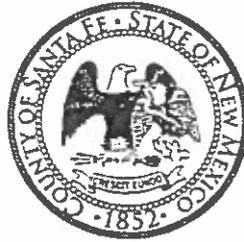


Henry P. Roybal  
Commissioner, District 1

Miguel Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

DATE: August 11, 2015

TO: Board of County Commissioners

FROM: Adam Leigland, Public Works Department Director *AL 9/12/15*

VIA: Katherine Miller, County Manager *KM 8.17.15*

ITEM AND ISSUE: *BCC Meeting August 25, 2015*

Request for Direction on the Creation of County Flood Commissioner Pursuant to NMSA 1978, Sections 4-50-1 Through 4-50-9 (Public Works/Adam Leigland)

---

### SUMMARY

This is an update and further request for direction on the creation of the Office of the County Flood Commissioner, as requested by the BCC at the May 26, 2015, meeting.

### BACKGROUND:

A presentation on the possible creation of a county flood commissioner was made to the BCC on May 26, to outline the pros and cons of this office and to gauge the commission's interest in pursuing the option. The BCC directed staff to further explore the idea and report back. The BCC also requested that staff investigate soil and water conservation districts and compare them to the flood commissioner.

Other Counties. Three counties have created the office of the flood commissioner: Chaves, Dona Ana, and Sierra. For this report, staff interviewed the individuals listed below:

Chaves County: County manager, public works director, director of the flood commission.

Dona Ana County: BCC chair, county manager, public works director, county attorney, director of the flood commission.

Sierra County: Assistant county manager, public works director.

In every case except one, the flood commission was considered by the interviewee to be a positive. The Chaves County public works director indicated that he wished he could work more with the flood commissioner. The Dona Ana County BCC chair stated that he wished the flood

commissioner had more resources to be able to accomplish more. The Sierra County assistant county manager indicated that under the previous flood commissioner, the office worked very well. The Sierra County BCC has requested that the Office of the Governor appoint a new flood commissioner.

In short, it appears that the effectiveness of a flood commissioner, which can be high, lies in the level of collaboration and cooperation the flood commissioner has with the county commission, county staff, and constituents.

Soil and Water Conservation Districts. Soil and Water Conservation Districts (SCWD) are enabled by state statute (NMSA 73-20-44) to, among other things, develop comprehensive plans for flood prevention and control and to construct, improve, operate, or maintain physical projects and structures necessary or convenient for the flood prevention and control. Further, SCWDs are allowed by law (NMSA 73-20-4) to subdivide themselves into Watershed Districts (WSD), which are enabled to undertake projects for flood prevention, flood control, erosion prevention and control of erosion, and floodwater and sediment damages. Each district has the ability to levy tax assessments (1 mill for SWCD and 5 mills from WSD within their respective jurisdictions) to fund these projects and other district activities. SCWDs and WSDs are created from the ground up, have their own elected boards, and are accountable to the state soil and water conservation commission. There are currently 47 SWCDs and 7 WSDs in the state.

It appears that these two types of districts have largely similar powers to those of a flood commissioner with regard to flood control and/or damage, and have the ability to levy tax assessments. Staff reviewed the websites of the 17 SWCDs with websites and noted that only one of them (Coronado) actually does flood control/damage work. Staff also interviewed the director of the Santa Fe/Pojoaque SCWD.

In sum, while these districts have similar power and abilities with respect to flood control/damage as a flood commission, they have two disadvantages from the County's point of view. First, these districts are independent from a county and therefore not tools that a county commission can directly wield. Second, flood prevention and control does not appear to be a high priority for the districts.

**DISCUSSION:**

Based on the information gathered thus far, staff feels that a flood commissioner would be a valuable tool for the County. The specific action that the BCC would undertake to create the flood commission would be passage of a resolution approving the creation of the office of the flood commission; a sample resolution is attached for review.

One downside of the flood commissioner is that property taxes are increased within the county for an entity that is not managed by the county.

Learning from the experience of other counties, staff would recommend the execution of a memorandum of agreement (MOA) between the County and the flood commissioner. A sample such MOA is attached for review. This MOA would address in particular the problems that Sierra County faced with their flood commissioner.

Creation of the office of the flood commissioner would take time. A sample timeline, assuming that BCC approval is granted in August, is provided below.

Sample Timeline:

| Date         | Action  |
|--------------|---|
| Sep 29, 2015 | BCC approves enabling resolution; solicits candidates for appointment |
| Oct 8, 2015  | Office of the Governor solicited for appointment                      |
| Nov 10, 2015 | Flood commissioner appointed  |
| Dec 8, 2015  | MOA signed  |
| Mar 30, 2016 | Flood commissioner presents certification of need to BCC              |
| Jul 1, 2016  | BCC imposes property assessment                                       |
| Jul 12, 2016 | Flood commissioner presents work plan for approval                    |
| April 2017   | First property assessment revenues distributed from state             |

The state statute allows the BCC to impose the property tax assessment without first submitting the question to the voters. As mentioned earlier, the increase in property tax is a potential downside, so the BCC may choose to solicit voter approval for the creation of the office of the flood commissioner, in which case the timeline above would need to be modified accordingly.

Staff is requesting that the process to create the office of the flood commissioner be initiated with the enabling resolution.

**ACTION REQUESTED:**

Direct staff to bring an enabling resolution to the BCC for approval.



**MEMORANDUM OF AGREEMENT  
BETWEEN SANTA FE COUNTY AND  
THE OFFICE OF THE SANTA FE COUNTY FLOOD COMMISSIONER**

**THIS AGREEMENT** is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 201X, by and between the **County of Santa Fe**, a political subdivision of the State, hereinafter referred to as the "County," and the **Office of the Santa Fe County Flood Commissioner**, an entity created pursuant to NMSA 1978 Section 4-50-1, hereinafter referred to as the "Flood Commission".

**WHEREAS**, State statute (NMSA 1978 Section 4-50-1 to -10 (1921)) grants boards of county commissioners the power to approve the creation of the office of the county flood commissioner; and

**WHEREAS**, the Santa Fe Board of County Commissioners approved the creation of the office of the county flood commissioner on XXX, 201X, by Resolution No. 201X-XXX; and

**WHEREAS**, for flood control purposes, upon certification of need and estimated cost by the Flood Commission, the Board of County Commissioners is authorized to levy an annual tax upon all the taxable property located within five miles of both sides of any river or stream which contributes to or is subject to flood conditions destructive to property or dangerous to human life; and

**WHEREAS**, NMSA 1978 Section 4-50-6 requires that expenses and indebtedness incurred by the Flood Commission shall be subject to the approval of the County; and

**WHEREAS**, NMSA 1978 Section 4-50-7 requires that between the 15th day of December of each year and the succeeding first day of January the Flood Commission shall make full and detailed report to the County, giving a detailed description of all work constructed, built, or maintained by the Flood Commission during the current year, together with a full and true account of all expenditures made by the Flood Commission; and

**WHEREAS**, in order to function properly, the Flood Commission shall require the operational support of the County in such areas as finance, legal, human resources, and procurement; and

**WHEREAS**, the County desires that the Flood Commission become and remain a cost-effective, responsive, relevant, and transparent organization;

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES:**

1. **CERTIFICATION OF NEED AND ESTIMATED COST.** Pursuant to Section 4-50-2, within 180 days of the effective date of this agreement, the Flood Commission shall present to the County a recommendation for the determination of drainage areas, a certification of need (to include a staffing and equipment plan), and an estimated cost to meet such needs in such drainage areas, for County Commission approval.
2. **TAX LEVY AND COUNTY FLOOD FUND.** Based on the certification of need and estimated cost and determination of drainage areas as described in Paragraph 1, the County shall cause to be levied a tax on all properties within the drainage areas in compliance with the terms of Section 4-50-2. The revenues received from this tax shall be maintained in a separate fund known as the county flood fund, and the county flood fund shall be used to fund all operational and capital requirements of the Flood Commission.
3. **BRIDGING FUNDS.** The County may, as necessary, provide operating funds to the Flood Commission to bridge the time gap between the creation of the Flood Commission and the first receipts of revenue into the county flood fund. These bridging funds shall be reimbursed to the County on a schedule to be determined during the annual budget preparation process.
4. **APPROVAL OF EXPENDITURES AND WORK PLAN.** Pursuant to Section 4-50-6, the Flood Commission shall participate in the County annual budget process. In January and July of each year, the Flood Commission shall present to the County Commission for approval a work plan and an accounting of all anticipated expenditures for the upcoming six-month period and report on expenditures of the previous six-month period.
5. **ANNUAL REPORT.** Pursuant to Section 4-50-7, at the first commission meeting in December of each year, the Flood Commission shall present to the County a full and detailed report, giving a detailed description of all work constructed, built, or maintained by the Flood Commission during the current year, together with a full and true account of all expenditures made by the Flood Commission and an accounting of performance measures as described in Paragraph 9.
6. **OPERATIONAL SUPPORT.** The Flood Commission shall be entitled to full use and benefit of County operational resources. For this, the Flood Commission shall compensate the County an amount determined each year by the County during the budget preparation process for the upcoming fiscal year, and such compensation shall be transferred from the county flood fund into the County general fund.
7. **COORDINATION.** County departments such as Public Works and Growth Management shall well and faithfully coordinate their efforts with the Flood Commission as appropriate, and the Flood Commission shall in turn coordinate with County departments.

8. **COUNTY POLICIES AND PROCEDURES.** The Flood Commission shall follow and comply with all County policies and procedures in effect, including but not limited to the following areas: human resources, procurement, finance, fleet management, IT, public meetings, ethics, citizen advisory committees, and risk management.
9. **PERFORMANCE MEASURES.** To ensure that the Flood Commission meets County goals of cost-effectiveness, transparency, responsiveness, and relevance, the following measures shall be used to evaluate Flood Commission performance for purposes of approval of work plan and expenditures and maintenance of the Flood Commission. The annual report specified in Paragraph 5 shall contain an accounting of these performance measures. If the performance measures are not met, the County may specify remedial measures as a condition of approval of expenditures, or may choose to terminate this agreement pursuant to Paragraph 12.
- a. **Staffing.** The Flood Commission shall maintain a level of staffing that is equivalent to the level of staffing of a similar County department performing a similar level of work.
  - b. **Work orders.** The Flood Commission shall create a work order submission and management program or shall cooperate with an existing such County program, and shall promulgate and meet work order response rates.
  - c. **Work plan.** The Flood Commission shall complete at least 75% of the tasks outlined in the work plan described in Paragraph 4 above in the timeline indicated for each task.
10. **OTHER AGREEMENTS.** The County and the Flood Commission may enter into agreements for the provision of services such as management of the County Flood Damage Control Ordinance. The Flood Commission may, as appropriate, enter into agreements with other public entities and such agreements shall be subject to County approval.
11. **EFFECTIVE DATE.** This Agreement shall become effective on the date of execution by the County or the Flood Commission, whichever occurs last.
12. **TERMINATION.** This Agreement may be terminated by the County if the performance measures described in Paragraph 9 are not met. Termination shall occur by resolution of the County Commission, and such termination of the agreement shall constitute disbanding of the Flood Commission. The resolution terminating this agreement and thus disbanding the Flood Commission shall contain the timeline and process for the disbanding and a description of the disposition of Flood Commission assets, including the county flood fund.
13. **LIABILITY.** Each party shall be solely responsible for fiscal or other sanctions occasioned as a result of its own violation of requirements applicable to the performance of the Agreement. Each party shall be liable for its actions in accordance with this Agreement. Any liability incurred by the County or the Flood

Commission in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act NMSA 1978, Section 41-4-1, *et. seq.* and as amended. The County, Flood Commission, and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity; do not waive any defense; and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

14. **AMENDMENT.** This Agreement shall not be altered, changed, or amended except by an instrument executed in writing signed by all parties.
15. **APPROPRIATIONS.** The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of the State of New Mexico and the governing body of the County for the performance of this Agreement. If sufficient appropriations and authorization are not made, this Agreement shall terminate immediately upon written notice being given by the terminating party to the other party. Any party's decision as to whether sufficient appropriations are available shall be accepted by the other party and shall be final.
16. **GOVERNING LAW.** This Agreement shall be governed by, and construed in accordance with, the laws of New Mexico.
17. **NO THIRD-PARTY BENEFICIARIES.** Nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims or interests upon a person not a party to this Agreement.
18. **ENTIRE AGREEMENT.** This Agreement represents the entire understanding between the County and the Flood Commission and supersedes any prior agreements or understandings with respect to the subject of this Agreement. No changes, amendments or alterations to this Agreement will be effective until in writing and signed by the parties.

**IN WITNESS WHEREOF,** the parties set their hands:

**FLOOD COMMISSION:**

**SANTA FE COUNTY**

\_\_\_\_\_  
XXX, Flood Commissioner

\_\_\_\_\_  
XXXXXXX, Chair  
Board of County Commissioners Manager

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
XXXX,  
County Clerk

Approved as to form:

\_\_\_\_\_  
XXXXX, County Attorney  
Santa Fe County

Approved:

\_\_\_\_\_  
XXXX, Director  
Finance Division  
Santa Fe County

SAMPLE



SAMPLE

**SANTA FE COUNTY**  
**RESOLUTION No. 2015-\_\_**

---

**A RESOLUTION CONDITIONALLY APPROVING THE  
CREATION OF THE OFFICE OF THE COUNTY FLOOD  
COMMISSIONER**

---

**WHEREAS**, NMSA 1978, Section 4-50-1 to -10 (1921, as amended through 1997) grants boards of county commissioners the power to approve the creation of the office of the county flood commissioner and the annual budget of the office; and

**WHEREAS**, county flood commissioners are empowered to inspect rivers and streams in their respective counties where flood waters are liable to cause damage to property or life and in their discretion cause to be constructed and maintained dikes, embankments, dams, ditches or other structures or excavations necessary to control such flood water and protect life and property in their counties against loss and damage; and

**WHEREAS**, Santa Fe County contains numerous rivers and streams where flood waters have caused damage to property or life in the past and are liable to do so in the future; and

**WHEREAS**, County approval of creation of an Office of Santa Fe County Flood Commissioner will benefit to the citizens of Santa Fe County; and

**WHEREAS**, the flood commissioner is appointed by the governor, and serves a term of two years; and

**WHEREAS**, under Section 4-50-3, county flood commissioners have may inspect rivers and streams in their respective counties where flood waters are liable to cause damage to property or life and in their discretion cause to be constructed and maintained dikes, embankments, dams, ditches or other structures or excavations necessary to control such flood water and protect life and property in their counties against loss and damage; and

**WHEREAS**, for flood control purposes, upon certification of the need and estimated cost by the county flood commissioner, the Board of County Commissioners ("BCC") is authorized under Section 4-50-2 to levy an annual tax upon all the taxable property located within five miles of both sides of any river or stream which contributes to or is subject to flood conditions destructive to property or dangerous to human life; and

SAMPLE

**WHEREAS**, the levy under 4-50-2 shall not exceed one dollar fifty cents, or any lower maximum amount required by operation of the rate limitation provisions of NMSA 1978, Section 7-37-7.1 upon a tax imposed under this section, on each one thousand dollars of net taxable value;

**WHEREAS**, although the flood commissioner is a state position appointed by the governor, all expenses and indebtedness incurred by any county flood commissioner under the provisions of Sections 4-50-1 through 4-50-9 are subject to the approval of the BCC; and

**WHEREAS**, the Office of the Santa Fe Flood Commissioner will require broad operational support from the County, including support in the areas of finance, legal, human resources, and procurement; and

**WHEREAS**, in order establish clear lines of authority, responsibilities, staffing, office space and equipment, and other operational requirements it is essential that the relationship between the County and the flood commissioner be set out in a binding memorandum of agreement; and

**WHEREAS**, the BCC's approval of the creation of the office of the Santa Fe County flood commissioner should be conditioned on the governor's appointed flood commissioner executing an appropriate memorandum of agreement ("MOA") with the County; and

**WHEREAS**, the County Manager should be delegated authority to negotiate the MOA with the Flood Commissioner and to present the MOA to the BCC for approval within three months after the governor's appointment; and

**WHEREAS**, if the County Manager and Flood Commissioner are unable to negotiate and present a mutually acceptable MOA to the BCC within three months, or if BCC does not approve the MOA within sixth months, the BCC's approval of the creation of the Office of the Santa Fe Flood Commission shall automatically be rescinded unless BCC extends the periods of negotiation and approval by resolution.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNTY BOARD OF COMMISSIONERS:**

1. Pursuant to Section 4-50-1, the creation of the Office of the Santa Fe County Flood Commissioner is hereby conditionally approved.
2. The County Manager is authorized to formally notify the Office of the Governor of this approval and seek the immediate appointment of a flood commissioner, and, unless the BCC's approval is automatically rescinded as provided below, the County Manager is further authorized to seek new appointments and reappointments in the future as necessary.
3. The County Manager and the Flood Commissioner appointed by the governor shall negotiate a mutually acceptable draft MOA between the BCC and the Office of the Santa Fe

SAMPLE

Flood Commissioner and jointly present the draft to the BCC for approval within three months of the governor's appointment.

4. The MOA shall describe the scope and the terms of the County's operational support to the Office of the Santa Fe Flood Commissioner, establish requirements for reporting to the BCC and the County Manager, and include a list of performance criteria and such other terms and conditions as the County Manager deems necessary or appropriate.
5. The County Manager and the Flood Commissioner shall jointly present a proposed MOA to the BCC for approval and execution within three months of the Governor's appointment of the flood commissioner. If the MOA is not presented to the BCC within three months of the Governor's appointment of the flood commissioner, or if the MOA has not been approved by the BCC and executed by the BCC, the County Manager, and the Office of the Santa Fe Flood Commissioner within six months of the appointment of the flood commissioner, the BCC's conditional approval of the Office of the Santa Fe County Flood Commissioner shall automatically be rescinded unless the BCC extends the deadlines by resolution. The County Manager shall promptly notify the Office of the Governor if the BCC's conditional approval is rescinded under the terms of this Resolution.
6. The County Manager shall be the liaison between the BCC and the Office of the Santa Fe Flood Commissioner.

