a plan to correct such violations satisfactory to Contractor, which approval will not be unreasonably withheld. Notwithstanding anything to the contrary, Contractor shall continue to process orders submitted by other Authorized Purchasers.

4.0 Authorized Purchasers:

"Authorized Purchasers" under this Participating Addendum shall mean the State and the following:

1. State agencies.
2. Quasi-State Agencies - A "Quasi-State Agency" is any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member, as defined in N.J.S.A. 52:27B-56.1, provided that any sale to any such bi-state governmental entity is for use solely within the State of New Jersey.
3. Political Subdivisions, Volunteer Fire Departments And First Aid Squads, And Independent Institutions Of Higher Education - Counties, municipalities and school districts as defined in N.J.S.A. 52:25-16.1., volunteer fire departments, volunteer first aid squads and rescue squads as defined in N.J.S.A. 52:25-16.2, independent institutions of higher education as defined in N.J.S.A. 52:25-16.5, provided that each purchase by the independent institution of higher education shall have a minimum cost of \$500. The extension to counties, municipalities, school districts, volunteer fire departments, first aid squads and independent institutions of higher education must be under the same terms and conditions, including price, applicable to the State.
4. State Colleges -in accordance with N.J.S.A. 18A:64-60.
5. County Colleges - in accordance with N.J.S.A. 18A:64A- 25.9.

All participants other than the State and State agencies are responsible for the full cost of their purchases.

5.0 Fulfillment Partners and Subcontractors:

Contractor has the right to utilize Fulfillment Partners, as fulfillment agents under this Participating Addendum, e.g., for direct order taking, processing, fulfillment or provisioning. As used herein, the term "Fulfillment Partner" shall include authorized partners, authorized resellers, authorized data communications resellers or similar authorized agents used by Contractor to provide the services described in the preceding sentence, as such terms are defined in the Solicitation (RFP #JP14001), the WSCA Master Agreement and any Statement of Work. However, this Participating Addendum may not be subcontracted or assigned by the Contractor, in whole or in part, without the prior written consent of the Director, which shall not be unreasonably withheld. Such consent, if granted, shall not relieve the Contractor of any responsibilities under this Participating Addendum. For the avoidance of doubt, the Contractor shall be responsible for obtaining all required forms from each Fulfillment Partner or subcontractor and submit the required forms to the State. The State will not accept forms directly from a Fulfillment Partner and/or subcontractor.

Contractor and the State agree to the minimum of 2 and maximum of 17 Fulfillment Partners under this Participating Addendum.

Fulfillment Partners may be removed and/or added upon a ten (10) business days' prior written notice to the State during the term of this Participating Addendum, but under no circumstance shall the total number of Fulfillment Partners exceed the aforementioned maximum.

Each of Contractor and the State reserve the right to remove an authorized Fulfillment Partner at its discretion for cause, not meeting established vendor criteria under this Participating Addendum, or where the addition, or continued use, of the entity would violate any state or federal law or regulation. If an authorized Fulfillment Partner is removed for any reason, Contractor will name the alternate Fulfillment Partner responsible to fulfill each pending purchase order and responsible for any delay to the expected delivery.

The name, address and contact information for Contractor-approved Fulfillment Partners shall be separately set forth at the Contractor's website, as amended by Contractor during the term of this Participating Addendum, including any applicable technical certifications or general limitations (e.g., geographic) or Contractor qualifying criteria as applicable (qualifying criteria).

6.0 Reserved:

7.0 Ordering and Compensation:

Pricing shall be in accordance with the terms set forth in the WSCA Master Agreement, as amended by this Participating Addendum.

The State of New Jersey Contract number and the WSCA Master Agreement number ("AR623, RFP#JP14001") MUST be shown on all Purchase Orders issued against this Participating Addendum.

All orders and payments will be issued in accordance with the terms set forth in the WSCA Master Agreement, as amended by this Section 7.0 of this Participating Addendum.

In the event of a manufacturer's or Contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any subsequent new orders placed during the term of this Participating Addendum. If an Authorized Purchaser identifies a reduced price on product(s) on an undelivered purchase order, Contractor shall refund the difference in price upon request from the Authorized Purchaser. The Director must be notified, in writing, of any price reduction within ten (10) business days of the effective date. Failure to report price reductions may result in cancellation of this Participating Addendum for cause.

