

STATE OF UTAH - STATE COOPERATIVE CONTRACT

CONTRACT NUMBER MA268

1. **CONTRACTING PARTIES:** This State Cooperative Contract ("Contract") is between the **Division of Purchasing and General Services (State)**, 3150 State Office Building, PO Box 141061, Salt Lake City, UT 84114-1061, an agency of the State of Utah, and the following **CONTRACTOR**:

<u>Unisys Corporation</u>		
Name		
<u>2495 Natomas Park Drive</u>		
Address		
<u>Sacramento</u>	<u>CA</u>	<u>95833</u>
City	State	Zip

LEGAL STATUS OF CONTRACTOR

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

Contact Person David Leichner Phone #626-433-3780 Fax # 626-569-9386 Email Dave.Leichner@Unisys.com
Federal Tax ID# 38-0387840 Vendor #34660A Commodity Code #92005

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this Contract is to provide:
WSCA Public Cloud Hosting Services
3. **CONTRACT PERIOD:** Effective date: August 15, 2012 Termination date: July 31, 2015 unless terminated early or extended in accordance with the terms and conditions of this Contract. Renewal options (if any): 2 - 1 year each
4. **PRICING AS PER THE ATTACHMENT C**
PAYMENT TERMS: 30 days
DAYS REQUIRED FOR DELIVERY: 10-14
MINIMUM ORDER: N/A
FREIGHT TERMS: F.O.B. Destination
5. The following documents are incorporated into this Contract by reference and attached:
ATTACHMENT A: Standard Contract Terms and Conditions, Western States Contracting Alliance
ATTACHMENT B: Scope of Work
ATTACHMENT C: Contract Pricing
ATTACHMENT D: Additional Terms and Conditions
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, regulations, or actions applicable to the goods and/or services authorized by this Contract.
b. Utah State Procurement Code, Procurement Rules, Solicitation #PR12063, WSCA Posting Public Cloud Hosting Services, dated 12/1/2011, including all addenda and amendments thereto; Request for Best and Final Offers, Solicitation #PR12063, dated 2/10/2012; CONTRACTOR's Proposal in response to Solicitation #PR12063, dated 1/18/2012; and CONTRACTOR's Best and Final Offer in response to Solicitation #PR12063, dated 2/28/2012.

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

CONTRACTOR

STATE OF UTAH

Janine Huebner
Contractor's Signature

10-17-2012
Date

Ken D. Beem
Director, Div. of Purchasing & General Svs.

10/18/12
Date

Janine Huebner
Contracts Manager
Type or Print Name and Title
Unisys Corporation



Revision number:

Purchasing Agent: Pam Rugg

Phone #: (801) 538-3232

Email: prugg@utah.gov

Item: PUBLIC CLOUD HOSTING SERVICES (WSCA)

Vendor: 34660A

Unisys Corporation
2495 Natomas Park Drive
Sacramento CA 95833

Internet Homepage:

www.Unisys.com

Telephone:

626-433-3780

Fax number:

626-569-9386

Contact:

Dave Leichner

Email address:

Dave.Leichner@unisys.com

Usage Report Contact:

Same

Reporting Type:

Item-Line

Brand/trade name:

Price:

See Attached Price List

Terms:

Net 30

Effective dates:

08/15/12 through 07/31/15

Potential renewal options remaining:

Two 1-yr.

Days required for delivery:

10 – 14 Days

Price guarantee period:

Discounts good through term of Contract

Freight:

Minimum order:

None

Min shipment without charges:

FOB Destination, Freight Prepaid

Other conditions:

WSCA Website: <http://www.utah.gov/wsc>

This is a new contract.

BID NO. PR12063

This is a multiple award contract. Please see contracts MA266, MA265 and MA272 before making a purchasing decision.