**PASSED, APPROVED, AND ADOPTED THIS \_\_\_ DAY OF \_\_\_\_\_, 2015.**  
**BOARD OF COUNTY COMMISSIONERS**

By: \_\_\_\_\_ Date \_\_\_\_\_  
Robert Anaya, Chair

**ATTEST:**

\_\_\_\_\_  
Geraldine Salazar, County Clerk Date \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_  
Gregory Shaffer County Attorney Date \_\_\_\_\_



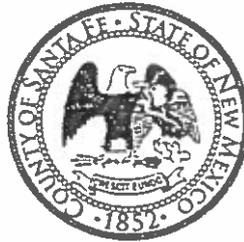




**Henry P. Roybal**  
*Commissioner, District 1*

**Miguel M. Chavez**  
*Commissioner, District 2*

**Robert A. Anaya**  
*Commissioner, District 3*



**Kathy Holian**  
*Commissioner,  
District 4*

**Liz Stefanics**  
*Commissioner,  
District 5*

**Katherine Miller**  
*County Manager*

**MEMORANDUM**

**DATE:** *August 12, 2015*

**TO:** *Board of County Commissioners*

**VIA:** *Katherine Miller, County Manager* *8/17/15*

**FROM:** *Adam Leigland, Public Works Director* *8/11/15*

**ITEM AND ISSUE:** *BCC Meeting August 25, 2015*

**Discussion and Possible Direction on Options for Residential Curbside Solid Waste and Recycling Service Regulation within Santa Fe County (Public Works/Craig O'Hare)**

---

**SUMMARY:**

At the direction of Commissioners at the July 14 meeting, staff has prepared a set of residential solid waste and recycling collection options for the Commission's consideration. Based on input received from the public and from Commissioners, staff includes a recommendation for the BCC to adopt Option 2 below. If the Commission takes action on a specific option (including any amendments to the option) at today's meeting, staff recommends that at least three public outreach meetings be held in the most affected areas of the County followed by additional direction from the Commission to prepare the appropriate ordinance.

**BACKGROUND:**

The BCC held a June 30 public hearing on an ordinance to establish three "Residential Solid Waste Collection Districts" in the more densely populated areas of the County immediately surrounding the City of Santa Fe. Solid waste and recycling collection in those districts would be performed via a contract between the County and a single solid waste hauler (including the possibility for that hauler to subcontract with a smaller private hauler for specialized collection services) selected by the County from a competitive Request for Proposal (RFP) process. Public input at the hearing was predominantly in opposition to the proposed initiative for the following primary reasons: 1) Citizens were content with their existing hauler, rates and services; 2) Citizens were concerned that small locally-based haulers might be put out of business; and 3) Citizens objected, in principal, to the County selecting the hauler they must use for refuse collection. Opposition came primarily from homeowners living in the proposed North Collection District. The Commission voted to delay action on the ordinance until the November 10 BCC meeting.

At the July 14 BCC meeting, Commissioners informally discussed the Solid Waste Collection Districts proposal. Commissioners expressed their interest in increasing the waste diversion and recycling rate in the County and directed staff to develop alternative options in addition to the Solid Waste Collection District approach. As a result of this discussion, staff placed issuing a Request for Proposal to haulers on “hold” pending further direction.

**DISCUSSION:**

Upon further research and internal discussions, staff developed three main options for the Commission’s consideration. Options 1 and 2 can be further modified to address particular concerns or interests by the Commission.

**Option 1: Continue with Solid Waste Collection District Proposal as Presented on June 30**

This option involves continuing with the Solid Waste and Recycling Collection District proposal as originally envisioned. A thorough discussion of the proposal is in the attached June 15 memo to the BCC written for the June 30 public hearing. This option is the most comprehensive and aggressive in achieving the solid waste management, recycling, and resource management objectives. It would likely, of course, continue to receive significant opposition from a portion of the affected population.

**Possible Modifications:**

The Commission could choose to remove one of the three collection districts or modify the boundaries of the collection districts. Staff would recommend that at least two distinct collection districts exist in order to be able to select and maintain competition among private haulers.

If this option is selected, the RFP issuance will be restarted, with proposals due in November and further BCC consideration undertaken at that time.

**Option 2: Utilize a Permitting/Regulatory Approach Requiring Private Haulers to Provide Refuse and Recycling Collection as a Single “Bundled” Service**

Option 2 would preserve the three collection districts proposed under Option 1, but would apply only a regulatory regime to any private sector hauler operating in the district. This option maintains the existing open market structure amongst haulers and hauler choice for homeowners. In addition to providing weekly refuse service, haulers would be required to provide some level of recycling collection service for all non-glass recyclables. (Requiring glass collection and processing could add significantly to rates). The recycling service would be included, coupled with refuse service, in a single monthly or quarterly charge. Homeowners would not have a choice of rejecting recycling service for a lower fee. The objective is to increase recycling by making it just as convenient as refuse disposal.

The County would require that all private haulers in the collection districts obtain a permit from the County requiring: 1) the “bundled” refuse and recycling service noted above; 2) flow control to Caja del Rio landfill and BuRRT recycling center; and 3) quarterly reporting of refuse and recycling tonnages, customer rates, number of customers, landfill and BuRRT drop-off tonnages, etc. In this option, the County would not assume a rate oversight or rate control responsibility, nor a performance monitoring role beyond compliance with the permit.

Many homeowners already have the option of combined refuse and recycling service and would therefore be unaffected by this proposal. Homeowners that currently have only refuse collection

service, on the other hand, would likely experience an increase in their monthly fee reflecting the additional recycling collection service. While it's difficult to know for certain what this monthly increase might be, staff estimates a range of an additional \$6-10 per month.

Possible Modifications:

In addition to Option 2 for the three Collection Districts described above , a County-wide approach could be included that would require haulers that provide curbside refuse outside the collection districts to also offer every other week recycling collection for an additional charge. Homeowners would be assured that recycling service is available to them but would have the choice of whether to pay extra for it. The same hauler permitting and reporting requirements would be incorporated. Staff recommends considering this modification/addition after implementation of Option 2 is well underway (assuming the Commission selects Option 2). Staff does not feel that requiring bundled refuse and recycling service is appropriate throughout the County because of the potential for it to dramatically increase customers' costs in outlying, less densely populated areas.

Note that if Option 2 selected, services from the County's solid waste consultant for developing the RFP will likely no longer be necessary. Staff would, therefore, recommend terminating this contract.

Option 3: "No Action"

Option 3 maintains the status quo. This option is the easiest and would likely satisfy the objectors mentioned above, but does little to advance the County's established solid waste management and recycling objectives. Staff resources permitting, the County could continue to work with the haulers and homeowners to promote and encourage recycling.

Note that if Option 3 selected, services from the County's solid waste consultant for developing the RFP will likely no longer be necessary. Staff would, therefore, recommend terminating this contract.

Staff recommends that the Commission select a single option or modified option before further public outreach meetings are held. At least three public meetings would be held in late August and into September. Staff would then bring the item back for further direction at the September 29 BCC meeting.

Staff recommends Option 2.

**ACTION REQUESTED:**

Direct staff to develop Option 2, conduct public outreach, and bring a developed proposal to the September 29 meeting.

Attachment:  
June 15, 2015, BCC memo



Henry P. Roybal  
Commissioner, District 1

Miguel Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## *MEMORANDUM*

**DATE:** *June 15, 2015*

**TO:** *Board of County Commissioners*

**FROM:** *Adam Leigland, Public Works Department Director*

**VIA:** *Katherine Miller, County Manager*

**ITEM AND ISSUE:** *BCC Meeting June 30, 2015*

**Ordinance No. 2015-\_\_\_, An Ordinance Establishing Curbside Residential Solid Waste and Recycling Collection Districts within Certain Populated Parts of Santa Fe County; Prohibiting the Commercial Collection of Residential Solid Waste Within These Districts Except in Accordance with a Valid Contract Between a Commercial Solid Waste Hauler and the County; Implementing and Amending Ordinance Number 2014-10. (Final Public Hearing) (Public Works/Adam Leigland)**

---

**SUMMARY:**

The proposed ordinance would establish three residential solid waste and recycling collection districts in the more densely populated residential areas of the County surrounding the City of Santa Fe. The three collection districts are identified on the attached overview map. Implementation of the Ordinance will result in a single private solid waste hauler being authorized to provide solid waste and recycling collection service in each district. Unless curbside collection is already required by a homeowners' association covenant or County ordinance, homeowners' use of the collection service will be voluntary. Homeowners in a District may choose to utilize the private hauler collection service or dispose of their solid waste on their own via the County's convenience centers. The ordinance is structured such that at least two private haulers will serve the three districts, in order to maintain a more competitive environment for future contract awards or extensions.

**BACKGROUND:**

One of the Commission's Solid Waste Task Force (SWTF) recommendations approved by the BCC at its October 28, 2014 meeting was the creation of solid waste collection districts in the denser areas surrounding the City of Santa Fe. The concept is that several collection districts of approximately equal size will be created, and in order for a private solid waste service provider to operate in a collection district, the private hauler must have a contract with the County. The contract will be exclusive, that is, only one hauler can operate in any one collection district, and the

contract will specify certain levels of service as determined by the County. The motivating idea behind this is that by aggregating demand and requiring that private haulers contract with the County to serve these areas, the County can ensure that residents can get higher solid waste service at a lower price.

A common disappointment expressed by County residents with existing private service is the lack of curbside recycling being offered. The contracts with the private haulers selected to provide solid waste collection will include requiring recycling collection as well.

The County's new comprehensive Solid Waste Ordinance, 2014-10, was adopted on November 25, 2014. Ordinance 2014-10 established most of the general enabling authority to pursue the establishment of collection districts. The proposed collection district ordinance further defines the procedures, roles, and responsibilities of residents, the County, and private haulers with respect to establishing and administering the collection districts.

**DISCUSSION:**

The following represents the key issues to be addressed in the County's contracts with the private haulers that are selected to serve each collection district:

**Basic service.** The basic service to be provided by the private hauler will be once-weekly curbside refuse pickup and weekly or biweekly curbside recycling pickup. Bins will be provided by the private hauler. The hauler must dispose solid waste at the Caja del Rio landfill. Other services and/or parameters may be considered, such as bulky item collection, pay-as-you-throw pricing, amnesty days, household hazardous waste collection, and so on.

**Special service.** Household collection service beyond the basic service described above, such as greater frequency of pick-up or "side door" collection, will be offered and will be the responsibility of the individual household to subscribe to and pay for.

**Accounts and billing.** The contractor will be responsible for creating and maintaining customer accounts, and for customer billing. Delinquent accounts will be the contractor's responsibility.

**Service Districts.** Three districts have been identified, shown on the attached map. The number of households in each of the service districts is shown in the table below.

| Service Districts | Number of Households |
|-------------------|----------------------|
| North             | 5011                 |
| Southeast         | 5726                 |
| Southwest         | 5006                 |
| Total             | 15,743               |

The service areas are coterminous with the Sustainable Growth Management Plan's Sustainable Development Area (SDA) 2 in the Santa Fe metro area, thus furthering County growth management goals.

**Service parameters and rate setting.** The County will establish the basic service parameters. The contractor's initial rate will be market-driven as determined in the RFP process. Subsequent rate changes will be allowed either by pre-established escalators such as the Consumer Price Index or by approval of the BCC.

**Voluntary household participation.** Households can voluntarily opt out of contracted service, unless they are otherwise required to have curbside service. Since the private hauler contracts will be exclusive for each district, households that opt-in to contracted service will not have a choice of service provider, and households that opt-out must purchase a County solid waste permit and utilize County convenience centers.

That said, it should be noted that section 7.20 of the Sustainable Land Development Code mandates that new developments in SDA-1 must have contracted solid waste service. Further, numerous existing subdivisions in the proposed collection districts have covenants that require contracted solid waste collection. In these cases, household participation will be mandatory.

Although it is impossible to say precisely how many households would opt-out, using permit sales data, staff estimates that of the 15,743 households in the proposed collection areas, approximately 2,400, or 15%, will opt out. Staff expects that over time, many households that initially opt out will eventually opt in.

**Number of collection districts.** Any private hauler will only be allowed to serve any two of the three districts at any one time. This is intended to increase opportunity for the private sector, increase competition, and prevent the County from becoming locked in to a single private hauler.

**Contract fee.** It is common practice for a local government to charge a fee to contractors in contract arrangements such as the one under consideration. For instance, Taos County, which already has contracted solid waste collection districts, charges private haulers who serve in those districts a fee that is a percentage of annual gross revenues. This generates revenue for the County and also provides some quality control of the contractors, but since the haulers mostly pass the cost through, it slightly increases the cost of solid waste service to residents.

Staff is recommending in the ordinance a contract fee of 2% of gross revenues. Assuming a customer base of 13,300 households and a monthly rate of \$17/household produces annual gross revenue of \$2,700,000. Using a contract fee rate of 2% produces \$54,400 in annual revenue to the County.

**Contract term.** Private haulers will seek the longest term possible, and the County would likely get lower rates the longer the contract term. Most solid waste equipment can be amortized over seven to eight years, which will be a prime consideration for the private haulers. Staff has included a seven-year term in the ordinance.

State statute (Section 4-37-7(A)) requires publication of "the date and time of the meeting at which the ordinance is to be considered" for solid waste fee items. The BCC approved the publication of

title and general summary at the April 28 meeting; this notice was published in the Albuquerque Journal on May 26<sup>th</sup>.

Three public meetings were held, one in each of the proposed districts, the week of May 18. The BCC was provided a presentation on the feedback received at these meetings at the June 9, 2015, BCC meeting. Additionally, meetings were held with the private haulers to get their input. Attached to this memo is a copy of the outreach document used at those meetings and subsequently.

The next step in the process is to finalize and issue the request for proposals (RFP). This is expected to occur in early August. Proposals will be received and evaluated by November. When the proposals are received, the County will know if its goals have been met, and the decision of whether to award the contracts and implement this concept can be made at that time. Staff believes that the concerns of both the public and the private haulers can be met with this schedule.

#### Revisions to the April 28<sup>th</sup> Draft Ordinance

Public Works Department and County Attorney Office staff made a few clarifying and organizational revisions to the April 28th draft of the ordinance. While none of the edits changed the fundamental components of the ordinance, the more significant changes include:

- Section 4 Findings: The County's waste reduction and recycling objectives were added, since recycling is expected to increase in the collection districts.
- Section 4D: Clarification that collection of commercial and industrial solid waste is not affected by this ordinance.
- Section 5 Definitions: "Service Area" has been added. A service area can be all of or part of a Collection District. This provides County staff needed flexibility in establishing contracts with the haulers (e.g. if the number of collection districts or the area to be serviced within a collection district needs to be revised.)
- Section 6C(3): Revised to better align with the Sustainable Land Development Code.

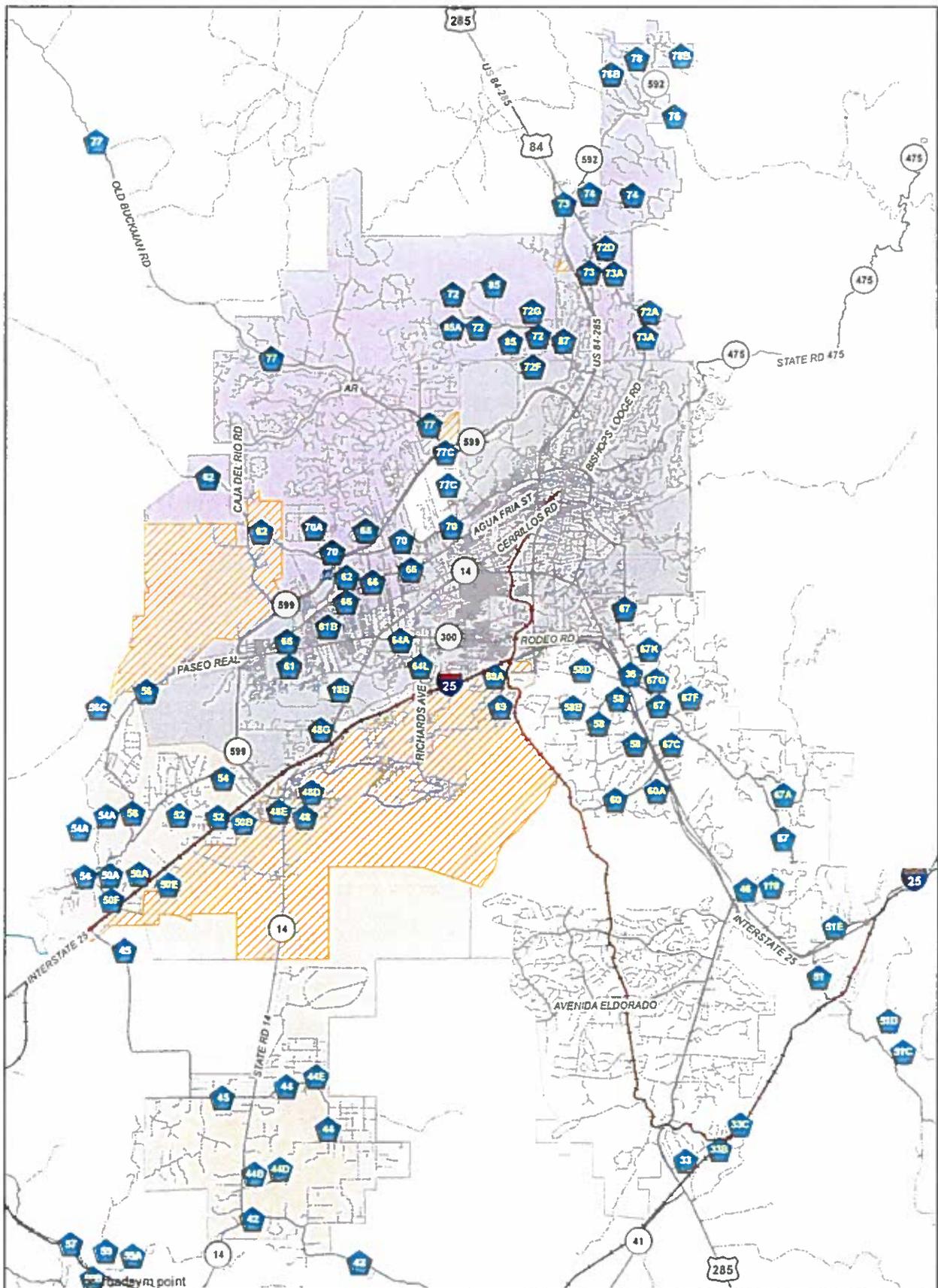
#### **ACTION REQUESTED:**

Approve subject ordinance.