The State of New Jersey's obligation to make payment under the Agreement is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State of New Jersey for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency which is an Authorized Purchaser by the New Jersey State Legislature and made available through receipt of revenues. Notwithstanding the foregoing, the parties agree that performance under this contract is contingent upon the appropriation of funds.

Contractors or Fulfillment Partners may be paid by the State through the Procurement card (p-card). P-card transactions do not require the submission of either a contractor invoice or a State payment voucher. Purchasing transactions utilizing the p-card will usually result in payment to the Contractor or the Fulfillment Partners in three (3) days. The Contractor and the Fulfillment Partner should take note that there will be a transaction processing fee for each p-card transaction. To participate, the Contractor or Fulfillment Partner must be capable of accepting the applicable credit card.

Payments shall be made to the Fulfillment Partners or Contractors pursuant to the provisions of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-33 et seq. The Act requires state agencies to pay for goods and services within sixty (60) days of the state agency's receipt of a properly executed State Payment Voucher. Authorized Purchaser has sixty (60) days after Product delivery to inspect the Product for external damage and for any concealed damage ("Acceptance Period"). If external or concealed damage is revealed during the Acceptance Period, then Purchaser shall notify Contractor. At Contractor's option, Contractor shall 1) repair such damage, 2) ship a replacement, or 3) refund the purchase price (upon return of the Product). Interest will be paid on delinquent accounts at a rate established by the New Jersey State Treasurer (the "State Treasurer"). Interest will not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the Agreement are not affected by the Prompt Payment Act.

Contractor's Fulfillment Partners are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest quote.

Discount periods shall be calculated starting from the next business day after the recipient has accepted the goods or services received a properly

signed and executed State Payment Voucher form and, when required, a properly executed performance security, whichever is latest.

The date on the check issued by the State in payment of that Voucher shall be deemed the date of the State's response to that Voucher.

8.0 Delivery Guarantees:

Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the WSCA Master Agreement, as amended by this Participating Addendum.

The Contractor shall be responsible for the delivery of new or "like-new" products to the State under this Participating Addendum and in accordance with good commercial practice. "Like-new" products will be identified as "like-new" and will be furnished at a price discounted from the price of the equivalent new product.

Products delivered must be strictly in accordance with the WSCA Master Agreement, as amended by this Participating Addendum.

In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the WSCA Master Agreement, the State shall be authorized to obtain the product or service from any available source.

9.0 Performance Guarantee:

The Contractor hereby certifies that:

1. The equipment offered is standard, new or "like-new" equipment, with available parts regularly used for the type of equipment offered; that such parts are all in production; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice. In the event that a warranty claim occurs during the warranty period as set forth in the WSCA Master Agreement, warranty hardware replacement may consist of "like-new" parts.
2. All equipment supplied under this Participating Addendum and operated by electrical current is UL listed where applicable.
3. Contractor warrants that all goods purchased by the State shall be fully operational for the period stated in the WSCA Master Agreement from time of acceptance by the State. Authorized Purchaser has sixty (60) days after Product delivery to inspect the Product for external damage and for any concealed damage ("Acceptance Period"). If external or concealed damage is revealed during the Acceptance Period, then Authorized Purchaser shall notify Contractor. At Contractor's option, Contractor shall 1) repair such damage, 2) ship a replacement, or 3) refund the purchase price (upon return of the Product). Delivery of goods shall be evidenced by a signed delivery receipt. The Contractor and/or Fulfillment Partner shall render prompt warranty service without charge, regardless of geographic location.