Remit to: Unisys Corporation
2495 Natomas Park Drive
Sacramento CA 95833

This Statewide Contract for State Executive Agencies must be purchased thru the State Department of Technology Office with the State CIO's Authorization Required. Authorization is required before purchase can be made. The Authorization requirements and procedure is detailed in the attachment to the contract. Orders may be placed only after Authorization is



received. This contract covers only those items listed in the price schedule. It is the responsibility of the agency to ensure that other items purchased are invoiced separately. State agencies will place orders directly with the vendor creating a PRC in Finet. Agencies will return to the vendor any invoice which reflects incorrect pricing.

AUTHORIZATION REQUIRED: DTS (DEPARTMENT OF TECHNOLOGY SERVICES) ADMINISTERS STATE AGENCY PURCHASES FROM THIS CONTRACT. STATE AGENCIES (EXECUTIVE BRANCH) MUST COORDINATE THEIR PURCHASE THROUGH DTS AND MAY NOT PURCHASE DIRECTLY FROM THE CONTRACTOR. PLEASE CONTACT

_____ AT 801-538-_____ OR _____ AT 801-538-_____ WITH DTS FOR ASSISTANCE. DTS WILL CHARGE STATE AGENCIES BASED ON DTS= UNIVERSAL SURCHARGE RATE PLAN. POLITICAL SUBDIVISIONS (SUCH AS HIGHER EDUCATION, PUBLIC EDUCATION, CITIES AND COUNTIES) MAY PURCHASE DIRECTLY FROM THE CONTRACTOR WITHOUT STATE INVOLVEMENT.

Unisys Corporation SERVICE OPERATIONS, INC DISCOUNT STRUCTURE FOR WSCA PUBLIC CLOUD HOSTING SERVICES CONTRACT

See attached price list.

WSCA Website:

<http://www.utah.gov/wsca>

ATTACHMENT D – State of Utah – State Cooperative Contract – Contract Number MA268

This Attachment D to the Agreement governs your access to and use of the Services and Tools, as each is defined below, provided to you by or through Unisys Corporation ("Contractor"), under the State of Utah – State Cooperative Contract – Contract Number MA268 ("Agreement") and sets out the trade rules and practices that apply to you or the entity you represent ("you") for use of the Services and Tools. "We," "us", or "our" means Contractor and those for whom Contractor is responsible under the Agreement, including its respective cloud hosting provider(s) and software Tool provider(s) (each a "Provider") and all its/their related entities in respect of the Services and Tool(s). Contractor may add/replace cloud hosting providers as permitted under the Agreement with your advance written consent.

1. Use of the Services and Tool(s). Your use of and access to the GIS Cloud Hosting Services, General Cloud Hosting Services, and Cloud Provisioning Services as described in the Agreement ("Services") and any software tools that Unisys may make available under the Agreement, such as cloud provisioning and management software, are governed by the Agreement, including this Attachment D and the Trade Rules and Practices (as defined below), which shall have priority. Only Contractor Service Level Agreements in the Agreement for the Services/Tool(s), if any, apply to your use of such Services/Tool(s). Your access and continued access to, and use of, the Services and Tool(s) is conditioned on your compliance with (a) all laws, rules, and regulations and your compliance and agreement with the policies, provisions, materials, and instructions under which the services/proprietary software are made available by their supplier/owner to their customers in general and (b) Unisys training provided to you for the use of the Services and Tool(s), ("Trade Rules and Practices").

2. Security and Backup. You are solely responsible for properly configuring the Services/Tool(s) unless you have purchased consulting services of Contractor to configure the Services/Tool(s) and you are solely responsible for using the Services/Tool(s) and taking steps to maintain appropriate security, protection and backup of any software (including machine images), data, text, audio, video, images or other content ("Materials") you or any end user (a) run on or with the Services/Tool(s), (b) cause to interface with the Services/Tool(s), or (c) upload to the Services or otherwise transfer, process, use or store in connection with the Services/Tool(s), ("Your Materials") including using encryption technology to protect Your Materials from unauthorized access and routinely archiving Your Materials. We shall have no responsibility for any data or Your Materials you may use, including but not limited to, storing, processing, uploading, importing, exporting, returning, or otherwise, with or related to the Services.