#### Attachments:

1. Overview map of the proposed collection districts
2. Proposed ordinance with exhibits
3. Residential Collection Districts public information document

# Overview of Residential Solid Waste Service Districts



- Railroads
- Major Roads
- ▨ SGMP SDA 1
- ▨ North Service District
- ▨ Southeast Service District
- ▨ Southwest Service District
- ▨ City of Santa Fe



May 13, 2015

This information is for reference only. Santa Fe County assumes no liability for errors associated with the use of these data. Users are solely responsible for confirming data accuracy.



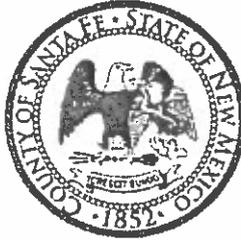




Henry P. Roybal  
Commissioner, District 1

Miguel M. Chavez  
Commissioner, District 2

Robert A. Anaya  
Commissioner, District 3



Kathy Holian  
Commissioner, District 4

Liz Stefanics  
Commissioner, District 5

Katherine Miller  
County Manager

## MEMORANDUM

DATE: August 12, 2015

TO: Board of County Commissioners

FROM: Bill Taylor, Procurement Manager, CPO *BT*

VIA: Katherine Miller, County Manager  
Jeffrey Trujillo, ASD Director  
Daniel Sanchez, IT Director

ITEM AND ISSUE: *BCC Meeting August 25, 2015*

**REQUEST WAIVER FROM SECTION 1 OF ORDINANCE NO. 2012-5, *OUTSIDE CONTRACTS*, AND APPROVAL TO PURCHASE VOLUME LICENSING OF MICROSOFT SOFTWARE THROUGH THE WESTERN STATES CONTRACTING ALLIANCE (WSCA) STATE PRICE AGREEMENT #20-000-00-0003B FOR A THREE YEAR TERM IN THE AMOUNT OF \$439,548.39, INCLUSIVE OF GROSS RECEIPTS TAX (GRT) AND GRANTING SIGNATURE AUTHORITY TO THE COUNTY MANAGER TO SIGN THE PURCHASE ORDER. (*BILL TAYLOR, PURCHASING DIVISION/DANIEL SANCHEZ, IT DIVISION*)**

---

**SUMMARY:**

The Santa Fe County Administrative Services Department (ASD), IT Division is requesting the authorization and approval to utilize the Western States Contracting Alliance (WSCA) State Price Agreement to enter into a three (3) year term agreement, Agreement # 2016-0083-IT/BT for Microsoft Volume Licensing through Software House International (SHI) as the reseller for Microsoft products.

The annual cost for the Volume Licensing is \$146,516.13, including GRT for a three year term total of \$439,548.39.

**BACKGROUND:**

The Microsoft Volume Licensing costs are based on volume purchases. By utilizing the WSCA Contract the County can receive the volume discounts available that are offered to the larger entities on the Price Agreement.

The products in the agreement include software for Windows and Server Operating Systems, Microsoft Exchange 2013, SQL database software, SharePoint Server, Windows Office, Project Server, and Visio.

**REQUESTED ACTION:**

Request a waiver from County Ordinance 2012-5, Section One to utilize the WSCA State Price Agreement #20-000-00-0003B and approval to enter into the three (3) year term agreement with Microsoft software for the total agreement amount of \$439,548.39 inclusive of gross receipts tax.

## Enterprise Enrollment

## State and Local

 Enterprise Enrollment number  
*(Microsoft to complete)*

|  |
|--|
|  |
|--|

Proposal ID/Framework ID

|  |
|--|
|  |
|--|

 Previous Enrollment number  
*(Reseller to complete)*

8512184

 Earliest expiring previous  
 Enrollment end date <sup>1</sup>

2015-07-31

**This Enrollment must be attached to a signature form to be valid.**

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) any supplemental contact information form or Previous Agreement/Enrollment form that may be required, (5) any order submitted under this Enrollment. This Enrollment may only be entered into under a 2011 or later Enterprise Agreement. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

All terms used but not defined are located at <http://www.microsoft.com/licensing/contracts>. In the event of any conflict the terms of this Agreement control.

**Effective date.** If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to "anniversary date" refers to the anniversary of the effective date each year this Enrollment is in effect.

**Term.** The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. If the Enrollment is renewed, the renewal term will expire 36 full calendar months after the effective date of the renewal term. Any reference in this Enrollment to "day" will be a calendar day.

**Product order.** The Reseller will provide Enrolled Affiliate with Enrolled Affiliate's Product pricing and order. Prices and billing terms for all Products ordered will be determined by agreement between Enrolled Affiliate and the Reseller. The Reseller will provide Microsoft with the order separately from this Enrollment.

## Terms and Conditions

### 1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

"Additional Product" means any Product identified as such in the Product List and chosen by Enrolled Affiliate under this Enrollment.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product List and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product List and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which the Enrollment expires.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"L&SA" means a License with Software Assurance for any Product ordered.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Professional locally (in a physical or virtual operating system environment), OR (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, OR (2) an Industry Device, OR (3) not managed (as defined in the Product List at the start of the applicable initial or renewal term of the Enrollment) as part of Enrolled Affiliate's Enterprise. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product List.

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product List, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"Transition" means the conversion of one or more License to or from another License(s). Products eligible for Transition and permitted Transitions are identified in the Product List.

"Transition Period" means the time between the Transition and the next Enrollment anniversary date for which the Transition is reported.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Use Rights. The Use Rights for Online Services are published in the Online Services Terms.

## **2. Order requirements.**

a. **Minimum Order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.

(i) **Enterprise Commitment.** If ordering any Enterprise Products, Enrolled Affiliate's order must include coverage for all Qualified Users and/or all Qualified Devices in any Product

pool an Enterprise Product is ordered in. Enrolled Affiliate may elect to mix Enterprise Products and the corresponding Enterprise Online Services within a Product pool as long as all devices not covered by an Enterprise Product are only used by users covered with a per user license.

- (ii) **Enterprise Online Services.** If ordering Enterprise Online Services only, then Enrolled Affiliate must maintain at least 250 Subscription Licenses.
- b. **Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products and Services.
- c. **Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. **Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. **Adding Products.**
  - (i) **Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.
  - (ii) **Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product List or (2) included as part of other Licenses.
- f. **True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.
  - (i) **Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
  - (ii) **Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
  - (iii) **Online Services.** For Online Services identified as eligible for true-up in the Product List, Enrolled Affiliate may reserve the additional Licenses prior to use. Microsoft will provide a report of Reserved Licenses in excess of existing orders to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retroactively to the month in which they were reserved.
  - (iv) **Transitions.** Enrolled Affiliate must report all Transitions. Transitions may result in an increase in certain Licenses to be included on the true-up order and a reduction of other Licenses for prior orders. Reductions in Licenses will be effective at end of the Transition Period. For Licenses paid up front, Microsoft will issue a credit for the remaining months of Software Assurance or Subscription Licenses that were reduced as part of the Transition.

(v) **Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product List, as follows:

- a) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
- b) For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
- c) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

(vi) **Update statement.** An update statement must be submitted instead of a true-up order if, as of the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative.

(vii) **True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

(viii) **Late true-up order.** If the true-up order or update statement is not received when due:

- 1) Microsoft will invoice Reseller for all Reserved Licenses not previously ordered.
- 2) Transitions and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).

g. **Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

- (i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
- (ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.
- (iii) If Enrolled Affiliate has previously ordered an Online Service as an Additional Product and wants to step-up to an Enterprise Online Service eligible for a Transition, the step-up may be reported as a Transition.
- (iv) If Enrolled Affiliate Transitions a License, it may be able to further step-up the Transitioned License. If Enrolled Affiliate chooses to step-up and the step-up License is separately

eligible to be Transitioned, such step-up Licenses may result in a License reduction at the Enrollment anniversary date following the step-up.

- h. **Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- i. **Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

### **3. Pricing.**

- a. **Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.
- b. **Setting Prices.** Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. As long as Enrolled Affiliate continues to qualify for the same price level, Microsoft's prices for Resellers for each Product or Service will be fixed throughout the applicable initial or renewal Enrollment term. Price levels and Microsoft's prices for Resellers are reestablished at the beginning of the renewal term. However, if Enrolled Affiliate qualifies for a different price level during the applicable initial or renewal term, Microsoft may at its discretion establish a new price level for future new orders either upon Enrolled Affiliate's request or on its own initiative. Any changes will be based upon price level rules in the Product Selection Form.

### **4. Payment terms.**

For the initial or renewal order, Enrolled Affiliate may pay upfront or elect to spread its payments over the applicable Enrollment term. If spread payments are elected, unless indicated otherwise, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and on each Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

### **5. Transitions.**

#### **a. Transition requirements.**

- (i) Licenses with active Software Assurance or Subscription Licenses may be Transitioned at any time if permitted in the Product List. Enrolled Affiliate may not, however, reduce the quantity of Licenses or associated Software Assurance prior to the end of the Transition Period.
- (ii) Enrolled Affiliate must order the Licenses to which it is transitioning for the year(s) following the Transition Period.
- (iii) If a Transition is made back to a License that had active Software Assurance as of the date of Transition, then Software Assurance must be re-ordered for all such Licenses on a prospective basis following the Transition Period. Software Assurance coverage may not exceed the quantity of perpetual Licenses for which Software Assurance was current at the time of any prior Transition. Software Assurance may not be applied to Licenses transferred by Enrolled Affiliate.
- (iv) If a device-based License is Transitioned to a user-based License, all users of the device must be licensed as part of the Transition.
- (v) If a user-based License is Transitioned to a device-based License, all devices accessed by the user must be licensed as part of the Transition.

**b. Effect of Transition on Licenses.**

- (i) Transition will not affect Enrolled Affiliate's rights in perpetual Licenses paid in full.
- (ii) New version rights will be granted for perpetual Licenses covered by Software Assurance up to the end of the Transition Period.
- (iii) For L&SA not paid in full at the end of the Transition Period, Enrolled Affiliate will have perpetual Licenses for a proportional amount equal to the amounts paid for the Transitioned Product as of the end of the Transition Period.
- (iv) For L&SA not paid in full or granted a perpetual License in accordance with the above or Subscription Licenses, all rights to Transitioned Licenses cease at the end of the Transition Period.

**6. End of Enrollment term and termination.**

- a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.
- b. **Renewal Option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing the Enrollment for one additional 36 full calendar month term or signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. The renewal term will start on the day following the Expiration Date. Microsoft will not unreasonably reject any renewal. Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at renewal.
- c. **If Enrolled Affiliate elects not to renew.**
  - (i) **Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring L&SA.
  - (ii) **Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product List, the following options are available at the end of the Enrollment initial or renewal term.
    - 1) **Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price for Enrolled Affiliate's price level as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate does want an Extended Term, Reseller must submit a request to Microsoft. Microsoft must receive the request not less than 30 days prior to the Expiration Date.
    - 2) **Cancellation during Extended Term.** If Enrolled Affiliate has opted for the Extended Term and later determines not to continue with the Extended Term, Reseller must submit a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received the notice.
  - (iii) **Subscription Licenses and Online Services not eligible for an Extended Term.** If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.
  - (iv) **Customer Data.** Upon expiration or termination of a License for Online Services, Microsoft will keep Customer's Data in a limited function account for 90 days so that Customer may

extract it. Enrolled Affiliate will reimburse Microsoft if there are any associated costs. After 90 days Microsoft will disable Enrolled Affiliate's account and will delete its Customer Data. Enrolled Affiliate agrees that, other than as described above, Microsoft has no obligation to continue to hold, export or return Enrolled Affiliate's Customer Data and that Microsoft has no liability whatsoever for deletion of Enrolled Affiliate's Customer Data pursuant to these terms.

- d. **Termination for cause.** Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Agreement.
- e. **Early termination.** Any Early termination of this Enrollment will be subject to the "Early Termination" Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, Microsoft will issue Reseller a credit for any amount paid in advance that would apply after the date of termination.

## Enrollment Details

### 1. **Enrolled Affiliate's Enterprise.**

- a. Identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

Enrolled Affiliate only

Enrolled Affiliate and all Affiliates

Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

- b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Include future Affiliates

### 2. **Contact information.**

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (\*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

**Name of entity (must be legal entity name)\*** Santa Fe County

**Contact name\*** First Daniel Last Sanchez

**Contact email address\*** dpsanchez@santafecountynm.gov

**Street address\*** 142 W. Palace Ave.

**City\*** Santa Fe

**State/Province\*** NM  
**Postal code\*** 87501 -  
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)  
**Country\*** USA  
**Phone\*** 505-992-9888  
**Tax ID**  
*\* indicates required fields*

- b. **Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized for applicable Online Services to add or reassign Licenses, step-up, and initiate Transitions prior to a true-up order.

Same as primary contact (default if no information is provided below, even if the box is not checked).

**Contact name\*** First Lynn Last Farmer  
**Contact email address\*** SHI International Corp.  
**Street address\*** 290 Davidson Avenue  
**City\*** Somerset  
**State/Province\*** NJ  
**Postal code\*** 08873-  
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)  
**Country\*** USA  
**Phone\*** 602-515-9436

**Language preference.** Choose the language for notices. English  
 This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.  
*\* indicates required fields*

- c. **Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses, step-up, and initiate Transitions prior to a true-up order.

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

**Contact name\*:** First Daniel Last Sanchez  
**Contact email address\*** dpsanchez@santafecountynm.gov  
**Phone\*** 505-992-9888

This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.  
*\* indicates required fields*

- d. **Reseller information.** Reseller contact for this Enrollment is:

**Reseller company name\*** SHI International Corp  
**Street address (PO boxes will not be accepted)\*** 290 Davidson Ave  
**City\*** Somerset  
**State/Province\*** NJ  
**Postal code\*** 08873  
**Country\*** USA  
**Contact name\***  
**Phone\*** 888-764-8888  
**Contact email address\*** msteam@shi.com  
*\* indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

|   |
|---|
| <b>Signature*</b> _____                     |
| <b>Printed name*</b> SHI International Corp |
| <b>Printed title*</b>                       |
| <b>Date*</b>                                |

\* indicates required fields

**Changing a Reseller.** If Microsoft or the Reseller chooses to discontinue doing business with each other, Enrolled Affiliate must choose a replacement Reseller. If Enrolled Affiliate or the Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the other party using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*

- (i) Additional notices contact
- (ii) Software Assurance manager
- (iii) Subscriptions manager
- (iv) Customer Support Manager (CSM) contact

### 3. **Financing elections.**

Is a purchase under this Enrollment being financed through MS Financing?  Yes,  No.

If a purchase under this Enrollment is financed through MS Financing, and Enrolled Affiliate chooses not to finance any associated taxes, it must pay these taxes directly to Microsoft.

## Enterprise and Enterprise Subscription Enrollment Product Selection Form

Enrollment Number  
 Microsoft to complete for initial term.  
 Reseller or Software Advisor to  
 complete for renewal

**Step 1. Enter all fields in the table below (Required).**

| Profile                           | Qualified Devices | Qualified Users | Enterprise Product Platform | Licensing Model |
|-----------------------------------|-------------------|-----------------|-----------------------------|-----------------|
| Enterprise                        | 580               | 580             | Yes                         | Not Applicable  |
| Device Profile (i.e. Call Center) |                   |                 | Choose One                  | Choose One      |

**Step 2. Select the Products and Quantities Enrolled Affiliate is ordering on its initial Enrollment Order.** Quantity may not include any Licenses which Enrolled Affiliate has selected for optional future use, or to which it is transitioning or stepping-up within Enrollment term.

| Products  | Enterprise Quantity | Device Profile (i.e. Call Center) |
|---|---------------------|-----------------------------------|
| <b>Office Professional Plus</b>                                 |                     |                                   |
| Office Pro Plus   | 580                 |                                   |
| Office Pro Plus for Office 365                                  |                     |                                   |
| <b>Office 365 Plans</b>   |                     |                                   |
| Office 365 (Plan E1)  |                     |                                   |
| Office 365 (Plan E1 Add On)                                     |                     |                                   |
| Office 365 (Plan E3)  |                     |                                   |
| Office 365 (Plan E3) Add On                                     |                     |                                   |
| Office 365 (Plan E4)  |                     |                                   |
| Office 365 (Plan E4) Add On                                     |                     |                                   |
| Office 365 (Plan E3) without ProPlus Add On                     |                     |                                   |
| Office 365 (Plan E4) without ProPlus Add On                     |                     |                                   |
| <b>Client Access License (CAL)</b>                              |                     |                                   |
| Choose Core CAL or Enterprise CAL:                              | Core CAL            | <Choose One>                      |
| Core CAL or Enterprise CAL                                      | 580                 |                                   |
| Bridge for Office 365   |                     |                                   |
| Bridge for Windows Intune                                       |                     |                                   |
| Bridge for Office 365 and Windows Intune                        |                     |                                   |
| <b>Windows Desktop</b>  |                     |                                   |
| Windows Enterprise Upgrade                                      | 580                 |                                   |
| Windows VDA   |                     |                                   |
| Windows SA per User USL   |                     |                                   |
| Windows VDA per User USL  |                     |                                   |
| Windows SA per User Add On                                      |                     |                                   |
| <b>Microsoft Intune</b>   |                     |                                   |
| Microsoft Intune  |                     |                                   |
| <b>Other Enterprise Products and Enterprise Online Services</b> |                     |                                   |
| Microsoft Desktop Optimization Pack (MDOP)                      |                     |                                   |
| Enterprise Mobility Services (EMS) Add On                       |                     |                                   |

| Products                               | Enterprise Quantity | Device Profile (i.e. Call Center) |
|--|---------------------|-----------------------------------|
| Enterprise Mobility Services (EMS) USL |                     |                                   |
| Enterprise Cloud Add On USL            |                     |                                   |
| Enterprise Cloud USL                   |                     |                                   |

**Step 3. Establish the Enrolled Affiliate's price level.** Unless otherwise indicated in the associated contract documents, the price level for each Product offering/pool is set based upon the quantity to price level mapping. **DO NOT INCLUDE BRIDGE CALS, OFFICE 365 PLAN 3 ADD ONs, EMS ADD ONs, WINDOWS SA PLUS ADD ONs, OR ENTERPRISE CLOUD ADD ON USLs.**

| Price Group         | 1   | 2  | 3   | 4  |
|---------------------|---|--|---|--|
| Enterprise Products | Office Professional Plus + Office Professional Plus for Office 365 + Office 365 (Plans E3 or E4) + Enterprise Cloud USL | Client Access License + Office 365 (Plans E1, E3,-E4) + Enterprise Cloud USL | Client Access License + Microsoft Intune + EMS USL + Enterprise Cloud USL | Windows Enterprise Upgrade + Windows VDA + Windows SA per User USL + Windows VDA per User USL + Enterprise Cloud USL |
| Quantity            | 580   | 580  | 580   | 580  |

| Product Offering / Pool   | Price Level |
|---|-------------|
| <b>Enterprise Products and Enterprise Online Services USLs:</b> Unless otherwise indicated in associated contract documents, Price Level is set using the highest quantity from Groups 1 through 4. | D           |
| <b>Additional Product Application Pool:</b> Unless otherwise indicated in associated contract documents, Price Level is set using quantity from Group 1.  | D           |
| <b>Additional Product Server Pool:</b> Unless otherwise indicated in associated contract documents, Price Level is set using the highest quantity from Group 2 or 3.                                | D           |
| <b>Additional Product Systems Pool:</b> Unless otherwise indicated in associated contract documents, Price Level is set using quantity from Group 4.  | D           |

Quantity of Licenses and Software Assurance to Price Level Mapping:

| Quantity of Licenses and Software Assurance | Price Level |
|---|-------------|
| 2,399 and below                             | A           |
| 2,400 to 5,999                              | B           |
| 6,000 to 14,999                             | C           |
| 15,000 and above                            | D           |

**Notes:**

1. Enterprise Online Services may not be available in all locations. Please see the Product List for a list of locations where these may be purchased.
2. If Enrolled Affiliate does not order an Enterprise Product or Enterprise Online Service associated with an applicable Product pool, the price level for Additional Products in the same pool will be price level "A" throughout the term of the Enrollment.
3. Unless otherwise indicated in the associated Agreement documents, the CAL selection must be the same across the Enterprise for each Profile.