4. Sufficient quantities of parts necessary for proper service to equipment will be maintained at distribution points and service headquarters.
5. Trained and/or Contractor-certified technicians and/or engineers are regularly employed to make necessary repairs to equipment as detailed in Contractor's support program documentation contained in the WSCA Master Agreement, within the time accepted as industry practice.
6. During the warranty period and in accordance with the procedures set forth in the WSCA Master Agreement, at Contractor's sole option, the Contractor shall promptly repair, replace or provide a refund of the purchase price of any product which is rejected for failure to meet and conform with the Contractor's product specifications as contained in the WSCA Agreement, as amended by this Participating Addendum. This warranty does not apply to misuse, modification, damages caused by force majeure, as defined in the WSCA Master Agreement, or the State's or other Authorized Purchaser's failure to follow operation instructions of Contractor.
7. Contractor warrants that during the warranty period, software shall perform substantially in accordance with specifications, from the time of acceptance. During the Acceptance Period, Authorized Purchaser shall inspect the Product for external damage and for any concealed damage. If external or concealed damage is revealed during the Acceptance Period, then Purchaser shall notify Contractor. At Contractor's option, Contractor shall 1) repair such damage, 2) ship a replacement, or 3) refund the purchase price (upon return of the Product). Delivery of goods shall be evidenced by a signed delivery receipt.
8. Contractor represents and warrants that, at the time of delivery and installation of the software provided pursuant to this Participating Addendum, its product shall be free of what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the software, collect unlawful personally identifiable information on users, or prevent the software from performing as required under this Participating Addendum.
9. All services rendered under this Participating Addendum shall be performed in strict and full accordance with the specifications stated in the WSCA Master Agreement, as amended by this Participating Addendum. The contract shall not be considered complete until final approval by the State is rendered.

10.0 State Laws Requiring Mandatory Compliance by All Contractors:

State Law Requiring Mandatory Compliance by All Contractors-

The statutes, laws or codes cited are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

Ownership Disclosure-

Pursuant to N.J.S.A. 52:25-24.2, contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of the bid submission, the bidder disclosed the names and addresses of all of its owners holding 10% or more of the corporation or partnership's stock or interest during the term of the Contract. The Contractor has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed.

Business Registration-

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue.

The Contractor and any subcontractor providing goods or performing services under this Participating Addendum, and each of their affiliates, must comply with P.L. 2004, c. 57, which requires the Contractor and its subcontractor to collect and remit applicable State sales and use tax to the New Jersey Division of Taxation on the sale of all goods and services in the State of New Jersey subject to the provisions of the "Sales and Use Tax Act," P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.)

Anti-discrimination-

All parties to any contract with the State of New Jersey agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A.10:5-1 et seq. and N.J.S.A.10:5-31 through 10:5-38, and all rules and regulations issued there under.

New Jersey Prevailing Wage Act-

Pursuant to the New Jersey Prevailing Wage Act (N.J.S.A. 34: 11-56.26 et seq.), Contractor guarantees that it has not been suspended or debarred by the Commissioner, New Jersey Department of Labor and Workforce Development, for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; Contractor also guarantees that it will comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required and to the extent applicable to this Participating Addendum.

Americans with Disabilities Act-

The Contractor and its Fulfillment Partners agree to abide by the provisions of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

MacBride Principles-

Contractor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair

Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

Pay to Play Prohibitions-

Pursuant to N.J.S.A. 19:44A-20.13 et seq (L.2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for Contractor to:

1. Make or solicit a contribution in violation of the statute;
2. Knowingly conceal or misrepresent a contribution given or received;
3. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
4. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee;
5. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
6. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
7. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
8. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

Political Contribution Disclosure-

Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year the Contractor receives one or more contracts valued at \$50,000.00 or more. It is the Contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888) 313-3532 or on the internet at <http://www.elec.state.nj.us/>.

Standards Prohibiting Conflict of Interest-

The following prohibitions on Contractor activities shall apply to all contracts and purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988). As used below, "vendor" means any person, firm, corporation, or other entity which provides or offers or proposes to provide goods or services to or perform any contract for any State agency. As used below, "State agency" means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and, to the extent consistent with law, any interstate agency to which New Jersey is a party and any independent State authority, commission, instrumentality or agency. A

county or municipality shall not be deemed an agency or instrumentality of the State.

1. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i of any such officer or employee, or partnership, firm or corporation with which they are employed or associated or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
2. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
3. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee or having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding the present or proposed relationship does not present the potential, actuality or appearance, of a conflict of interest.
4. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
5. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employees or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
6. The provisions cited in this paragraph shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with the Contractor under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines in the Executive Commission on Ethical Standards may promulgate under the provisions contained herein.

Set-Off for State Tax Notice-

Please be advised that, pursuant to P.L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

Compliance Laws-

The Contractor agrees to comply with all local, State and federal laws, rules and regulations applicable to this Participating Addendum and to the goods delivered and/or services performed hereunder.