3. Removal/Suspension/End of Services. We may remove and withhold Services if the respective Provider does not permit Unisys to resell or continue to resell its services on terms acceptable to Unisys or Provider withholds its services. If you become aware of any violation of the Trade Rules and Practices by an end user, you will immediately notify us and terminate such end user's access to Your Materials and the Services/Tool(s). We may suspend the account through which you access the Services/Tool(s), or end the Services or use of the Tool(s), immediately, which may include but not be limited, to a

determination: (a) you are, or any end user is, in breach of the Trade Rules and Practices; or (b) your or an end user's use of the Services/Tool(s) (i) poses a security risk to the Services/Tool(s) or any other customer, (ii) may harm our systems or the systems or software (including machine images), data, text, audio, video, images or other content of any other customer, or (iii) we or any third party may be subject to liability. Upon any cessation of the access/use of the Services/Tools during the term of the Agreement, other than a cessation by the Western States Contracting Alliance (WSCA) or a WSCA participating entity, Unisys shall apply diligent efforts to provide a mutually acceptable replacement provider for the Services or Tool(s), as the case may be, for the remaining term of the Agreement.

4. Proprietary Rights – Services/Tool(s). As between you and us, we or our licensors own and reserve all right, title, and interest in and to the Services/Tool(s), which are the confidential proprietary information of their respective Provider, which you shall hold in strict confidence. Unisys grants you the right to use the Services/Tool(s) solely as a licensee of Unisys in accordance with the Agreement. Provider(s) has/have no obligation to provide the Service/Tool(s) to you, which each Provider makes available as is, with all faults, and without any liability to you, so you agree to look, and you shall look, exclusively to Unisys and your Agreement regarding any such obligation. You obtain no rights from any Provider or its licensors to the Services/Tool(s), including any related intellectual property rights. Any Materials, other than Your Materials, you access on our Site(s) will be governed by the Trade Rules and Practices, except that some of our Materials may be provided to you under a separate license, such as the Apache Software License, in which case that license will govern your use of those Materials.

5. U.S. Government Rights. In accordance with Federal Acquisition Regulation (FAR) Sections 12.211 and 12.212, and Defense Federal Acquisition Regulation Supplement (DFARS) Sections 227.7202-1 and 227.7202-3, the Services or Tool(s), or both, are provided to the U.S. Government as "commercial items," "commercial computer software," "commercial computer software documentation," and "technical data" with the same rights and restrictions generally applicable to the Services and Tool(s). If you are using the Services/Tool(s) on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, you will immediately discontinue your use of the Services/Tool(s). The terms "commercial item" "commercial computer software," "commercial computer software documentation," and "technical data" are defined in the FAR and the DFARS. If you provide any suggested improvements to us regarding the Services, Tool(s), or our Materials, we may use such suggestions without restriction.

6. Import and Export Compliance. In connection with this Attachment, Trade Rules and Practices, and the Services/Tool(s) you will comply with all applicable import, re-import, export, and re-export control laws and regulations.

FINET COMMODITY CODE(S):
92005 – Cloud Services
00000 – Generic Commodity Code

REVISION HISTORY:

**Standard Contract Terms and Conditions
Western States Contracting Alliance
Request for Proposal**

Note: Changes have been made to the following terms and conditions: Patents, Copyrights, Etc.; Defaults and Remedies; Hold Harmless; Warranty; NonDiscrimination and Records Administration. The following terms and conditions have been added: Confidentiality; Limitation of Liability; Public Information; and Dispute Resolution.

PARTICIPANTS: The Western States Contracting Alliance (herein WSCA) is a cooperative group contracting consortium for state government departments, institutions, agencies and political subdivisions (e.g., 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. Other states and their political subdivisions are also eligible to participate in WSCA contracts. Obligations under this contract are limited to those Participating States who have signed 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 award(s) will be permissive.