4. MDOP requires purchase of Windows SA, Windows VDA, Windows SA per User Full USL, or Windows VDA per User Full USL.

**This form must be attached to a signature form to be valid.**



## Program Signature Form

|                  |          |             |
|------------------|----------|-------------|
| MBA/MBSA number  |          | Proposal ID |
| Agreement number | 01E73293 |             |

**Note:** Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

| Contract Document                | Number or Code          |
|----------------------------------|-------------------------|
| <Choose Agreement>               | Document Number or Code |
| <Choose Agreement>               | Document Number or Code |
| <Choose Agreement>               | Document Number or Code |
| <Choose Agreement>               | Document Number or Code |
| <Choose Agreement>               | Document Number or Code |
| Enterprise Enrollment            | X20-10632               |
| <Choose Enrollment/Registration> | Document Number or Code |
| <Choose Enrollment/Registration> | Document Number or Code |
| <Choose Enrollment/Registration> | Document Number or Code |
| <Choose Enrollment/Registration> | Document Number or Code |
| Product Selection Form           | X20-12770               |
| Document Description             | Document Number or Code |
| Document Description             | Document Number or Code |
| Document Description             | Document Number or Code |
| Document Description             | Document Number or Code |

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

| Customer  |
|---|
| Name of Entity (must be legal entity name)* Santa Fe County |
| Signature* _____  |
| Printed First and Last Name*                                |
| Printed Title   |
| Signature Date*   |
| Tax ID  |

\* indicates required field

| Microsoft Affiliate   |
|---|
| <b>Microsoft Corporation</b>  |
| <b>Signature</b> _____<br><b>Printed First and Last Name</b><br><b>Printed Title</b><br><b>Signature Date</b><br><small>(date Microsoft Affiliate countersigns)</small> |
| <b>Agreement Effective Date</b><br><small>(may be different than Microsoft's signature date)</small>  |

**Optional 2<sup>nd</sup> Customer signature or Outsourcer signature (if applicable)**

| Customer   |
|--|
| <b>Name of Entity (must be legal entity name)*</b><br><b>Signature*</b> _____<br><b>Printed First and Last Name*</b><br><b>Printed Title</b><br><b>Signature Date*</b> |

*\* indicates required field*

| Outsourcer   |
|--|
| <b>Name of Entity (must be legal entity name)*</b><br><b>Signature*</b> _____<br><b>Printed First and Last Name*</b><br><b>Printed Title</b><br><b>Signature Date*</b> |

*\* indicates required field*

If Customer requires physical media, additional contacts, or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

**Microsoft Corporation**  
 Dept. 551, Volume Licensing  
 6100 Neil Road, Suite 210  
 Reno, Nevada 89511-1137  
 USA



Pricing Proposal  
Quotation #: 10000731  
Created On: 7/21/2015  
Valid Until: 8/14/2015

## Santa Fe County

**Ted Roybal**  
PO Box 276  
Accounts Payable  
Santa Fe, NM 87504  
United States  
Phone: 505 995-9537  
Fax:  
Email: tfroybal@co.santa-fe.nm.us

## Inside Account Manager

**Mike Ewanichak**  
290 Davidson Ave  
Somerset, NJ 08873  
Phone: 800-527-6389x 5553577  
Fax: 7326527407  
Email: Mike\_Ewanichak@shii.com

All Prices are in US Dollar (USD)

| Product  | Qty | Your Price | Total       |
|--|-----|------------|-------------|
| 1 EA Office Pro Plus Platform Software Assurance<br>Microsoft - Part#: 269-12442<br>Note: installment 1 of 3   Enterprise Agreement # 8512184  | 580 | \$86.79    | \$50,338.20 |
| 2 EA WinPro Platform Software Assurance<br>Microsoft - Part#: CW2-00307<br>Note: installment 1 of 3   Enterprise Agreement # 8512184           | 580 | \$31.88    | \$18,490.40 |
| 3 EA CoreCAL User Cal Platform Software Assurance<br>Microsoft - Part#: W06-01072<br>Note: installment 1 of 3   Enterprise Agreement # 8512184 | 580 | \$37.45    | \$21,721.00 |
| 4 EA Exchange Svr Ent Software Assurance<br>Microsoft - Part#: 395-02504<br>Note: installment 1 of 3   Enterprise Agreement # 8512184          | 2   | \$660.73   | \$1,321.46  |
| 5 EA Project Svr Software Assurance<br>Microsoft - Part#: H22-00475<br>Note: installment 1 of 3   Enterprise Agreement # 8512184               | 1   | \$924.12   | \$924.12    |
| 6 EA PrjctSvrCAL USER CAL Software Assurance<br>Microsoft - Part#: H21-00591<br>Note: installment 1 of 3   Enterprise Agreement # 8512184      | 6   | \$31.64    | \$189.84    |
| 7 EA SharePointSvr Software Assurance<br>Microsoft - Part#: H04-00268<br>Note: installment 1 of 3   Enterprise Agreement # 8512184             | 1   | \$1,108.97 | \$1,108.97  |
| 8 EA SQL Svr Std Software Assurance<br>Microsoft - Part#: 228-04433<br>Note: installment 1 of 3   Enterprise Agreement # 8512184               | 1   | \$146.30   | \$146.30    |
| 9 EA SQLCAL UsrCAL Software Assurance<br>Microsoft - Part#: 359-00961<br>Note: installment 1 of 3   Enterprise Agreement # 8512184             | 40  | \$34.06    | \$1,362.40  |



|    |  |    |            |             |
|----|--|----|------------|-------------|
| 10 | EA SQL Svr Ent Core SA 2Lic CoreLic<br>Microsoft - Part#: 7JQ-00343<br>Note: installment 1 of 3   Enterprise Agreement # 8512184                       | 6  | \$2,242.67 | \$13,456.02 |
| 11 | EA SQL Svr Ent Core 2 core License and software Assurance<br>Microsoft - Part#: 7JQ-00341<br>Note: installment 1 of 3   Enterprise Agreement # 8512184 | 4  | \$5,232.85 | \$20,931.40 |
| 12 | EA VisioPro Software Assurance<br>Microsoft - Part#: D87-01159<br>Note: installment 1 of 3   Enterprise Agreement # 8512184                            | 6  | \$91.15    | \$546.90    |
| 13 | EA VSProwMSDN Software Assurance<br>Microsoft - Part#: 77D-00111<br>Note: installment 1 of 3   Enterprise Agreement # 8512184                          | 4  | \$306.30   | \$1,225.20  |
| 14 | EA WinSvrDataCtr 2 Proc Software Assurance<br>Microsoft - Part#: P71-07282<br>Note: installment 1 of 3   Enterprise Agreement # 8512184                | 5  | \$1,004.24 | \$5,021.20  |
| 15 | EA WinSvrStd 2 Proc Software Assurance<br>Microsoft - Part#: P73-05898<br>Note: installment 1 of 3   Enterprise Agreement # 8512184                    | 18 | \$143.88   | \$2,589.84  |

|              |                     |
|--------------|---------------------|
| Subtotal     | \$139,373.25        |
| *Tax         | \$7,142.88          |
| <b>Total</b> | <b>\$146,516.13</b> |

\*Tax is estimated. Invoice will include the full and final tax due.

**Additional Comments**

State of New Mexico SHI Vendor ID 0000010388  
SHI New Mexico WSCA Software Contract # SPD 20-000-00-003B

State of Arizona Contract: ADSP011-007500

**\*\*Please note that if we do not have a copy of your tax exemption form, tax will be charged on your invoice\*\***

Do you have an opportunity to discuss? Please contact our Account Executive, Lynn Farmer:  
Lynn Farmer | SHI | Account Executive Public Sector AZ K-12 and NM SLED | Lynn\_Farmer@SHI.com | www.shi.com  
Phone Number: 602-515-9436

SHI has recently been awarded as an Direct Reseller for Arizona's HP / WSCA Contract."Now there are no boundaries to using SHI for your HP solutions"

*The Products offered under this proposal are subject to the SHI Return Policy posted at [www.shi.com/returnpolicy](http://www.shi.com/returnpolicy), unless there is an existing agreement between SHI and the Customer.*



#5

PURCHASE REQUISITION NBR: 0000161580

REQUISITION BY: EORNELAS      STATUS: REQ-APRVL >\$10000      DATE: 7/28/15  
REASON: VOLUME LICENSE FOR SANTA FE COUNTY  
SHIP TO LOCATION: ADMINISTRATIVE SERVICES      SUGGESTED VENDOR: 10884 SHI INTERNATIONAL CORP      DELIVER BY DATE: 7/28/15

LINE NBR      DESCRIPTION      QUANTITY UOM      UNIT COST      EXTEND COST      VENDOR PART NUMBER

1      YEAR 1 OF ENTERPRISE AGREEMENT PER QUOTE 10000731. 139373.25 EA      1.0000      139373.25  
THE PRODUCTS IN THE AGREEMENT INCLUDE SOFTWARE FOR  
WINDOW AND SERVER OPERATION SYSTEMS, SQL DATABASE  
SOFTWARE, SHAREPOINT SERVER, WINDOWS OFFICE,  
PROJECT SERVER, EXCHANGE AND VISIO. SHI NEW  
MEXICO WSCA SOFTWARE CONTRACT # SPD 20-000-00-003B  
COMMODITY:  
SUBCOMMOD: MISC

2      TAX ON SERVICES      7142.88 EA      1.0000      7142.88  
REQUESTED BY: TED ROYBAL  
COMMODITY:  
SUBCOMMOD: MISC

REQUISITION TOTAL: 146516.13

-----  
A C C O U N T   I N F O R M A T I O N  
-----

| LINE # | ACCOUNT        | PROJECT                   | AMOUNT    |
|--------|----------------|---------------------------|-----------|
| 1      | 10115024125015 | SERVICES                  | 139373.25 |
|        |                | SOFTWARE LICENSE/MAINTNCE |           |
| 2      | 10115024125015 | SERVICES                  | 7142.88   |
|        |                | SOFTWARE LICENSE/MAINTNCE |           |
|        |                |                           | 146516.13 |

REQUISITION IS IN THE CURRENT FISCAL YEAR.

 8/4/15





State of New Mexico  
General Services Department  
Purchasing Division

Statewide Price Agreement Amendment

**Awarded Vendor:**  
0000010388  
Software House International  
290 Davidson Ave  
Somerset, NJ 08873  
  
**Telephone No.:** (732) 868-5904

Price Agreement Number: 20-000-00-00003B

Price Agreement Amendment No.: Eight

Term: November 7, 2011 - June 2, 2016

**Ship To:**  
All State of New Mexico agencies, commissions,  
institutions, political subdivisions and local public  
bodies allowed by law.

Procurement Specialist: Teri Arevalo *JA*

Telephone No.: (505) 827-0266

**Invoice:**  
As Requested

**Title:** Software VAR

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

In accordance with Price Agreement provisions, and by mutual agreement of all parties, this Price Agreement is extended from June 2, 2015 to June 2, 2016 at the same price, terms and conditions.

The provisions of the Price Agreement shall remain in full force and effect, except as modified by this amendment.

Accepted for the State of New Mexico

*Brenda S. Chang*  
\_\_\_\_\_  
New Mexico State Purchasing Agent

Date: 04/23/2015



Enterprise Agreement

State and Local

Not for Use with Microsoft Business Agreement or Microsoft Business and Services Agreement

Contents

1. Definitions ..... 1
2. How the Enterprise and Enterprise Subscription program works ..... 33
3. Licenses for Products ..... 33
4. How to know what Product Use Rights apply ..... 44
5. Making copies of Products and re-imaging rights ..... 55
6. Transferring and reassigning Licenses ..... 55
7. Term and termination ..... 66
8. Restrictions on use ..... 77
9. Open Source Restrictions ..... 77
10. Confidentiality ..... 88
11. Warranties ..... 88
12. Defense of infringement and misappropriation claims ..... 99
13. Limitation of liability ..... 1040
14. Verifying compliance ..... 1144
15. Miscellaneous ..... 1144

This Microsoft Enterprise Agreement is entered into between the entities identified on the program signature form.

Effective date. The effective date of this agreement is the effective date of the first Enrollment or the date Microsoft accepts this agreement, whichever is earlier. Any reference in this agreement or an Enrollment to "day" will be a calendar day.

This agreement consists of (1) these agreement terms and conditions and the signature form and all attachments identified therein, (2) the Product List, (3) the Product Use Rights applicable to Products licensed under this agreement, (4) any Affiliate Enrollment entered into under this agreement,

Please note: Several documents referenced in this agreement but not attached to the signature form may be found at: http://www.microsoft.com/licensing/contracts and are incorporated by reference, including the Product List and Product Use Rights. These documents may contain additional terms and conditions for Products licensed under this agreement and may be changed from time to time. Customer and/or its Affiliates should review such documents carefully, both at the time of signing and periodically, to ensure a full understanding of all terms and conditions applicable to Products licensed.

Terms and Conditions

1. Definitions.

"Affiliate" means

a. with regard to Customer,

(i) any government agency, department, office, instrumentality, division, unit or other entity of the state or local government that is supervised by or is part of Customer, or which supervises Customer or of which Customer is a part, or which is under common supervision with Customer;

(ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of

Handwritten notes and stamps: 11/13, 10/29/11, and a signature 'dB'.

Customer's state and located within Customer's state jurisdiction and geographic boundaries; and

(iii) any other entity in Customer's state expressly authorized by the laws of Customer's state to purchase under state contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and

b. with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft;

"available" means Microsoft has made Licenses for that Product available on the Product List for ordering under a particular licensing program;

"Customer" means the entity that has entered into this agreement and its Affiliates;

"Customer Data" means all data, including all text, sound, or image files that are provided to Microsoft by, or on behalf of, Enrolled Affiliate through its use of the Online Services.

"Enrolled Affiliate" means an entity, either Customer or any one of Customer's Affiliates, that has entered into an Enrollment under this agreement;

"Enrollment" means the document that an Enrolled Affiliate submits under this agreement to place its initial order;

"Enterprise" means the Enrolled Affiliate and the Affiliates it chooses on its Enrollment to include in its enterprise;

"Fixes" means Product fixes, modifications or enhancements, or their derivatives that Microsoft either releases generally (such as service packs).

"License" means Enrolled Affiliate's right to use the quantity of a Product ordered. For certain Products, a License may be available on a subscription basis. (Subscription License) Licenses for Online Services will be considered Subscription Licenses under this agreement.

"L&SA" means a License and Software Assurance for any Product ordered.

"Microsoft" means the Microsoft Affiliate that has entered into this agreement or an Enrollment and its Affiliates, as appropriate.

"Online Service" means the Microsoft-hosted services identified in the Online Services section of the Product List.

"Product" means all software, Online Services and other web-based services, including pre-release or beta versions, identified on the Product List.

"Product List" means the statement published by Microsoft from time to time on the World Wide Web at <http://www.microsoft.com/licensing/contracts> or at a successor site that Microsoft identifies, which identifies the Products that are or may be made available under a program (which availability may vary by region) and any Product-specific conditions or limitations on the acquisition of licenses for, or use of, those Products.

"Product Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at <http://www.microsoft.com/licensing/contracts> or at a successor site.

"Reseller" means a large account Reseller authorized by Microsoft to resell Licenses under this program;

"Service Level Agreement" means the document specifying the standards Microsoft agrees to adhere to and by which it measures the level of service for an Online Service.

"Software Assurance" means an offering that provides new version rights and other benefits for Products as further described in the Product List.

"Trade Secret" means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy;

"use" or "run" means to copy, install, use, access, display, run or otherwise interact.

## **2. How the Enterprise and Enterprise Subscription program works.**

**The Enterprise and Enterprise Subscription Program.** The Enterprise and Enterprise Subscription programs establish a Customer's overall licensing framework and the applicable terms and conditions. Under the Enterprise program, Customer may license Products by entering into Enrollments. The Enterprise Subscription program offers Customer the same options as the Enterprise Program, but on a subscription basis, with an optional buy-out to obtain perpetual Licenses.