Compliance State Laws-

It is agreed and understood that any contracts and/or orders placed under this Participating Addendum shall be governed and construed and the rights and obligations of the parties hereto and of the Authorized Purchasers shall be determined in accordance with the laws of the State of New Jersey, including without limitation, by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., the New Jersey Contractual Liability Act, N.J.S.A., 59:13-1, et seq., without reference to conflict of laws principles, and any and all litigation arising therefrom or related thereto shall be filed in the appropriate Division of the New Jersey Superior Court.

Open Public Records Act-

All documents and information submitted by Contractor to the State under this Participating Addendum are considered public information, notwithstanding any disclaimers to the contrary submitted by a Contractor, except as may be exempted from public disclosure by the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law.

Compliance Codes-

The Contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The Contractor will be responsible for securing and paying all necessary permits, where applicable.

Public Works Contractor Registration Act-

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

Public Works Contract - Additional Affirmative Action Requirements-

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of the Agreement, the Contractor must agree as follows:

1. The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
2. The Contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
3. The Contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows;

1. The Contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
2. The Contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color,

national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

3. The Contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
4. In conforming with the targeted employment goals, the Contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

Worker and Community Right to Know Act-

The provisions of N.J.S.A. 34:5A-1 et seq. which requires the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the Contractor in compliance with the provisions of the statute.

Service Performance Within the U.S. -

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a Contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the Contractor or Fulfillment Partner proceeds to shift the performance of any of the services outside the United States, the Contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause, unless previously approved by the Director and the State Treasurer.

Buy American-

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the Contractor shall be required to so certify.

Prohibited Investment in Iran -

Pursuant to N.J.S.A. 52:32-55 et seq., the Contractor must utilize the Disclosure of Investment Activities in Iran form to certify that neither the Contractor, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Contractor, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment

activities set forth in N.J.S.A. 52:32-56(f). If the Contractor is unable to so certify, the Contractor shall provide a detailed and precise description of such activities as directed on the form.

Organ and Tissue Donation -

Pursuant to N.J.S.A. 52:32-33.1, Contractors are encouraged to notify their employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees shall be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. §1320b-8 to serve in this State.

Contractor is Independent Contractor -

The Contractor's status shall be that of any independent contractor and not as an employee of the State.

State's Option to Reduce Scope of Work -

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under the Agreement. In such an event, the Director shall provide to the Contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days' of receipt of such written notice, if either is applicable:

(a) If the Contractor does not agree with the Director's proposed adjusted contract price, the Contractor shall submit to the Director any additional information that the Contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the Contractor of the final adjusted contract price.

(b) If the Contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the Contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the Contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the Contractor of the compensation to be paid for such work effort.

Change in Law -

Whenever a change in applicable law or regulation affects the scope of work, the Director shall provide written notice to the Contractor of the change and the Director's determination as to the corresponding adjusted change in the scope of work and corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

(a) If the Contractor does not agree with the adjusted contract price, the Contractor shall submit to the Director any additional information that the Contractor believes impacts the adjusted contract price with a request that the Director reconsider the adjusted contract price. The Director shall make

a prompt decision taking all such information into account, and shall notify the Contractor of the final adjusted contract price.

(b) If the Contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the Contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the Contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the Contractor of the compensation to be paid for such work effort.

Suspension of Work -

The State may, for valid reason, issue a stop order directing the Contractor to suspend work under the contract for a specific time. The Contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The Contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the Contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The Contractor shall provide whatever information that Director may require related to the equitable adjustment.

11.0 Liabilities:

Indemnification-

The Contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State and its employees, from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith on account of the loss of life, property (not including lost or damaged data) or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under the Agreement.

Contractor shall also assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State and its employees, from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith for or on account of the use of any U.S. registered copyrighted composition, U.S. issued patent, or trade secret, furnished or used in the performance of the Agreement.

In the event of a third party patent and copyright claim or suit, the Contractor, at its option, may: (1) procure for the State the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties. The State will (1) promptly notify Contractor in writing of the claim; (2) provide reasonable assistance to Contractor in defending or settling the claim, including the selection of attorneys. The State must agree to any settlement of an alleged claim, which approval shall not be

unreasonably withheld. The State may observe the proceeding and confer with Contractor at its own expense. In addition, the State retains the right to take over its defense, at its own cost, upon reasonable notice to Contractor.