QUANTITY ESTIMATES: WSCA does not guarantee to purchase any amount under the contract to be awarded. Estimated quantities are for the purposes of submitting proposals only and are not to be construed as a guarantee to purchase any amount.

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 RFP states "No substitute". Proposals 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.

ACCEPTANCE OR REJECTION OF PROPOSALS: WSCA reserves the right to accept or reject any or all proposals or parts of proposals, and to waive informalities therein.

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

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.

TAXES: Proposal 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.

MODIFICATION OR WITHDRAWAL OF PROPOSALS: Proposals may be modified or withdrawn prior to the time set for the opening of proposals. After the time set for the opening of proposals, no proposal may be modified or withdrawn unless done in response to a request for a "Best and Final Offer" from WSCA.

PATENTS, COPYRIGHTS, ETC.: The Contractor will release, indemnify and hold the Buyer, its

officers, agents and employees harmless from claims asserted against them claiming that a product provided to Buyer by or used by Contractor in the performance of this Contract infringes any intellectual property right enforceable in the US and any resultant liability of any kind or nature, including the Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article or appliance furnished or used in the performance of this Contract.

Contractor will defend and indemnify Buyer at Contractor's expense against these claims provided Buyer (1) gives Contractor prompt written notice of the claim, (2) permits Contractor to defend or settle the claim and (3) provides all reasonable assistance in defending or settling the claim.

Contractor will not defend or indemnify Buyer if the claim (1) results from Buyer's design, alteration, or misuse of the item, or (2) results from the use of the item in combination with any party Products. Buyer agrees to look solely to the indemnification and remedies, if any, provided by the manufacturer or the Contractor supplier of any Products not provided by the Contractor, and not to Contractor.

In satisfaction of its indemnity under this provision, Contractor may (1) obtain the right of continued use of the item for Buyer or, (2) replace or modify the item to avoid the claim. If neither alternative is available on commercially reasonable terms, then at Contractor's request, Buyer will stop Buyer's use of the item and Buyer will return the item to Contractor. Upon return of the item, Contractor will give Buyer a credit for the price paid to Contractor, less a reasonable offset for use and obsolescence.

AWARD: WSCA may award multiple contracts as the result of this solicitation. Awards shall be made to the responsible offeror(s) whose proposal is determined to be the most advantageous to WSCA, taking into consideration price and the other evaluation factors set forth in the RFP.

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 Request for Proposal, designed to limit independent bidding or competition.

CANCELLATION: Unless otherwise stated in the special terms and conditions, any contract entered into as a result of this bid may be canceled by either party upon 60 days notice, in writing, prior to the effective date of the cancellation. Further, any Participating State may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of and 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. Cancellation of the contract due to Contractor default may be immediate.

DEFAULT AND REMEDIES: Any of the following events shall constitute cause for WSCA to declare Contractor in default of the contract: 1. Nonperformance of contractual requirements; 2. A material breach of any term or condition of this contract WSCA shall issue a written notice of default providing a period of at least thirty (30) days in which Contractor shall have an opportunity to cure. Time allowed for cure shall not diminish or eliminate Contractor's liability for liquidated or other damages. If the default remains, after Contractor has been provided the opportunity to cure, WSCA may do one or more of the following: 1. Exercise any remedy provided by law; 2. Terminate this contract and any related contracts or portions thereof; 3. Impose liquidated damages as set forth in the Contract; 4. In accordance with applicable law, suspend contractor from receiving future proposal solicitations.

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.

CONFLICT OF TERMS: Contractor Terms and Conditions that apply are attached to the Contract. No other Terms and Conditions will apply to this Contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, etc.

The Contractor may use subcontractors; however, the Contractor will be responsible for any agreements with the subcontractors. The Participating Entity is not agreeing to and is not responsible for any terms and conditions with a subcontractor.

If a Service Provider desires to change its standard commercial terms and policies and the State does not want to continue the respective Services, then the State may end the Services according to the termination for convenience provision(s) of the Contract.