- a. **Enrollments.** The Enterprise program gives Customer and/or its Affiliates the ability to enter into one or more Enrollments to order Products. Subscription Enrollments may be available for some of these Enrollments.
- b. **Licenses.** The types of Licenses available are L&SA, Licenses obtained under Software Assurance and Subscription Licenses. These License types as well as additional License Types are defined in the Product List.
- c. **How Enrolled Affiliates acquire Licenses.** An Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders will be made out to and submitted to the Enrolled Affiliate's Reseller. Microsoft will invoice that Reseller according to the terms in the applicable Enrollment.
- d. **Choosing and maintaining a Reseller.** Each Enrolled Affiliate must choose and maintain a Reseller authorized in the Enrolled Affiliate's location.
- e. **Pricing.**
  - (i) **Establishing Price Levels.** Each Product generally is assigned to a Product pool (e.g., applications, systems, or servers). Each Product pool will be assigned one of four price levels (A, B, C, and D). Enrolled Affiliate's Price Level will be Level D for all Enterprise Products, Enterprise Online Services, Online Services and Additional Products ordered under any Enrollment.
  - (ii) **Placing Orders through Reseller.** Orders under an Enrollment will be made to the Reseller. Microsoft will invoice the Reseller according to the terms in the applicable Enrollment. Throughout this agreement the term "price" refers to reference price. The Reseller and the Enrolled Affiliate will determine the Enrolled Affiliate's actual price and payment terms.
- f. **Order Requirements.** Order Requirements are outlined in each Enrollment.
- g. **Management and Reporting.** Customer and/or Enrolled Affiliate may manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center ("VLSC") web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. Upon the effective date of this agreement and any Enrollments, the contact(s) identified for this purpose will be provided access to this site and may authorize additional users and contacts.

## **3. Licenses for Products.**

- a. **General.** Enrolled Affiliate will have the number of Licenses ordered for the latest version of a Product, and may use prior versions as permitted in the Product Use Rights, so long Microsoft receives timely orders from Reseller for all required Licenses for such Products and complies with applicable license terms. The Licenses obtained under an Enrollment are not

related to any order or fulfillment of software media. The ability to use a Product ordered may be affected by minimum hardware or software requirements.

- b. **Use by Affiliates.** The Enrolled Affiliate may sublicense the right to use the Products to any Affiliates covered under its Enrollment, but Affiliate recipient of these Licenses may not sublicense these rights and their use must be consistent with the License terms contained in this agreement.
- c. **When Licenses become perpetual.** The right to run any Product licensed under an Enrollment is temporary unless and until it becomes perpetual as follows:
  - (i) A License is temporary until Enrolled Affiliate's Reseller has paid for a License in full and the applicable initial Enrollment or renewal term during which the License was ordered must have expired or been terminated as permitted in this agreement.
  - (ii) Subscription Licenses are never perpetual. If a buy-out option is available, Enrolled Affiliate may obtain a perpetual License by exercising the buy-out option and paying for the License in full.
  - (iii) Enrolled Affiliate will have perpetual Licenses to use the Products ordered in the latest version available (or any prior version) as of the date of expiration, termination, or renewal.
  - (iv) All perpetual Licenses acquired under this agreement remain subject to the terms of this agreement and such terms survive expiration or termination of this agreement or an Enrollment.
- d. **Perpetual Licenses through Software Assurance.** Perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual licenses for which Software Assurance coverage was ordered. In the case of Early Termination, the terms in Section 7 titled Term and Termination will apply.
- e. **License confirmation.** This agreement, the applicable Enrollment, the Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate's evidence of all Licenses obtained under its Enrollment.
- f. **Reorganizations, Consolidations, and Privatizations.** If the number of Qualified Devices or Qualified Users covered by an Enrollment changes by more than ten percent as a result of a reorganization, consolidation, or privatization of an Enrolled Affiliate, Microsoft will work with the Enrolled Affiliate in good faith to determine how to accommodate its changed circumstances in the context of this agreement. If an Enrolled Affiliate consolidates with a third party with an existing agreement or enrollment, Microsoft will work with the Enrolled Affiliate in good faith to accommodate its changed circumstances in the context of this agreement.

#### **4. How to know what Product Use Rights apply.**

- a. **Product Use Rights.** The Product Use Rights in effect on the effective date of an Enrollment will apply to Enrolled Affiliate's use of then-current versions of each Product (excluding Online Services). For future versions, the Product Use Rights in effect when those future versions are first released will apply. In both cases, subsequent changes made by Microsoft to the Product Use Rights for a particular version will not apply to Enrolled Affiliate's use of that version, unless Enrolled Affiliate chooses to have such changes apply. The use rights for Online Services and the process for updating them as the Online Services evolve are detailed in the Product Use Rights.
- b. **Product Use Rights for earlier versions (downgrade).** If Enrolled Affiliate runs an earlier version of a Product than the version that was current on the Enrollment effective date, the Product Use Rights for the version licensed, not the version being run, will apply. However, if

the earlier version includes components that are not part of the licensed version, any Product Use Rights specific to those components will apply to Enrolled Affiliate's use of those components.

- c. **Reservation of rights.** All rights not expressly granted are reserved.

## 5. **Making copies of Products and re-imaging rights.**

- a. **General.** Enrolled Affiliate may make as many copies of Products, if applicable, as it needs to distribute them within its organization. Copies must be true and complete (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees it will be responsible for any third party's actions. Enrolled Affiliate agrees to use reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of this agreement.
- b. **Copies for training/evaluation and back-up.** For all Products other than Online Services, Enrolled Affiliate may: (1) use up to 20 complimentary copies of any licensed Products in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Products for a 60 day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Product Use Rights.
- c. **Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product is licensed (1) from an original equipment manufacturer (OEM); (2) as a full packaged Product through a retail source; or (3) under another Microsoft program, then media provided under this agreement may generally be used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
- (i) Separate Licenses must be owned from the source for each Product that is re-imaged.
  - (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
  - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g. upgrade or full License) must be identical to the Product type from the separate source.
  - (iv) Enrolled Affiliate must adhere to any Product-specific processes or requirements for re-imaging identified in the Product List.
  - (v) Re-images made under this subsection remain subject to the terms and use rights provided with the License from the separate source.
  - (vi) This subsection does not create or extend any warranty or support obligation.

## 6. **Transferring and reassigning Licenses.**

- a. **License Transfers.** License transfers are not permitted, except as explicitly set forth in the Perpetual License Transfer Form. The resale of Licenses is prohibited, including any transfer by a Customer or its Affiliate(s) for the purpose of transferring those Licenses to an unaffiliated third party.
- b. **Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses may be reassigned within the Enterprise as described in the Product Use Rights.

## 7. **Term and termination.**

- a. **Term.** The term of this agreement will be 36 months from the Effective date unless terminated by either party as described below. Each Enrollment will have the term provided in that Enrollment.
- b. **Termination without cause.** Either party may terminate this agreement, without cause, upon 60 days written notice. Such termination will merely terminate either party's and its Affiliates' ability to enter into new Enrollments under this agreement. Such termination will not affect any Enrollment or order not otherwise terminated, and any terms of this agreement applicable to any Enrollment or order not otherwise terminated will continue in effect with respect to that Enrollment or order. An Enrolled Affiliate may terminate an Enrollment without liability, penalty or further obligation to make payments if funds to make payments under the Enrollment are not appropriated or allocated for such purpose.
- c. **Termination for cause.** Either party to an Enrollment may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay invoices (even if such non-payment is caused by non-appropriation of funds). Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days notice and opportunity to cure.

If Microsoft gives such notice to an Enrolled Affiliate, Microsoft will give Customer a copy of that notice as well and Customer agrees to assist in attempting to resolve the breach. If the breach also affects other Enrollments and cannot be resolved between Microsoft and Customer within a reasonable period of time, Microsoft may also terminate this agreement and all other Enrollments under it, unless the basis for termination of the Enrollment is non-appropriation of funds to the Enrolled Affiliate, in which event Microsoft may only terminate the affected Enrollment(s). If an Enrolled Affiliate ceases to be Customer's Affiliate, Customer must promptly notify Microsoft, and Microsoft may terminate its Enrollment.

- d. **Early termination.** If (1) an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or (2) if Microsoft terminates an Enrollment because the Enrolled Affiliate has ceased to be an Affiliate of Customer, or (3) Enrolled Affiliate terminates an Enrollment for non-appropriation of funds, or (4) Microsoft terminate an Enrollment for non-payment due to non-appropriation of funds, then the Enrolled Affiliate will have the following options:

- (i) It may immediately pay the total remaining amount due, including all installments, in which case, the Enrolled Affiliate will have perpetual rights for all Licenses it has ordered; or

- (ii) It may pay only amounts due as of the termination date, in which case the Enrolled Affiliate will have perpetual Licenses for:

- 1) all copies of Products (including the latest version of Products ordered under SA coverage in the current term) for which payment has been made in full, and
- 2) the number of copies of Products it has ordered (including the latest version of Products ordered under Software Assurance coverage in current term) that is proportional to the total of installment payments paid versus total amounts due (paid and payable) if the early termination had not occurred.

- (iii) In the case of Early Termination under Subscription Enrollments, Enrolled Affiliate will have the following options:

- 1) For eligible products Enrolled Affiliate may obtain perpetual Licenses as described in the section titled "Buy-out option," provided that Microsoft receives the buy-out order for those Licenses within 60 days after Enrolled Affiliate provides notice of termination.

- 2) Where not exercising buy-out option, in the event of breach by Microsoft, Microsoft will issue Reseller a credit for any amount paid in advance that would apply after the date of termination.

Nothing in this section shall affect perpetual License rights acquired either in a separate agreement or in a prior term of the terminated Enrollment.

- e. **Effect of termination or expiration.** When an Enrollment expires or is terminated,
  - (i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Any and all unpaid payments or any order of any kind, including subscription services, remain due and payable. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable.
  - (ii) Enrolled Affiliate's right to Software Assurance benefits under this agreement ends if it does not renew Software Assurance.
- f. **Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service where there is any current or future government requirement or obligation that: (1) subjects Microsoft to any regulation or requirement not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue operating the Online Service without modification; and/or (3) causes Microsoft to believe these terms or the Online Service may be in conflict with any such requirement or obligation. For example, Microsoft may modify or terminate an Online Service in connection with a government requirement that would cause Microsoft to be regulated as a telecommunications provider.
- g. **Program updates.** Microsoft may make a change to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments.

## 8. **Restrictions on use.**

Restrictions on use. Enrolled Affiliate must not:

- a. separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as provided in the Product Use Rights;
- b. reverse engineer, decompile or disassemble any Product or Fix, except where applicable law permits it despite this limitation; or
- c. distribute, sublicense, rent, lease, lend, or host any Product or Fix except as permitted in the Product Use Rights or in a separate written agreement.

## 9. **Open Source Restrictions.**

Certain third party license terms require that computer code be generally (1) disclosed in source code form to third parties; (2) licensed to third parties for the purpose of making derivative works; or (3) redistributable to third parties at no charge (collectively, "Open Source License Terms"). Neither party may use, incorporate, modify, distribute, provide access to, or combine the computer code of the other with any other computer code or intellectual property (collectively, "Provide") in a manner that would subject the other's computer code to Open Source License Terms. Microsoft is not responsible for Customer's upload, use or distribution of Customer's code from the Online Services. Customer may upload code to an Online Service and allow third parties access to use or download Customer's code on the Online Service, provided that (1) such use is not restricted by a Supplemental Agreement or the Product Use Rights and (2) any Open Source License Terms apply solely to Customer and their uploaded code, and not to any code or Products provided by Microsoft. Each party warrants that it will not provide

the other party with, or give third parties access through the Online Services to, computer code that is governed by Open Source License Terms, except as described above.

## 10. Confidentiality.

To the extent permitted by applicable law, the terms and conditions of this agreement are confidential. Neither party will disclose such terms and conditions, or the substance of any discussions that led to them, to any third party other than Affiliates or agents, or to designated or prospective resellers who: (1) have a need to know such information in order to assist in carrying out this agreement; and (2) have been instructed that all such information is to be handled in strict confidence.

## 11. Warranties.

- a. **Limited warranty.** Microsoft warrants that:
  - (i) Online Services will perform in accordance with the applicable Service Level Agreement;
  - (ii) Products other than Online Services will perform substantially as described in the applicable Microsoft user documentation; and
- b. **Limited warranty term.** The limited warranty for:
  - (i) Online Services is for the duration of Enrolled Affiliate's use of the Online Service, subject to the notice requirements in the applicable Service Level Agreement;
  - (ii) Products other than Online Services is one year from the date Enrolled Affiliate first uses the Product; and
- c. **Limited warranty exclusions.** This limited warranty is subject to the following limitations:
  - (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;
  - (ii) the limited warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement or the Product Use Rights, or resulting from events beyond Microsoft's reasonable control;
  - (iii) the limited warranty does not apply to components of Products that Enrolled Affiliate is permitted to redistribute;
  - (iv) the limited warranty does not apply to free, trial, pre-release, or beta products; and
  - (v) the limited warranty does not apply to problems caused by the failure to meet minimum system requirements.
- d. **Remedies for breach of limited warranty.** If Microsoft fails to meet any of the above limited warranties and Enrolled Affiliate notifies Microsoft within the warranty period, then Microsoft will:
  - (i) for Online Services, provide the remedies identified in the Service Level Agreement for the affected Online Service;
  - (ii) for Products other than Online Services, at its option either (1) return the price paid or (2) repair or replace the Product; andThese are Enrolled Affiliate's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.
- e. **DISCLAIMER OF OTHER WARRANTIES.** OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. MICROSOFT DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-

INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.

## 12. *Defense of infringement and misappropriation claims.*

- a. **Microsoft's agreement to protect.** Microsoft will defend Enrolled Affiliate against any claims made by an unaffiliated third party that any Product or Fix that is made available by Microsoft for a fee infringes that party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret. Microsoft will also pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). This section provides Enrolled Affiliate's exclusive remedy for these claims.
- b. **Limitations on defense obligation.** Microsoft's obligations will not apply to the extent that the claim or award is based on:
- (i) Customer Data, code, or materials provided by Enrolled Affiliate as part of an Online Service;
  - (ii) Enrolled Affiliate's use of the Product or Fix after Microsoft notifies it to discontinue that use due to a third party claim;
  - (iii) Enrolled Affiliate's combination of the Product or Fix with a non-Microsoft product, data or business process;
  - (iv) damages attributable to the value of the use of a non-Microsoft product, data or business process;
  - (v) modifications that Enrolled Affiliate makes to the Product or Fix;
  - (vi) Enrolled Affiliate's redistribution of the Product or Fix to, or its use for the benefit of, any unaffiliated third party, except as expressly permitted by the Product Use Rights;
  - (vii) Enrolled Affiliate's use of Microsoft's trademark(s) without express written consent to do so; or
  - (viii) any Trade Secret claim, where Enrolled Affiliate acquires the Trade Secret (1) through improper means; (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from a person (other than Microsoft or its Affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the Trade Secret.

Enrolled Affiliate will be responsible for any costs or damages that result from any of these actions.

### c. **Specific rights and remedies in case of infringement.**

- (i) **Microsoft's rights in addressing possible infringement.** If Microsoft receives information concerning an infringement claim related to a Product or Fix, Microsoft may, at its expense and without obligation to do so, either:
- 1) procure for Enrolled Affiliate the right to continue to use the allegedly infringing Product or Fix; or
  - 2) modify the Product or Fix, or replace it with a functional equivalent, to make it non-infringing, in which case Enrolled Affiliate will immediately cease use of the allegedly infringing Product or Fix after receiving notice from Microsoft.
- (ii) **Enrolled Affiliate's specific remedy in case of injunction.** If, as a result of an infringement claim, Enrolled Affiliate's use of a Product or Fix that is made available by Microsoft for a fee is enjoined by a court of competent jurisdiction, Microsoft will, at its option:
- 1) procure the right to continue its use;

- 2) replace it with a functional equivalent;
  - 3) modify it to make it non-infringing; or
  - 4) refund the amount paid (or, for Online Services, refund any amounts paid in advance for unused Online Services) and terminate the license or right to access the infringing Product or Fix.
- d. **Enrolled Affiliate's Responsibility.** Enrolled Affiliate will be responsible for any costs or damages arising from any claims made by an unaffiliated third party that:
- (i) any Customer Data or non-Microsoft software Microsoft hosts on Enrolled Affiliate's behalf infringes the third party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret; or
  - (ii) arise from Enrolled Affiliate's or its end user's violation of the Product Use Rights or these Additional Use Right and Restrictions.

Enrolled Affiliate must pay the amount of any resulting adverse final judgment (or settlement to which Enrolled Affiliate consents).

- e. **Obligations of protected party.** Enrolled Affiliate must notify Microsoft promptly in writing of a claim subject to the subsection titled "Microsoft's agreement to protect" and Microsoft must notify Enrolled Affiliate promptly in writing of a claim subject to the subsection titled "Enrolled Affiliate's Responsibility." To the extent permitted by applicable law, where Enrolled Affiliate y invokes its right to protection it must (1) give Microsoft sole control over the defense or settlement; and (2) provide reasonable assistance in defending the claim. Microsoft will reimburse Enrolled Affiliate for reasonable out of pocket expenses that it incurs in providing assistance.

### 13. **Limitation of liability**

- a. **Limitation on liability.** To the extent permitted by applicable law, the liability of Microsoft and Enrolled Affiliate, their respective Affiliates and contractors arising under this agreement is limited to direct damages up to (1) for Products other than Online Services, the amount Enrolled Affiliate was required to pay for the Product giving rise to that liability and (2) for Online Services, the amount Enrolled Affiliate was required to pay for the Online Service giving rise to that liability during the prior 12 months. In the case of Products provided free of charge, or code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. \$5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:
- (i) Microsoft's and Enrolled Affiliate's obligations under the section titled "Defense of infringement, misappropriation, and third party claims";
  - (ii) liability for damages caused by either party's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication (provided that, in jurisdictions that do not recognize a legal distinction between "gross negligence" and "negligence," "gross negligence" as used in this subsection shall mean "recklessness");
  - (iii) liabilities arising out of any breach by either party of its obligations under the section entitled "Confidentiality", except that Microsoft's liability arising out of or in relation to Customer Data shall in all cases be limited to the amount Enrolled Affiliate paid for the Online Service giving rise to that liability during the prior 12 months;
  - (iv) liability for personal injury or death caused by either party's negligence, or that of its employees or agents, or for fraudulent misrepresentation; and

- (v) violation by either party of the other party's intellectual property rights.
- b. **EXCLUSION OF CERTAIN DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, OR CONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR THE PARTIES' RESPECTIVE OBLIGATIONS IN THE SECTION TITLED "DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS."
- c. **Affiliates and Contractors.** Neither Microsoft nor Enrolled Affiliate shall bring any action against the other's Affiliates or contractors in respect of any matter disclaimed on their behalf in this agreement.