Notwithstanding the foregoing, Contractor has no obligation or liability for any patent or copyright claim or suit arising from: (1) the unauthorized combination, operation, or use of a product supplied under this Participating Addendum with any product, device, or software not supplied by Contractor; (2) the unauthorized alteration or modification of any product supplied under this Participating Addendum; (3) Contractor's compliance with the State's designs, specifications, requests, or instructions, provided that if the State provides Contractor with the State's designs, specifications, requests, or instructions, Contractor shall review same and advise whether there are any foreseeable issues of patent or copyright infringement; or (4) the State's failure to promptly implement a required update or modification to the product provided by Contractor. This Section states the entire obligation of Contractor and its suppliers, and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any intellectual property rights or proprietary rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and Contractor disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.

Notwithstanding anything to the contrary contained in the WSCA Master Agreement, the State shall not be responsible for the Contractor's attorney fees and/or expenses.

The Contractor's indemnification and liability is not limited by, but is in addition to the insurance obligations contained in this Participating Addendum.

Notwithstanding anything to the contrary in the Agreement or any contract document, under no circumstances will the State indemnify Contractor and any such provision in the WSCA Master Agreement or any contract document shall be of no force and effect. The State of New Jersey's obligations under the Participating Addendum are subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et. seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et. seq.) and the availability of funds.

Limitation of Liability-

Contractor's liability arising out of or in connection with this Participating Addendum is limited to the lesser of two times (2x) the amount paid by the State under this Participating Addendum over the prior twelve months or \$5 million. In no event shall Contractor be liable for any special, indirect, or consequential damages arising out of this Participating Addendum. This limitation on liability shall not apply to Contractor's obligation to indemnify, defend, and save harmless the State and its employees as described in this Participating Addendum.

Insurance-

The Contractor shall secure and maintain in force for the term of this Participating Addendum insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company.

The Contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof, and the insurance shall not be canceled for any reason except after sixty (60) days written notice to the State. If the Contractor receives a notice of cancellation, the Contractor will promptly replace such coverage so that no lapse in insurance occurs. Certificates of renewals shall be provided within five (5) business days of the replacement or renewal of the insurance.

The Contractor shall not begin to provide services or goods to the State or Authorized Purchaser, as applicable, until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance and Audit Unit, PO Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates shall be emailed to the State at:

ccau.certificate@treas.state.nj.us

The insurance to be provided by the Contractor shall be as follows:

1. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees and Authorized Purchasers under Contract 87735 as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. Such Commercial General Liability Insurance policy shall be written on a current standard Insurance Services Organization form, or its equivalent, and contain only such reasonable and customary exclusionary endorsements based on the Contractor's industry and size. The insurance obligations contained in this Participating Addendum are in addition to and shall not limit Contractor's obligations under this Participating Addendum, including, but not limited to, the Contractor's defense and indemnity obligations.
2. Automobile liability insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit. The State, its officers, and employees and Authorized Purchasers under Contract 87735 must be named as "Additional Insureds" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property, or other Authorized Purchaser's behalf or on property controlled by such other Authorized Purchaser, as applicable.
3. Worker's Compensation Insurance applicable under the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
 - A. \$1,000,000 BODILY INJURY, EACH OCCURRENCE
 - B. \$1,000,000 DISEASE EACH EMPLOYEE
 - C. \$1,000,000 DISEASE AGGREGATE LIMIT
4. Professional Liability Insurance: The Contractor shall provide Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance sufficient to protect the Contractor

from any liability arising out the professional obligations performed pursuant to the requirements of this Agreement. The insurance shall be in an amount not less than \$5,000,000. If the Contractor has claims-made coverage and subsequently changes carriers during the term of the contract, it shall obtain from its new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance carrier an endorsement for retroactive coverage to the inception date of this Participating Addendum.