REPORTS: The contractor shall submit quarterly reports to the WSCA Contract Administrator showing the quantities and dollar volume of purchases by each agency.

HOLD HARMLESS: The Contractor will release, protect, indemnify and hold the STATE and the respective political subdivisions and their officer, agencies, employees, harmless from and against claims asserted against them, (and any damage, cost or liability, including reasonable attorney's fees) for any or all injuries to persons and property damages to the extent caused by the intentional acts or negligence of the Contractor, its employees or subcontractors or volunteers in the performance of this Contract. The parties agree that if there are any Limitations of the Contractor's Liability, including a limitation of liability for anyone for whom the Contractor is responsible, such Limitations of Liability will not apply to injuries to persons, including death, or direct damages to property.

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

GOVERNING LAW: This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the state sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the contract(s) shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the contract(s) or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

DELIVERY: The prices offered shall be the delivered price to any Participating 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 Buyer 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.

WARRANTY: The services of Contractor and its subcontractors and subconsultants at any tier, if any, shall be performed in accordance with the standard of care exercised by qualified members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude and complexity of the services that are the subject of this Contract.

The Contractor may use subcontractors; however, the Contractor will be responsible for any agreements with the subcontractors. The Participating Entity is not agreeing to and is not responsible for any terms and conditions with a subcontractor.

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE EXCEPT WHERE SUCH WARRANTIES CANNOT LAWFULLY BE EXCLUDED, AS TO THE SERVICES PROVIDED BY

CONTRACTOR HEREUNDER. CONTRACTOR DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE FOR SERVICES.

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 WSCA Contract Administrator.

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 WSCA Contract Administrator.

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.

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.

INSPECTIONS: Goods furnished under this contract shall be subject to inspection and test by the Buyer at times and places determined by the Buyer. If the Buyer finds goods furnished to be incomplete or in compliance with proposal specifications, the Buyer 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 Buyer, the Buyer may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Buyer's rights including the rights and remedies associated with revocation of acceptance under the Uniform Commercial Code.

PAYMENT: Payment for completion of a 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 State or political subdivision "Purchasing Card".

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. WSCA may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

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 user agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

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 proposal opening. Prices must remain firm for the full term of the contract.

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

PROPOSAL PREPARATION COSTS: WSCA is not liable for any costs incurred by the offeror in proposal preparation.

CONFLICT OF INTEREST: The contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any WSCA participants to any officer or employee of WSCA or participating states to secure favorable treatment with respect to being awarded this contract.

INDEPENDENT CONTRACTOR: The contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind WSCA or the respective 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.

POLITICAL SUBDIVISION PARTICIPATION: Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.) of the 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.

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.

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 the charges 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. The Contractor agrees to allow the State and Federal auditors, and State agency staff, access upon advance written notice to Contractor, to all the records to this contract as may be reasonably necessary to determine the accuracy of the charges for Services to the State according to generally accepted auditing principles. Each audit participant shall comply with Contractor's reasonable confidentiality and site security policies, procedures, and practices to the extent allowed by law.

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.

ENTITY PARTICIPATION: Use of specific WSCA cooperative contracts by state agencies, political subdivisions and other entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

CONFIDENTIALITY: Each party agrees that all written information communicated to it by the other party, whether before the date of this Contract or during the Term, and (i) marked as "confidential" or "proprietary" or in a manner that gives notice of its proprietary nature (ii) regarding customers, human resources, financial costs and information, inventory, purchasing or merchandising or plans strategies or forecasts; or (iii) relating to Contractor's techniques, software and tools used to provide the Services (collectively referred to as "Confidential Information") shall be used only for the purposes of this Contract, and that no Confidential Information of the disclosing party shall be disclosed to third parties by the recipient, its employees, and other agents without the prior written consent of the disclosing party. Each party agrees to take reasonable precautions to prevent the disclosure to third parties of Confidential Information of the other party, including the precautions described in this Contract. A party shall have no obligations for information that is (i) already known by or available to the party or a related