#### **14. Verifying compliance.**

- a. **Right to verify compliance.** Enrolled Affiliate must keep records relating to the Products it and its Affiliates use or distribute. Microsoft has the right to the extent permitted by applicable law, to verify compliance with the license terms for Products at Microsoft's expense.
- b. **Verification process and limitations.** To verify compliance, Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days notice, during normal business hours and in a manner that does not interfere unreasonably with Enrolled Affiliate's operations. Enrolled Affiliate must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of Licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties. As an alternative, Microsoft can require Enrolled Affiliate to complete Microsoft's self-audit questionnaire relating to the Products Enrolled Affiliate and any of Affiliates use or distribute, but reserve the right to use a verification process as set out above.  
If Microsoft undertakes verification and does not find material unlicensed use (License shortage of 5% or more per Product), Microsoft will not undertake another verification of the same entity for at least one year. Microsoft and the independent auditors will use the information obtained in compliance verification only to enforce Microsoft's rights and to determine whether Enrolled Affiliate are in compliance with the license terms for the Products. By invoking the rights and procedures described above, Microsoft does not waive its rights to enforce the agreement or to protect Microsoft's intellectual property by any other means permitted by law.
- c. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use, Enrolled Affiliate must promptly direct its Reseller to order sufficient Licenses to cover such use. If material unlicensed use is found, Enrolled Affiliate must reimburse Microsoft for the costs Microsoft has incurred in verification and acquire the necessary additional Licenses at single retail license cost within 30 days.

#### **15. Miscellaneous.**

- a. **Notices to Microsoft.** Notices, authorizations, and requests in connection with this agreement must be sent by regular or overnight mail, express courier, or fax to the addresses

and numbers listed on the signature form and in this agreement. Notices will be treated as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery.

**Copies should be sent to:**

Microsoft Corporation  
Legal and Corporate Affairs  
Volume Licensing Group  
One Microsoft Way  
Redmond, WA 98052  
USA

Via Facsimile: (425) 936-7329

Microsoft may provide information about upcoming Enrollment deadlines and Online Services in electronic form. Such information may be provided by email to contacts provided by Enrolled Affiliate under an Enrollment, or through a web site Microsoft identifies. Notice by email is given as of the transmission date.

- b. **Assignment.** Either party may assign this agreement to an Affiliate only. Assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement, it must notify the other party of the assignment in writing.
- c. **Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this agreement will be amended to give effect to the eliminated provision to the maximum extent possible.
- d. **Waiver.** A waiver of any breach of this agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- e. **Applicable law; Dispute resolution.** The terms of this agreement will be governed by the laws of Enrolled Affiliate's state, without giving effect to its conflict of laws. Disputes relating to this agreement will be subject to applicable dispute resolution laws of Enrolled Affiliate's state.
- f. **This agreement is not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft software.
- g. **Entire agreement.** This agreement, the Product List, all Enrollments under this agreement, and the Product Use Rights constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications. In the case of a conflict between any documents referenced in this agreement that is not expressly resolved in the documents, their terms will control in the following order: (1) these terms and conditions and the accompanying signature form; (2) an Enrollment; (3) the Product List; (4) the Product Use Rights; (5) any other documents; and (6) all orders submitted under this agreement.
- h. **Survival.** Provisions regarding ownership and license rights, fees, Product Use Rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, defense of infringement and misappropriation claims, Microsoft's and Customer's obligations to protect each other, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this agreement and of any agreement in which they are incorporated.
- i. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product.
- j. **Free Products.** It is Microsoft's intent that the terms of this agreement and the Product Use Rights be in compliance with all applicable federal law and regulations. Any free Product

provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate, and is not provided for use by or personal benefit of any specific government employee.

- k. **Amending the agreement.** This agreement (except the Product List and the Product Use Rights) can be changed only by an amendment signed by both parties.
- l. **Resellers and other third parties cannot bind Microsoft.** Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- m. **Privacy.** Microsoft and Customer will comply with all applicable privacy and data protection laws and regulations. Customer may choose to provide personal information to Microsoft on behalf of third parties (including, Customer's contacts, resellers, distributors, and administrators) as part of this agreement. Customer represents and warrants that it has and will comply with any applicable laws to provide notices to or obtain permissions from any such individuals to allow sharing of their personal information with Microsoft for the purpose of allowing Microsoft or its agents to facilitate Customer's agreements and related services.

Customer consents to Microsoft's use of the contact information provided by Customer for purposes of administering its agreements, the business relationship and related services and with Microsoft's sharing of Customer's information with Customer's designated representatives, resellers, distributors, and administrators for such purposes, including allowing such individuals to update Customer's contact information on Customer's behalf. The personal information Customer provides in connection with this agreement will be used and protected according to the privacy statement available at <https://www.microsoft.com/licensing/servicecenter> to the maximum extent permitted by applicable law. Product-specific privacy commitments are described in the Product Use Rights.

- n. **Natural disaster.** In the event of a natural disaster, Microsoft may provide additional assistance or rights by posting them on <http://www.microsoft.com> at such time.
- o. **Copyright violation.** Except as set forth in the section above entitled "Transferring and reassigning Licenses", the Enrolled Affiliate agrees to pay for and comply with the terms of this agreement and the Product Use Rights for the Products it uses. Except to the extent Enrolled Affiliate is licensed under this agreement, it will be responsible for its breach of this contract and violation of Microsoft's copyright in the Products, including payment of License fees specified in this agreement for unlicensed use.
- p. **U.S. export jurisdiction.** Products and Fixes are subject to U.S. export jurisdiction. Customer will comply with all U.S. Export Administration Regulations and International Traffic in Arms Regulation requirements as well as all end-user, end-use, and destination restrictions issued by the U.S. and other governments applicable to this agreement. For additional information, see <http://www.microsoft.com/exporting>

## Program Signature Form

|                  |          |      |             |
|------------------|----------|------|-------------|
| MBA/MBSA number  |          | SGN- | Proposal ID |
| Agreement number | 01E73293 |      |             |

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, Customer can mean the signing entity, Enrolled Affiliate, Government, Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

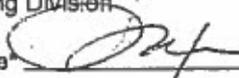
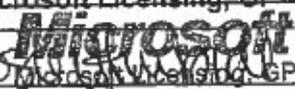
| Contract Document                | Number or Code |
|----------------------------------|----------------|
| Enterprise Agreement             | X20-02032      |
| <Choose Agreement>               |                |
| <Choose Enrollment/Registration> |                |
| Document Description             |                |

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

17713

2012 NOV -9 PM 2:42

NEW YORK STATE  
 MICROSOFT

| Customer   | Microsoft Affiliate  |
|--|--|
| <b>Name of Entity (must be legal entity name)*</b><br>New Mexico General Services Department State Purchasing Division<br><b>Signature*</b> <br><b>Printed First and Last Name*</b> Lawrence Maxwell<br><b>Printed Title*</b> State Purchasing Agent<br><b>Signature Date*</b> 10/29/2012 | <b>Microsoft Licensing, GP</b><br><br><b>Signature*</b> <br><b>Printed First and Last Name*</b> Rose Yturbide<br><b>Printed Title*</b> State Purchasing Agent<br><b>Signature Date*</b> 10/31/2012<br>Duly Authorized on behalf of Microsoft Licensing, GP<br><small>(date Microsoft Affiliate Signature)</small> |
| <b>Tax ID</b>  | <b>Effective Date</b> 11-5-2012<br><small>(may be different than Microsoft's signature date)</small>   |

\* indicates required field

Optional 2<sup>nd</sup> Customer signature or Outsourcer signature (if applicable)

| Customer  | Outsourcer  |
|---|---|
| <b>Name of Entity (must be legal entity name)*</b><br><b>Signature*</b><br><b>Printed First and Last Name*</b><br><b>Printed Title*</b><br><b>Signature Date*</b> | <b>Name of Entity (must be legal entity name)*</b><br><b>Signature*</b><br><b>Printed First and Last Name*</b><br><b>Printed Title*</b><br><b>Signature Date*</b> |

If Customer requires physical media, additional contacts, or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form. If no media form is included, no physical media will be sent.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

**Microsoft Licensing, GP**  
 Dept. 551, Volume Licensing  
 6100 Neil Road, Suite 210  
 Reno, Nevada 89511-1137  
 USA

|   |
|---|
| <b>Prepared By:</b> Name of Preparer<br>Email of Preparer |
|---|

## Supplemental Contact Information Form

This form can be used in combination with MBSA Agreement, and Enrollment/Registration. However, a separate form must be submitted for each enrollment/registration, when more than one is submitted on a signature form. For the purposes of this form, "entity" can mean the signing entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement. Primary and Notices contacts in this form will not apply to enrollments or registrations.

- This form applies to:
- MBSA
  - Agreement
  - Enrollment/Affiliate Registration Form

Insert primary entity name if more than one Enrollment/Registration Form is submitted

### Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (\*) indicate required fields; if the entity chooses to designate other contact types, the same required fields must be completed for each section. By providing contact information, entity consents to its use for purposes of administering the Enrollment by Microsoft and other parties that help Microsoft administer this Enrollment. The personal information provided in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>.

#### 1. Additional notices contact.

This contact receives all notices that are sent from Microsoft. No online access is granted to this individual.

Name of entity\*  
 Contact name\*: First Last  
 Contact email address\*  
 Street address\*  
 City\* State/Province\* Postal code\*  
 Country\*  
 Phone\* Fax

This contact is a third party (not the entity). Warning: This contact receives personally identifiable information of the entity.

#### 2. Software Assurance manager.

This contact will receive online permissions to manage the Software Assurance benefits under the Enrollment or Registration.

Name of entity\*  
 Contact name\*: First Last  
 Contact email address\*  
 Street address\*  
 City\* State/Province\* Postal code\*  
 Country\*

Phone\* Fax

This contact is a third party (not the entity). Warning: This contact receives personally identifiable information of the entity.

### 3. Subscriptions manager.

This contact will assign MSDN, Expression, and TechNet Plus subscription licenses to the individual subscribers under this Enrollment or Registration. Assignment of the subscription licenses is necessary for access to any of the online benefits, such as subscription downloads. This contact will also manage any complimentary or additional media purchases related to these subscriptions.

Name of entity\*

Contact name\*: First Last

Contact email address\*

Street address\*

City\* State/Province\* Postal code\*

Country\*

Phone\* Fax

This contact is a third party (not the entity). Warning: This contact receives personally identifiable information of the entity.

### 4. Online services manager.

This contact will be provided online permissions to manage the online services ordered under the Enrollment or Registration.

Name of entity\*

Contact name\*: First Last

Contact email address\*

Street address\*

City\* State/Province\* Postal code\*

Country\*

Phone\* Fax

This contact is a third party (not the entity). Warning: This contact receives personally identifiable information of the entity.

### 5. Customer Support Manager (CSM).

This person is designated as the Customer Support Manager (CSM) for support-related activities.

Name of entity\*

Contact name\*: First Last

Contact email address\*

Street address\*

City\* State/Province\* Postal code\*

Country\*

Phone\* Fax

### 6. Primary contact information.

An individual from inside the organization must serve as the primary contact. This contact receives online administrator permissions and may grant online access to others. This contact also receives all notices unless Microsoft is provided written notice of a change.

Name of entity\* New Mexico General Services Department State Purchasing Division

Contact name\*: First Laura Last Beltemacchi

**Contact email address\*** laura.beltemacchi@state.nm.us  
**Street address\*** 1100 St. Francis Drive Joseph Montoya Building, Room 2016  
**City\*** Santa Fe **State/Province\*** NM **Postal code\*** 87505  
**Country\*** USA  
**Phone\*** 505-827-0610 **Fax**

**7. Notices contact and online administrator information.**

This individual receives online administrator permissions and may grant online access to others. This contact also receives all notices.

*Same as primary contact*

**Name of entity\*** SHI International Corp  
**Contact name\***: First Lynn Last Farmer  
**Contact email address\*** Lynn\_Farmer@shi.com  
**Street address\*** 290 Davidson Ave  
**City\*** Somerset **State/Province\*** NJ **Postal code\*** 08873  
**Country\*** USA  
**Phone\*** 602-515-9436 **Fax**

This contact is a third party (not the entity). Warning: This contact receives personally identifiable information of the entity.





State of New Mexico  
General Services Department  
Purchasing Division

Statewide Price Agreement Amendment

**Awarded Vendor**  
0000010388  
Software House International  
2 Riverview Dr.  
Somerset, NJ 08873  
  
Telephone No. (732) 868-5904

Price Agreement Number: 20-000-00-00003B

Price Agreement Amendment No.: One

Term: November 7, 2011 – June 2, 2013

**Ship To:**  
All State of New Mexico agencies, commissions,  
institutions, political subdivisions and local public bodies  
allowed by law.

Procurement Specialist: Gerric Becker

Telephone No.: (505) 476-3121

**Invoice:**  
  
As Requested

Title: Software VAR

This Price Agreement Amendment is to be attached to the respective Price Agreement and become a part thereof.

This amendment is issued to reflect the following effective immediately.

Please correct the first sentence, paragraph 3, under Other Modifications on page 2 of 5 of Master Price Agreement to read:

The successful vendor will remit to the State of New Mexico Contract Manager an administrative fee in the amount of one half of one percent of all total sales for New Mexico State and local public bodies from this Contract.

Except as modified by this amendment, the provisions of the Price Agreement shall remain in full force and effect.

Accepted for the State of New Mexico

\_\_\_\_\_  
New Mexico State Purchasing Agent

Date: 7/13/2012



State of New Mexico  
General Services Department

Statewide Price Agreement

**Awarded Vendor**  
0000010388  
Software House International  
2 Riverview Dr.  
Somerset, NJ 08873  
  
Telephone No. (732) 868-5904

Price Agreement Number: 20-000-00-00003B

Payment Terms: Per Contract

F.O.B.: Per Contract

Delivery: Per Contract

**Ship To:**  
All State of New Mexico agencies, commissions,  
institutions, political subdivisions and local public bodies  
allowed by law.

Procurement Specialist: Gerrie Becker

Telephone No.: (505) 476-3121

**Invoice:**  
Statewide

Title: **Software VAR**

Term: **November 7, 2011 thru June 2, 2013**

**This Price Agreement is made subject to the "terms and conditions" shown on the reverse side of this page, and as indicated in this Price Agreement.**

Accepted for the State of New Mexico

A handwritten signature in black ink, appearing to be "J. L. ...", written over a horizontal line.

New Mexico State Purchasing Agent

Date: 11/4/2011

Purchasing Division, 1100 St. Francis Drive, PO Box 6850, Santa Fe, NM 87502-6850 (505) 827-0472

A handwritten signature in black ink, appearing to be "VL ...", written below the address line.

**PARTICIPATING ADDENDUM**

[hereinafter "Addendum"]

For

**WSCA SOFTWARE VALUE ADDED RESELLER  
MASTER PRICE AGREEMENT NUMBER ADSP011-00000358**

Between

SHI International Corp.  
[hereinafter "Contractor"]

and

The State of New Mexico  
[hereinafter "Participating State"]

2011 NOV -2 AM 11:34  
RECORDED  
STATE PROCUREMENT CENTER

20-000-00-00003B

Page 1 of 5

1. **Scope:** This Addendum covers the WSCA Software Value Added Reseller (SVAR) contracts, lead by the State of Arizona, for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts.

2. **Participation:** Use of specific WSCA cooperative contract by state agencies, political subdivisions and other entities authorized by an 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 State Chief Procurement Official.

3. **Participating State Modifications or Additions to Master Price Agreement:**

**Pay Equity Reporting for Employees in New Mexico:** "Contractor agrees if it has ten (10) or more employees OR eight (8) or more employees in the same job classification, at any time during the term of this contract, to complete and submit the required reporting form (PE10-249 or PE250, depending on their size at the time) either within thirty (30) calendar days of contract award (if the contract did not result from a solicitation) or on the annual anniversary of the initial report submittal for contracts up to one (1) year in duration (if the contract did result from a solicitation).

"For contracts that extend beyond one (1) calendar year, or are extended beyond one (1) calendar year, contractor also agrees to complete and submit the required form-annually within thirty (30) calendar days of the annual contract anniversary date of the initial submittal date and, if more than 180 calendar days has elapsed since submittal of the last report, at the completion of the contract.

"Should contractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor agrees to provide the required report within ninety (90) calendar days of meeting or exceeding the size requirement. That submittal date shall serve as the basis for submittals required thereafter.

"Contractor also agrees to levy these reporting requirements on any subcontractor(s) performing more than 10% of the dollar value of this contract if said subcontractor(s) meets, or grows to meet, the stated employee size thresholds during the term of the contract. Contractor further agrees that, should one or more subcontractor not meet the size requirement for reporting at contract award but subsequently grows such that they meet or exceed the size requirement for reporting, contractor will submit the required report, for each such subcontractor, within ninety (90) calendar days of that

**PARTICIPATING ADDENDUM**

[hereinafter "Addendum"]

For

**WSCA SOFTWARE VALUE ADDED RESELLER  
MASTER PRICE AGREEMENT NUMBER ADSP011-00000358**

Between

SHI International Corp.

[hereinafter "Contractor"]

and

The State of New Mexico

[hereinafter "Participating State"]

20-000-00-00003B

Page 2 of 5

subcontractor meeting or exceeding the size requirement. Subsequent report submittals, on behalf of each such subcontractor, shall be due on the annual anniversary of the initial report submittal. Contractor shall submit the required form(s) to the State Purchasing Division of the General Services Department, and other departments as may be determined, on behalf of the applicable subcontractor(s) in accordance with the schedule contained in this paragraph. Contractor acknowledges that this subcontractor requirement applies even though contractor itself may not meet the size requirement for reporting and be required to report itself.

"Contractor shall not be required to report more frequently than annually unless more than 180 calendar days has elapsed since submittal of the last report and the contract has reached completion. The requirement for reporting at contract completion shall not apply in the case of a one-time fulfillment of a purchase order."