12.0 Miscellaneous:

Confidentiality-

a. The State's obligation to maintain the confidentiality of Contractor's confidential information provided to the State under the Agreement is conditioned upon and subject to the State's obligations under the New Jersey Public Records Act, N.J.S.A. 47:1A-1 et seq., ("OPRA"), the New Jersey common law right to know, and any other lawful document request or subpoena.

b. By virtue of the Agreement, the parties may have access to information that is confidential to one another. The parties agree to disclose only information that is required for the performance of their obligations under the Agreement. Contractor's confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure ("Contractor Confidential Information"). Notwithstanding the previous sentence, the Contractor acknowledges the terms and pricing of the contract are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.

c. The State's Confidential Information shall consist of all information or data contained in documents supplied by the State, any information or data gathered by the Contractor in fulfillment of the contract and any analysis thereof (whether in fulfillment of the contract or not).

d. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

e. The parties agree to hold each other's Confidential Information in confidence, using at least the same degree of care used to protect their own confidential information.

f. In the event that the State receives a request for Contractor Confidential Information related to the contract pursuant to a court order, subpoena, lawful document request or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such request. Contractor shall take any action it deems appropriate to protect its documents and/or information.

g. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other

operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such request. The State shall take any action it deems appropriate to protect its documents and/or information.

h. Notwithstanding the requirements of nondisclosure described in this Section 12.0, either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (iii) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in subsection 12.0(f), or if Contractor is unsuccessful in defending its rights as described in subsection 12.0(f), or (iv) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights as described in subsection 12.0 (g), or if the State is unsuccessful in defending its rights as described in subsection 12.0 (g).

i. Except as permitted above, neither party will use or disclose the other's Confidential Information for seven (7) years after the termination of the Agreement or such longer time period as required by applicable law.

Contractor shall be liable for damages arising from its breach of the confidentiality obligations of this Participating Addendum.

Assignment of Antitrust Claim(s) -

The Contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this Participating Addendum, the Contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this Participating Addendum.

In connection with this assignment, the following are the express obligations of the Contractor:

1. It will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
2. It will advise the Attorney General of New Jersey:
 - a. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
 - b. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
3. It shall notify the defendants in any antitrust suit of the fact of the within assignment at the earliest practicable opportunity after the Contractor has initiated an action on its own behalf or becomes aware

that such an action has been filed on its behalf by another person. A copy of such notice will be sent to the Attorney General of New Jersey.

Furthermore, it is understood and agreed that in the event any payment under any such claim or cause of action is made to the Contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

Mergers, Acquisitions and Dissolutions-

Merger or Acquisition:

If, during the term of this Participating Addendum, the Contractor shall merge with or be acquired by another firm, the Contractor shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. Any such merger or acquisition will require the assignment of the WSCA Master Agreement, as amended by this Participating Addendum, pursuant to the provisions related thereto set forth therein. The Contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the Contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents shall be submitted within thirty (30) days of the request. Failure to do so may result in termination of this Participating Addendum for cause.

Dissolution:

If, during the term of this Participating Addendum, the Contractor's partnership, joint venture or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director, in writing, the names of the parties proposed to perform under this Participating Addendum and the names of the parties to whom payment should be made. No payment will be made until all parties to the dissolved business entity submit the required documents to the Director.

Independent Contractor -

The Contractor's status shall be that of an independent contractor and not as an employee of the State.

Announcements and/or Advertisements-

All publicity and/or public announcements pertaining to this Participating Addendum shall be approved in writing by the State prior to release.

Contractor must obtain prior written (email) approval, no less than seven (7) business days before release for any and all advertisements pertaining to this Participating Addendum during its effective term. Any and all authorized Fulfillment Partners may not directly send advertisements to any and all Authorized Purchasers without explicit written approval from the Contractor.

Contractor and/or Fulfillment Partner Facilities Inspection-

The State reserves the right to inspect the Contractor and/or Fulfillment Partner's establishment for the purposes of ascertaining whether the

Contractor has the necessary facilities for performing the Agreement, and for ongoing contract compliance.

Governing Law; Jurisdiction -

Any claims under this Participating Addendum and any and all litigation arising there from or related thereto shall be brought in State court in the State of New Jersey and governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles. The State of New Jersey's obligations under this Participating Addendum are subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et. seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et. seq.) and the availability of funds.