entity at the time of disclosure; (ii) independently generated by the party or a related entity and not derived from the Confidential Information of the other party, (iii) generally known or available publicly, or which may later become generally known or available publicly, except where such knowledge or availability is the result of an unauthorized disclosure by the party, (iv) disclosed by a third party to the recipient or a related entity without notice that the disclosure is unlawful, (v) made available by the other party to a third party without similar restrictions; or (vi) required to be disclosed by the party or a related entity according to applicable law, regulation, court order, or other legal process provided the recipient first gives the other party written notice of the intended disclosure so the other party may seek protection of the information by any lawful means. Any obligation of confidentiality shall cease two (2) years after the return of such Confidential Information to the disclosing party by the receiving party or two (2) years after the termination of this Agreement, whichever is later. Failure to identify and mark information will not prevent information from being Confidential Information if a reasonably prudent business person in place of the receiving party knew or should have known the information was confidential. This confidentiality provision will apply to the extent allowed by applicable law.

PUBLIC INFORMATION: Contractor agrees that the contract, related Sales Orders, and Invoices will be public documents, as far as distribution of copies. Contractor gives WSCA express permission to make copies of the contract, related Sales Orders, and Invoices in accordance with the State public information laws. Except for sections identified in writing and expressly approved by the State of Utah, Division of Purchasing, as Lead State for this WSCA Contract, Contractor agrees that the Contractor's response to the solicitation will be a public document, and copies may be given to the public as required by public information laws. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, or copyright information.

LIMITATION OF LIABILITY: UNLESS FURTHER LIMITED ELSEWHERE IN THIS AGREEMENT, NEITHER CONTRACTOR, ITS PROVIDERS, ITS SUPPLIERS, NOR ITS SUBCONTRACTORS SHALL BE LIABLE FOR AGGREGATE, CUMULATIVE DAMAGES, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE, IN EXCESS OF THE CHARGES PAID TO CONTRACTOR FOR THE SERVICES DIRECTLY RELATED TO THE CAUSE OF ACTION THROUGH WHICH THE DAMAGE AROSE DURING THE TWELVE (12) MONTH PERIOD PRECEDING BUYER'S CLAIM; PROVIDED HOWEVER THAT THE LIMITATION IN THE PREVIOUS SENTENCE SHALL NOT APPLY TO CLAIMS COVERED BY THE PATENT AND COPYRIGHT INDEMNIFICATION, BREACH OF CONFIDENTIALITY OBLIGATIONS, FRAUD OR FRAUDULENT MISREPRESENTATION, WILLFUL MISCONDUCT OR CLAIMS FOR PERSONAL INJURY AND PROPERTY DAMAGE INDEMNIFICATION.

IN NO EVENT SHALL CONTRACTOR, ITS PROVIDERS, SUPPLIERS, OR ITS SUBCONTRACTORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS CONTRACT OR ITS PERFORMANCE OR NONPERFORMANCE, EVEN IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ADDITION, CONTRACTOR, ITS PROVIDERS, ITS SUPPLIERS AND ITS SUBCONTRACTORS SHALL NOT BE LIABLE FOR ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA FROM ANY CAUSE, LOSS OF PROFITS, LOSS OF SAVINGS, LOSS OF BUSINESS OR CLAIMS AGAINST BUYER FROM OTHERS ARISING OUT OF OR RELATED TO THIS CONTRACT. HOWEVER, TO THE EXTENT CONTRACTOR, ITS PROVIDERS, ITS SUPPLIERS AND/OR ITS SUBCONTRACTORS ARE THE DIRECT CAUSE OF LOSS OF DATA, CONTRACTOR SHALL RESTORE SUCH DATA FROM THE STATE'S BACKUP SYSTEM AT NO ADDITIONAL COST TO THE STATE.

DISPUTE RESOLUTION: The parties shall deal in good faith and attempt to resolve potential disputes informally.

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