**Other Modifications:**

The successful vendor will remit to the State of New Mexico Contract Manager an Administrative Fee in the amount of one percent (.05%) of all total sales for New Mexico State and Local Public Bodies from this contract. Checks should be made payable to the State of New Mexico on a quarterly basis as follows:

| <u>Period End</u> | <u>Report &amp; Fee Due</u> |
|-------------------|-----------------------------|
| September 30      | October 31                  |
| December 31       | January 31                  |
| March 31          | April 30                    |
| June 30           | July 31                     |

The Administrative Fee is based upon:

- The sales of all software (including leases);
- Service and supplies billings;

**PARTICIPATING ADDENDUM**

[hereinafter "Addendum"]

For

**WSCA SOFTWARE VALUE ADDED RESELLER  
MASTER PRICE AGREEMENT NUMBER ADSP011-00000358**

Between

SHI International Corp.  
[hereinafter "Contractor"]

and

The State of New Mexico  
[hereinafter "Participating State"]

20-000-00-00003B

Page 3 of 5

**4. Leasing Options:**

No Options for Leasing are included in the Master Price Agreement or this Participating Addendum.

**5. Primary Contacts:** The primary government contact individuals for this Addendum are as follows (or their named successors):

Lead State

Name: Stacy Ingalls  
Address: Arizona Department of Administration  
State Procurement Office  
100 North 15<sup>th</sup> Avenue, Suite 201  
Phoenix, AZ 85007  
Telephone: 602-542-9134  
Fax: 602-542-5508  
E-mail: Stacy.Ingalls@azdoa.gov

Contractor

Name: Katie O'Kane  
Address: SHI International Group  
33 Knightsbridge Rd.  
Piscataway, NJ 08854  
Telephone: 732-868-5904  
Fax: 732-868-5905  
E-mail: Katie\_okane@shi.com

Participating State

Name: Gerrie Becker  
Address: C/o State Purchasing Division  
PO Box 6850  
1100 S. St. Francis Dr. Suite 2016  
Santa Fe, NM 87120  
Telephone: 505-476-3121  
Fax: 505-827-2484  
E-mail: Gerrie.Becker@state.nm.us

**PARTICIPATING ADDENDUM**

[hereinafter "Addendum"]

For

**WSCA SOFTWARE VALUE ADDED RESELLER  
MASTER PRICE AGREEMENT NUMBER ADSPO11-00000358**

Between

SHI International Corp.

[hereinafter "Contractor"]

and

The State of New Mexico

[hereinafter "Participating State"]

20-000-00-00003B

Page 4 of 5

**6. Servicing Subcontractors:** Only those SHI Authorized Subcontractors and service providers listed on the SHI WSCA website are eligible to support the Master Price Agreement as approved by the Participating Entity. SHI Subcontractors will vary by State.

**7. Purchase Order Instructions:**

All orders should contain the following (1) Mandatory Language "PO is subject to WSCA Contract # ADSPO11-00000358 (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount, monthly payment (if leased), itemized list of products or services purchased. (4) State of NM Price Agreement Number of 20-000-00-000051.

All orders are to be issued directly to: SHI

And all payments are to be issued to: SHI

**8. Purchase Order Number:**

All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number: 20-000-00-00003B; and the Master Price Agreement Number: ADSPO11-00000358.

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

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

**PARTICIPATING ADDENDUM**

[hereinafter "Addendum"]

For

**WSCA SOFTWARE VALUE ADDED RESELLER  
MASTER PRICE AGREEMENT NUMBER ADSP011-00000358**

Between

SHI International Corp.  
[hereinafter "Contractor"]

and

The State of New Mexico  
[hereinafter "Participating State"]

20-000-00-00003B

Page 5 of 5

Contractor below.

Signature: Natalie Castagno

Natalie Castagno  
Printed Name  
Contract Specialist  
Title

11/1/11  
Date

Signature: Lawrence O. Maxwell

Lawrence O. Maxwell  
Printed Name  
State Purchasing Agent  
Title

11/7/11  
Date



**WESTERN STATES CONTRACTING ALLIANCE**

**SOFTWARE VALUE ADDED RESELLER**

**MASTER PRICE AGREEMENT**

with

**SHI INTERNATIONAL, CORP.**

**State of Arizona  
Lead State**

**Contract No. ADSP011-00000358-3**

**EFFECTIVE: JUNE 3, 2011 to JUNE 2, 2013**





Janice K. Brewer  
Governor

Scott A. Smith  
Director

### ARIZONA DEPARTMENT OF ADMINISTRATION

#### STATE PROCUREMENT OFFICE

100 NORTH FIFTEENTH AVENUE • SUITE 201  
PHOENIX, ARIZONA 85007

(602) 542-5511 (main) (602) 542-5508 (fax)  
<http://spo.az.gov>

### AWARD DETERMINATION

#### SOLICITATION # ADSP011-00000358 WSCA Software Value-Added Reseller

In accordance with the Arizona Procurement Code, the Procurement Officer accepts the recommendations of the Evaluation Committee that a multiple award is the most advantageous to the State based on the evaluation criteria set forth in the solicitation:

|  | Technical | Price  | Quality | Value  | Cost   | Score  |
|--|-----------|--------|---------|--------|--------|--------|
| Technical Score - Subtotal<br>(Qualifications, Methodology & TC) | 309.88    | 370.38 | 346.50  | 290.25 | 473.75 | 322.25 |
| Cost Score - Subtotal<br>(Cost Converted to Points)              | 52.00     | 101.00 | 8.00    | 16.00  | 18.00  | 16.00  |
| Combined Score -TOTAL  | 361.88    | 471.38 | 354.50  | 306.25 | 491.75 | 338.25 |
| Final Ranking  | 6         |        |         |        |        |        |

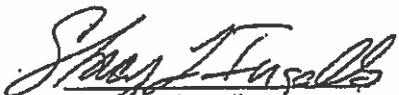


The following offerors were deemed non-susceptible for award. Details of the scores of awarded and non-awarded offerors are provided in the procurement file.

- Carahsoft
- CDW-G
- GovConnections
- Compucom

DLT  
Dell  
Zones  
Hewlett Packard Company  
VLCM  
Provista Software International, Inc.  
Onix Networking Corp.  
Sirius Computer Solutions Inc  
IKON OFFICE SOLUTIONS  
DISYS Solutions Inc.  
PC Mall Gov, Inc  
Framework 21  
Xerox  
The James Group  
Logicalis  
CCI

Please feel free to contact the Procurement Officer if you have any questions.



Stacy L. Ingalls  
Senior Procurement Officer  
Arizona State Procurement Office  
Ph: 602-542-9134  
Stacy.ingalls@azdoa.gov

6/3/11  
Date



# Offer and Acceptance

STATE OF ARIZONA

Agency: Arizona Dept. of Administration  
State Procurement Office (ADO/ASPO)  
Customer: WSCA participating states, AZ Statewide  
(state agencies & cooperative partners)

Description: WSCA Software Value-Added Reseller

## OFFER

I, the undersigned, hereby offer and accept the purchase of the goods and services described herein, and agree to be bound by the terms, conditions, specifications, and any other documents referenced herein.

Arizona Transaction Privilege (Sales) Tax License No: 22-3008348

Federal Employer Identification No: 22-3008348

SHI International Corp

Company Name

*Katie Olan*

Signature of Authorized Agent of the Company

33 Knightsbridge Rd.

Address

*Katie Olan*

Printed Name

Princeton

NJ

08554

City

State

Zip

*Contract Specialist*

Title

Phone: 732-668-5594

E-Mail: Katie.Olan@shi.com

Fax: 732-668-3905

Web Site: www.shi.com

Delivery and installation is promised within 5-10 calendar days after receipt of an order. If payment is made within \_\_\_\_\_ days after receipt of goods and services, the buyer is entitled to a discount of 0 \_\_\_\_\_ % on the above listed price(s).

## ACCEPTANCE

I, the undersigned, hereby accept the offer of the goods and services described herein, and agree to be bound by the terms, conditions, specifications, and any other documents referenced herein.

Contract No.

AD.SPO 11-00000358-3

Contract Award Date

6/3/11

*Shay L. Juszkiewicz*

Signature of Authorized Procurement Officer

*Shay L. Juszkiewicz*

Printed Name

*Sh. Procurement Officer*

Title



## Uniform Terms and Conditions

### STATE OF ARIZONA

Agency: Arizona Dept. of Administration  
State Procurement Office (ADOA/SPO)  
Customer: WSCA participating states; AZ Statewide  
(state agencies & cooperative partners)

Description: WSCA Software Value-Added Reseller

**1 DEFINITION OF TERMS.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:

**"Attachment"** means any item the Solicitation requires the Offeror to submit as part of the Offer.

**"Contract"** means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement or Scope of Work; the Offer and any Best and Final Offers; and any Solicitation Amendments or Contract Amendments.

**"Contract Amendment"** means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.

**"Contractor"** means any person who has a Contract with the State.

**"Days"** means calendar days unless otherwise specified.

**"Exhibit"** means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.

**"Gratuity"** means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

**"Materials"** means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

**"Procurement Officer"** means the person, or his or her designee, duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract.

**"Services"** means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.

**"Subcontract"** means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.

**"State"** means the State of Arizona and Department or Agency of the State that executes the Contract.

**"State Fiscal Year"** means the period beginning with July 1 and ending June 30.

**2 CONTRACT INTERPRETATION**

- 2.1 Arizona Law.** The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
- 2.2 Implied Contract Terms.** Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.
- 2.3 Contract Order of Precedence.** In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order (a) Special Terms and Conditions; (b) Uniform Terms and Conditions; (c) Statement or Scope of Work; (d) Specifications; (e) Attachments; (f) Exhibits; (g) Documents referenced or included in the Solicitation.
- 2.4 Relationship of Parties.** The Contractor under this Contract is an independent contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- 2.5 Severability.** The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- 2.6 No Parole Evidence.** This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- 2.7 No Waiver.** Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.



## Uniform Terms and Conditions

### STATE OF ARIZONA

Agency: Arizona Dept. of Administration  
State Procurement Office (ADOA/SPO)  
Customer: WSCA participating states; AZ Statewide  
(state agencies & cooperative partners)

Description: WSCA Software Value-Added Reseller

### 3 CONTRACT ADMINISTRATION AND OPERATION

- 3.1 **Records.** Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- 3.2 **Non-Discrimination.** The Contractor shall comply with State Executive Order No. 2009-09 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- 3.3 **Audit.** Pursuant to ARS § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- 3.4 **Facilities Inspection and Materials Testing.** The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost, the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.
- 3.5 **Notices.** Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person Indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice to the other and an amendment to the Contract shall not be necessary.
- 3.6 **Advertising, Publishing and Promotion of Contract.** The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- 3.7 **Property of the State.** Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- 3.8 **Ownership of Intellectual Property.** Any and all intellectual property, including but not limited to copyright, invention, trademark, tradename, service mark, and/or trade secrets created or conceived pursuant to or as a result of this contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor (s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this contract.
- 3.9. **Federal Immigration and Nationality Act.** The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor.
- 3.10 **E-Verify Requirements.** In accordance with A.R.S. § 41-4401, Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A.



## Uniform Terms and Conditions

### STATE OF ARIZONA

Agency: Arizona Dept. of Administration  
State Procurement Office (ADDA/SPO)  
Customer: WSCA participating states; AZ Statewide  
(state agencies & cooperative partners)

Description: WSCA Software Value-Added Reseller

- 3.11 **Scrutinized Businesses.** In accordance with A.R.S. § 35-391 and A.R.S. § 35-393, Contractor certifies that the Contractor does not have scrutinized business operations in Sudan or Iran.
- 3.12 **Offshore Performance of Work Prohibited.** Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and involve access to secure or sensitive data or personal client data shall be performed within the defined territories of the United States. Unless specifically stated otherwise in the specifications, this paragraph does not apply to indirect or 'overhead' services, redundant back-up services or services that are incidental to the performance of the contract. This provision applies to work performed by subcontractors at all tiers.

#### 4 COST AND PAYMENTS

- 4.1 **Payments.** Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- 4.2 **Delivery.** Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destination.
- 4.3. **Applicable Taxes.**
- 4.3.1. **Payment of Taxes.** The Contractor shall be responsible for paying all applicable taxes.
- 4.3.2. **State and Local Transaction Privilege Taxes.** The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the responsibility of the seller to remit. Failure to collect such taxes from the buyer does not relieve the seller from its obligation to remit taxes.
- 4.3.3. **Tax Indemnification.** Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- 4.3.4. **IRS W9 Form.** In order to receive payment the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- 4.4 **Availability of Funds for the Next State fiscal year.** Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- 4.5 **Availability of Funds for the current State fiscal year.** Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions: (a) accept a decrease in price offered by the contractor; (b) cancel the Contract; or (c) cancel the contract and re-solicit the requirements.

#### 5 CONTRACT CHANGES

- 5.1 **Amendments.** This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the procurement officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- 5.2 **Subcontracts.** The Contractor shall not enter into any Subcontract under this Contract for the performance of this contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.



## Uniform Terms and Conditions

### STATE OF ARIZONA

Agency: Arizona Dept. of Administration  
State Procurement Office (ADOA/SPO)  
Customer: WSCA participating states; AZ Statewide  
(state agencies & cooperative partners)

Description: WSCA Software Value-Added Reseller

5.3 **Assignment and Delegation.** The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

## 6 RISK AND LIABILITY

6.1. **Risk of Loss.** The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

### 6.2 Indemnification.

6.2.1 **Indemnification – Contractor/Vendor Indemnification (Not Public Agency).** The parties to this contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the contractor for the vicarious liability of the State as a result of entering into this contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this contract is responsible for its own negligence.

6.2.2 **Indemnification – Public Agency Language Only.** Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers."

6.2.3 **Indemnification - Patent and Copyright.** The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

6.3 **Force Majeure.** Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

Force Majeure shall not include the following occurrences: (a) late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market; (b) late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or (c) inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.

If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.

Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

6.4 **Third Party Antitrust Violations.** The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.



## Uniform Terms and Conditions

STATE OF ARIZONA

Agency: Arizona Dept. of Administration  
State Procurement Office (ADOA/SPO)  
Customer: WSCA participating states; AZ Statewide  
(state agencies & cooperative partners)

Description: WSCA Software Value-Added Reseller

### 7 WARRANTIES

- 7.1 **Liens.** The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- 7.2 **Quality.** Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be: (a) of a quality to pass without objection in the trade under the Contract description; (b) fit for the intended purposes for which the materials are used; (c) within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units; (d) adequately contained, packaged and marked as the Contract may require; and (e) conform to the written promises or affirmations of fact made by the Contractor.
- 7.3 **Fitness.** The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- 7.4 **Inspection/Testing.** The warranties set forth in subparagraphs 7.1 through 7.3 of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- 7.5 **Compliance with Applicable Laws.** The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- 7.6 **Survival of Rights and Obligations after Contract Expiration or Termination.**
- 7.6.1 **Contractor's Representations and Warranties.** All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- 7.6.2 **Purchase Orders.** The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.

### 8 STATE'S CONTRACTUAL REMEDIES

- 8.1 **Right to Assurance.** If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the contract.
- 8.2 **Stop Work Order.** The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
- If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- 8.3 **Non-exclusive Remedies.** The rights and the remedies of the State under this Contract are not exclusive.
- 8.4 **Nonconforming Tender.** Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services or a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- 8.5 **Right of Offset.** The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.



## Uniform Terms and Conditions

### STATE OF ARIZONA

Agency: Arizona Dept. of Administration  
State Procurement Office (ADOA/SPO)  
Customer: WSCA participating states; AZ Statewide  
(state agencies & cooperative partners)

Description: WSCA Software Value-Added Reseller

#### 9 CONTRACT TERMINATION

- 9.1 **Cancellation for Conflict of Interest.** Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.
- 9.2 **Gratuities.** The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- 9.3 **Suspension or Debarment.** The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the contractor is not currently suspended or debarred. If the contractor becomes suspended or debarred, the contractor shall immediately notify the State.
- 9.4 **Termination for Convenience.** The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- 9.5 **Termination for Default.** In addition to the rights reserved in the contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
- Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
- The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.
- 9.6 **Continuation of Performance through Termination.** The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.
- 10 **CONTRACT CLAIMS.** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.
- 11 **ARBITRATION.** The parties to this Contract agree to resolve all disputes arising out of or relating to this contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).
- 12 **COMMENTS WELCOME.** The State Procurement Office periodically reviews the Uniform Terms and Conditions and welcomes any comments you may have. Please submit your comments to: State Procurement Administrator, State Procurement Office, 100 North 15th Avenue, Suite 201, Phoenix, Arizona, 85007.



## Special Terms and Conditions

STATE OF ARIZONA

Agency: Arizona Dept. of Administration  
State Procurement Office (ADOA/SPO0)  
Customer: WSCA participating states; AZ Statewide  
(state agencies and cooperative partners)

Description: WSCA Software Value-Added Reseller

1 **DEFINITIONS for ProcureAZ terms.** ProcureAZ (<https://procure.az.gov>) is the State's online eProcurement system. Although the system was configured for the State's needs, the application is based on a commercial product known as BuySpeed Online, made by Periscope Holdings, Inc. As a result, some of the terms used in the BuySpeed Online application may be semantically different to similar terms used by the State. The following terms are as they appear in BuySpeed Online (and ProcureAZ), along with their corresponding meanings as they apply to the solicitation.

"**Actual Cost**" means the total value of all items and their extended quantities.

"**Alternate Id / Alternate ID**" is an optional field and means any additional data in order to link a solicitation or project to a related project, activity or program.

"**Attachments**" means the section, as displayed in ProcureAZ, where the solicitation's electronic documents may be attached. Attachments as defined in the Uniform Instructions may include Solicitation Attachments, and/or as defined in the Uniform Terms and Conditions may include Contract Attachments.

"**Buyer**" means procurement officer.

"**Catalog ID**" is an optional data field and means an identification number to signify a group of related contracts.

"**Contact Instructions**" means the contact information for the procurement officer.

"**Control Code**" is an optional field and means an identification characteristic of the contract.

"**Days ARO**" means the number of days 'After Receipt of Order' in which the customer will receive the ordered materials and/or services.