Tax Exemption-

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

Request for Additional Information-

The Director reserves the right to request relevant information from the Contractor, including factors necessary to evaluate the Contractor's financial capabilities to perform the Agreement. Further, the Director reserves the right to request a Contractor to explain to the Director's reasonable satisfaction, how the bid price was determined.

Maintenance of Records-

The Contractor shall maintain records for products and/or services directly related to sales orders and corresponding invoices, including product specifications at time of shipping, issued in accordance with this Participating Addendum for a period of five (5) years from the date of final payment. Such records shall be made available to the State, including the State of New Jersey, Office of the State Comptroller, for audit and review.

References to external documentation-

Any external information incorporated by reference within any of the documents comprising the contract, as specified in Section 1.0 above, including, without limitation, software license agreements or services agreement, are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.

Any changes in the information incorporated by reference by any of the documents that comprise the contract, as specified in Section 1.0 above, including, without limitation, software license agreements or services agreement, are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.

Any reference in Contractor's documents to website URLs that contain additional terms and conditions will be of no force and effect.

13.0 Waiver:

No term or provision of this Participating Addendum shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or any subsequent breach, except as may be expressly provided in the waiver or consent.

14.0 The State of New Jersey Mandatory Certification Requirements:

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

1. New Jersey Business Registration (N.J.S.A. 52:32-44);
2. Ownership Disclosure (N.J.S.A. 52:25-24.2);
3. Disclosure of Investment Activities in Iran (N.J.S.A. 52:32-55 et seq.)
4. Executed MacBride Principles (N.J.S.A. 52:34-12.2);
5. Executed Notice of Set-Off for State Tax (N.J.S.A. 54:49-19);
6. Completed Contractor Certification and Disclosure of Political Contributions (N.J.S.A. 19:44A-20:13 et. seq.);
7. Disclosure of Investigations and Actions Involving Bidder
8. Vendor Certification (P.L. 2005, c.271);
9. Source Disclosure Certification (N.J.S.A. 52:34-13.2);
10. Proof of insurance as specified herein;
11. Proof of compliance with New Jersey Affirmative Action requirements (N.J.A.C. 17:27-1.1 et. seq.)
 - a. New Jersey Form AA-302 Affirmative Action Employee Information Report; or New Jersey Affirmative Action Certificate; or Federal Affirmative Action Approval Letter.

15.0 Primary Contacts:

The primary participating entity contacts for this Participating Addendum are as follows:

Name:	Vicente Azarcon
Title:	Procurement Specialist
Participating Entity Name:	Division of Purchase and Property, Department of the Treasury State of New Jersey
Address:	33 West State Street, 8 th Floor PO Box 230 Trenton, New Jersey 08625-0230
Telephone:	(609) 292-0250
Fax:	(609) 292-5170
E-mail:	vicente.azarcon@treas.state.nj.us

The primary Contractor contact for this Participating Addendum is as follows:

Name: Murray Van Dyke

Title: Vertical Sales Executive
Contractor: Mitel Business Systems, Inc.
Address: 1146 North Alma School Road, Mesa, AZ 85201

Telephone: 602-629-8811
E-mail: usgovernmentsales@mitel.com

The parties hereto agree that this Participating Addendum may be executed in counterpart, each original signed page to become part of the original document.

IN WITNESS WHEREOF, authorized representatives of Contractor and the State have executed this Participating Addendum to be effective on the Effective Date.

<p>State of New Jersey, Department of the Treasury, Division of Purchase and Property</p> <p>By: <u><i>Lisa B. DuBois</i></u> Name: <u><i>Lisa B. DuBois</i></u> Jignasa Desai McCleary <i>Acting</i> Title: Director, Division Date: <u><i>8/29/14</i></u></p>	<p>Mitel Business Systems, Inc.</p> <p>By: <u><i>Jeff Nolan</i></u></p> <p>Name: Jeff Nolan</p> <p>Title: VP, National Partners and VSG</p> <p>Date: August 15, 2014</p>
<p>Approved as to Form: John J. Hoffman Acting Attorney General of the State of New Jersey</p> <p>By: <u><i>Aimee Manocchio Nason</i></u></p> <p>Name: <u><i>Aimee Manocchio Nason</i></u></p> <p>Title: Deputy Attorney General</p> <p>Date: <u><i>8-26-14</i></u></p>	