"**Department**" means the customer for whom the solicitation or contract was conducted for.

"**Discount %**" is an optional field and means the standard discount applied to all items.

"**Entered Date**" means the date that the contract was awarded, not necessarily the date the contract starts, e.g., Master Blanket/Contract Begin Date.

"**Fiscal Year**" means the State Fiscal Year in which the solicitation was initiated. In the event of contract(s) resulting from the solicitation, the Fiscal Year shall remain unchanged.

"**Freight Terms**" means how freight will be charged under the contract.

"**Header Information**" means the section of the solicitation or contract, as displayed in ProcureAZ, containing solicitation or contract information other than the line items.

"**Item Information**" means the section of the solicitation or contract, as displayed in ProcureAZ, containing the solicitation or contract line items.

"**Location**" means the specific customer, within the department, for whom the solicitation or contract was done.

"**Master Blanket/Contract Begin Date**" means the date that the contract starts.

"**Master Blanket/Contract End Date**" means the date that the contract ends.

"**Master Blanket/Contract End Date (Maximum)**" means the date that the contract may be extended through if all allowable term extensions are exercised.

"**Master Blanket/Contract Vendor Distributor List**" means the list of companies authorized to distribute the materials and/or services on behalf of the contractor under the contract.

"**Master Blanket Purchase Order**" means the contract, indicating that the contract will be in effect over a stated period of time.

"**Minor Status**" is an optional data field and means a type of status indicator of the contract in ProcureAZ.

"**Organization**" means the state agency under whose authority the solicitation or contract was conducted.

"**Payment Terms**" means the period of time that payment is due after receipt of an accurate invoice.

"**Pcard Enabled**" is an optional data field and means that customers are allowed to use their purchasing card (P-Card or Pcard) to order from the contract within the ProcureAZ system.

"**PO Acknowledgement**" means the list the notifications to the contractor and their acknowledgements of these notices.



## Special Terms and Conditions

### STATE OF ARIZONA

Agency: Arizona Dept. of Administration  
State Procurement Office (ADOA/SPO0)  
Customer: WSCA participating states; AZ Statewide  
(state agencies and cooperative partners)

Description: WSCA Software Value-Added Reseller

"PO Type" means the period of time that the contract is in place, either a one-time transaction, Open Market, or for a stated period of time, Blanket.

"Print Dest Detail" is an optional data field and means a print format applicable to orders under the contract.

"Print Format" means the format of the solicitation or contract print output.

"Project No." is an optional field and means an identification characteristic of the contract.

"Purchase Order" means contract.

"Purchase Order Number" means the contract's identification number.

"Purchaser" means procurement officer.

"Receipt Method" means the method by which materials and/or services under the contract are received, either by amount spent, Dollar, or by item units, Quantity.

"Release Number" means the order number of each order under the contract. The Master Blanket/Contract will always reflect a zero "0" release number.

"Release Type" means the process that orders under the contract are subject to within ProcureAZ, requiring approval on an order-by-order basis, e.g., Standard Releases or not requiring approval, e.g., Direct Release.

"Retainage %" is an optional field and means the amount of the contract's value that is retained.

"Shipping Method" means the method of shipping to be used under the contract.

"Shipping Terms" means the point where the contractor will ship the materials and/or services to, and if accepted, the point when responsibility and title passes from the contractor to the state.

"Short Description" means the contract's title.

"Status" means the availability of the contract within ProcureAZ for ordering, e.g., Sent status.

"Tax Code", if applicable, means the amount of taxes, expressed as a percentage, to be added to all items purchased under the contract. As items may be subject to differing tax rates, this field may be blank.

"Type Code" means the category of customers that may use any resulting contract(s), e.g., Single-Agency, Multi-Agency or Statewide.

"Vendor" means contractor.

## 2 OTHER DEFINITIONS

"Lead State" means the State conducting this cooperative solicitation and centrally administering any resulting Master Agreement with the permission of the Signatory States.

"MPA Contractor" means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Price Agreement.

"Master Price Agreement" or "Master Agreement" means the underlying agreement, executed by and between the Lead State, as WSCA contract manager, acting on behalf of the Western States Contracting Alliance (WSCA), and the Contractor, as now or hereafter amended.

"Participating Addendum" means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity's specific language or other requirements, e.g., ordering procedures specific to the Participating Entity, other terms and conditions.

"WSCA" means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming. WSCA is a cooperative purchasing arm of the National Association of State Procurement Officials (NASPO).



## Special Terms and Conditions

STATE OF ARIZONA

Agency: Arizona Dept. of Administration  
State Procurement Office (ADOA/SPO0)  
Customer: WSCA participating states; AZ Statewide  
(state agencies and cooperative partners)

Description: WSCA Software Value-Added Reseller

### 3 CONTRACT ADMINISTRATION

- 3.1 **Contract.** The contract includes the Master Price Agreement executed between the MPA Contractor and the State of Arizona, as Lead State on behalf of WSCA, as a result of this solicitation, and a Participating Addendum executed between an MPA contractor and an individual participating State.
- 3.1.1 **Master Price Agreement (MPA) or Master Agreement.** The MPA shall consist of: the solicitation as amended, any requests for clarifications and/or best and final offers, the proposal submitted by the MPA Contractor, their responses to any requests for clarifications and/or their best and final offer. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth and/or referenced in the solicitation as amended shall govern. However, the State reserves the right to clarify any contractual relationship in writing, and such written clarification shall govern in case of conflict with the applicable requirements stated in the solicitation as amended or the contractor's proposal. In all other matters not affected by the written clarification, if any, the solicitation shall govern.
- 3.1.2 **Participating Addendum (PA).** An individual participating state may execute an individual PA with one or more MPA Contractors. The PA will be administered by the Participating State, in conjunction with the Lead State.
- 3.1.3 **Order of Precedence.** Any conflict in terms between the MPA and the PA shall be resolved by giving priority to the terms of the PA. In their PA, an individual state may establish their Order of Precedence for conflicting terms in the different sections of their contract.
- 3.2 **Participation.** Use of a WSCA cooperative contract by state agencies, political subdivisions and other entities (including cooperatives) authorized by an 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 State Chief Procurement Official. In Arizona, this contract shall be for the use of all State of Arizona departments, agencies, commissions and boards. In addition, eligible universities, political subdivisions and nonprofit educational or public health institutions may participate at their discretion. In order to participate in this contract, a university, political subdivision, or nonprofit educational or public health institution shall have entered into a Cooperative Purchasing Agreement with the Department of Administration, State Procurement Office as required by Arizona Revised Statutes § 41-2632. This contract has been awarded with the understanding and agreement that it is for the sole convenience of the State of Arizona. The State reserves the right to obtain like goods or services from another source when necessary. Off-contract purchase authorization(s) may be approved by either the agency (within an agencies delegated authority) or by the State Procurement Office. Approvals shall be at the exclusive discretion of the State and shall be final. Off-contract procurement shall be consistent with the Arizona Procurement Code.
- 3.3 **Estimated Quantities.** WSCA and the State of Arizona anticipate considerable activity resulting from contracts that will be awarded as a result of this solicitation; however, no commitment of any kind is made concerning quantities actually acquired and that fact should be taken into consideration by each potential contractor. The Contract shall be on an as needed, if needed basis.
- 3.4 **Contract Type.** The Contract shall be Firm Fixed Price, with firm pre-order quote based on the Contractor rates.
- 3.5 **Contract Term.** Pursuant to Arizona law, the term of the Master Agreement shall be effective upon the date of final execution by the State of Arizona, and shall continue for a period of two (2) years from the date of the executed Master Agreement unless terminated, cancelled or extended as otherwise provided herein. The term of the individual Participating Addendum (PA) shall be effective upon the date of execution by the individual state, unless the individual state establishes a different effective date. Termination dates of an individual PA shall be the same as that of the Master Agreement unless terminated, cancelled or otherwise provided in the PA.
- 3.6 **Contract Extensions.** By mutual written contract amendment, the MPA may be extended for three (3) one-year periods or a portion thereof for a total contract term not to exceed five (5) years. Unless otherwise established in the PA, the term of the PA will automatically be extended with the extension of the term of the MPA. No PA can be extended beyond the term established in the MPA.
- 3.7 **Scrutinized Business Operations.** Pursuant to A.R.S. § 35-391.06 and § 35-393.06, the Contractor certifies that it does not have a scrutinized business operation in Sudan or Iran. For the purpose of this Section the term "scrutinized business operations" shall have the meanings set forth in A.R.S. § 35-391 or and § 35-393, as applicable.
- 3.8 **E-Verify.** The Contractor warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23-214, Subsection A. (That subsection reads: "After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program.). A breach of a warranty regarding compliance with immigration laws and regulations shall be deemed a material breach of the



## Special Terms and Conditions

### STATE OF ARIZONA

Agency: Arizona Dept. of Administration  
State Procurement Office (ADOA/SPOO)  
Customer: WSCA participating states; AZ Statewide  
(state agencies and cooperative partners)

Description: WSCA Software Value-Added Reseller

contract and the Contractor may be subject to penalties up to and including termination of the contract. Failure to comply with a State audit process to randomly verify the employment records of contractors and subcontractors shall be deemed a material breach of the contract and the Contractor may be subject to penalties up to and including termination of the contract. The State Agency retains the legal right to inspect the papers of any employee who works on the contract to ensure that the Contractor or subcontractor is complying with the warranty.

- 3.9 **Pandemic Contractual Performance.** The State shall require a written plan that illustrates how the contractor shall perform up to contractual standards in the event of a pandemic. The state may require a copy of the plan at anytime prior or post award of a contract. At a minimum, the pandemic performance plan shall include: (i) Key succession and performance planning if there is a sudden significant decrease in contractor's workforce; (ii) Alternative methods to ensure there are products in the supply chain; and (iii) An up to date list of company contacts and organizational chart.

In the event of a pandemic, as declared by the Governor of Arizona, U.S. Government or the World Health Organization, which makes performance of any term under this contract impossible or impracticable, the State shall have the following rights: (i) After the official declaration of a pandemic, the State may temporarily void the contract(s) in whole or specific sections if the contractor cannot perform to the standards agreed upon in the initial terms; (ii) The State shall not incur any liability if a pandemic is declared and emergency procurements are authorized by the director as per § 41-2537 of the Arizona Procurement Code; and (iii) Once the pandemic is officially declared over and/or the contractor can demonstrate the ability to perform, the State, at its sole discretion may reinstate the temporarily voided contract(s).

The State, at any time, may request to see a copy of the written plan from the contractor. The contractor shall produce the written plan within 72 hours of the request.

- 3.10 **Electronic or Information Technology.** Products, services and maintenance shall comply with A.R.S. § 41-3531, which requires conformance with the requirements of Section 508 of the Rehabilitation Act of 1973. Failure to comply shall be considered a breach of the Contract.

- 3.11 **Warranties.** The Contractor warrants that, per the period of time established in the Standard Publisher's Warranty, the materials shall be: (a) of a quality to pass without objection in the trade under the Contract description; (b) fit for the intended purposes for which the materials are used; (c) within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units; (d) adequately contained, packaged and marked as the Contract may require; and (e) conform to the written promises or affirmations of fact made by the Contractor.

#### 4 CONTRACT OPERATION

- 4.1 **Contract Release Orders.** Any services to be furnished under this contract shall be ordered by issuance of orders by the Participating Entity. Such orders may be issued from effective date of contract award. All orders are subject to the terms and conditions of this contract. All orders shall cite the contract numbers, that is, the number of the MPA and PA.

- 4.2 **Ordering Process.** Any products or services to be furnished under this contract shall be ordered by issuance of orders, following receipt of a firm quote as required in the Statement of Work, by the Participating Entity. Individual PA's may modify these, or provide other requirements of an individual state for placing an order. Contract releases or purchase orders are those that are issued by an Authorized Purchaser (defined in the Statement of Work) in any of the following forms:

- Hard copy, one time only or blanket (term type)
- Electronically transmitted through facsimile equipment
- Electronically transmitted as an e-mail attachment
- Electronically transmitted through a contractor's Electronic Data Interchange (EDI) system or secured internet/web portal, i.e. those that provide electronic commerce assistance for the electronic submission of purchase orders, purchase order tracking and reporting.
  - Such systems shall not allow for purchase orders to be placed for non-contract or excluded items
  - Use of such systems shall be at the sole discretion of the Participating Entity and all costs associated with set-up, maintenance and support shall be borne by the Contractor.
- Electronically through Participating Entity's p-card program.

- 4.3 **Order Acknowledgement.** Contractor shall acknowledge receipt of all Orders. Contractor shall notify the Customer, in writing or electronically, within two (2) days of Order receipt. Customers may accept verbal Order acknowledgment when time and circumstances require.



# Special Terms and Conditions

STATE OF ARIZONA

Agency: Arizona Dept. of Administration  
State Procurement Office (ADOA/SPOO)  
Customer: WSCA participating states; AZ Statewide  
(state agencies and cooperative partners)

Description: WSCA Software Value-Added Reseller

- 4.4 **Billing.** Contractor shall include both the Master Agreement number, and the appropriate PA reference number on invoices.
- 4.5 **Travel.** When requested, in writing, from the Participating Entity to perform work that requires overnight accommodations, the Participating Entity will reimburse the contractor in accordance with the current rates specified in the Rules and Regulations applicable to that Entity or as otherwise defined in their PA. The Contractor shall itemize all per diem and lodging charges. The Rules and Regulations that apply to contractors for the State of Arizona are those which are applicable to State employee travel. These State rates may be located at [www.gao.state.az.us](http://www.gao.state.az.us).
- 4.6 **Key Personnel.** It is essential that the contractor provide an adequate staff of experienced personnel, capable of and devoted to the successful accomplishment of work to be performed under this contract. The contractor must assign specific individuals to the key positions. Once assigned to work under the contract, key personnel shall not be removed or replaced without the prior written approval of the Issuing agency and a copy to the procurement office of record
- 4.7 **Notification.** The All notices, requests, demands, consents, approvals, and other communications which may or are required to be served or given hereunder (for the purposes of this provisions collectively called "Notices"), shall be in writing and shall be sent by registered or certified United States mail, return receipt requested, postage prepaid, addressed to the party or parties to receive such notice as follows:

To the Lead State (Administrator of the Master Agreement):

Arizona Department of Administration  
State Procurement Office  
100 North 15<sup>th</sup> Avenue, Suite 201  
Phoenix, Arizona 85007  
Fax: 602-542-5508

Procurement Officer: Maureen L. McGovern, MBA, CPPO  
Email: [Maureen.mcgovern@azdoa.gov](mailto:Maureen.mcgovern@azdoa.gov)  
Direct Phone: 602-542-9125

To the Contractor: (to be completed at time of award):

To the Participating State: (to be defined in the Participating Addendum)

## 5 USAGE REPORTS AND ADMINISTRATIVE FEES

- 5.1 **Usage Reports.** Reseller agrees to provide quarterly utilization reports to WSCA. The report shall be in the format developed by the Lead State and supplied to the Reseller at time of award. Individual participating states may require their own usage reports. Reseller shall provide these reports at the intervals, and in the format, required by the States.
- 5.2 **Administrative Fees.**
  - 5.2.1 **WSCA Administrative Fee** - Reseller will remit to WSCA a contract administration fee in the amount of one-half of one percent (.5%) of the total sales from this contract. The pricing listed on the proposal shall include the WSCA administrative fee. Administrative fees shall not be added as a line item on any invoice. A statement verifying the total sales amount for all Participating States must accompany the remittance. This remittance is due to WSCA no later than 45 days after the last day of each calendar quarter. The form to be submitted with the check, as well as mailing address, will be provided to Reseller at time of contract award.
  - 5.2.2 **Individual State's Administrative Fees** - In addition to the WSCA contract administration fee as stated above, some Participating States may also require an administrative fee. See also the section entitled, "Price Quotes - General". Specific State Administrative Fees may be added to the price of each item. Information on a State's Administrative Fee will be provided in that State's PA.

## 6 RISK AND LIABILITY

The following pages cover indemnification and insurance requirements. Unless otherwise established or modified in an individual PA, these requirements may be interpreted to apply to any Participating State. Contractors shall provide current Certificates of Insurance to each State with which the Contractor has an executed PA.



# Special Terms and Conditions

STATE OF ARIZONA

Agency: Arizona Dept. of Administration  
State Procurement Office (ADOA/SPO0  
Customer: WSCA participating states; AZ Statewide  
(state agencies and cooperative partners)

Description: WSCA Software Value-Added Reseller

### INDEMNIFICATION:

The Contractor shall defend, indemnify and hold harmless WSCA, the Lead State, and Participating Entities along with their officers, agencies, and employees as well as any person or entity for which they may be liable from and against claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement. This section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

### INSURANCE REQUIREMENTS:

Vendor shall procure and maintain, until all of their obligations, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the purchase and or use of the commodity.

The insurance requirements herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Vendor from liabilities that might arise out of the purchase and use of the commodities sold under this Contract by the Vendor, his agents, representatives, employees or subcontractors and Vendor is free to purchase such additional insurance as may be determined necessary.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage at least as broad and with limits of liability not less than those stated below.

1. **Commercial General Liability – Occurrence Form**

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

- General Aggregate \$2,000,000
- Products – Completed Operations Aggregate \$1,000,000
- Personal and Advertising Injury \$1,000,000
- Fire Legal Liability \$ 50,000
- Blanket Contractual Liability – Written and Oral \$1,000,000
- Each Occurrence \$1,000,000

2. **Business Automobile Liability**

Bodily Injury and Property Damage for any owned, hired, and/or non-owned vehicles used in the performance of this Contract.

Combined Single Limit (CSL) \$1,000,000

- a. The policy shall be endorsed to include the following additional insured language: *"The [Participating State, e.g., the State of Arizona], its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor, involving automobiles owned, leased, hired or borrowed by the Contractor."*
- b. Policy shall contain a waiver of subrogation against the [Participating State, e.g., State of Arizona], its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

3. **Worker's Compensation and Employers' Liability**

Workers' Compensation Statutory

- Employers' Liability
- Each Accident \$ 500,000
- Disease – Each Employee \$ 500,000
- Disease – Policy Limit \$1,000,000

- a. Policy shall contain a waiver of subrogation against the [Participating State, e.g., State of Arizona], its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
- b. For the State of Arizona, this requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.