

Data Storage Hardware, Midrange and High-end Servers

MASTER PRICE AGREEMENT

TERMS AND CONDITIONS

RFP # 54-000-00-000-51

This Agreement is made and entered into by Integrity Networking Systems Inc., (“Contractor”) and the New Mexico State Purchasing Agent (“NMSPA”) on behalf of the State of New Mexico.

The parties agree as follows:

1. Definitions

“Agreement Administrator” means to a qualified, professional individual appointed by the NMSPA to administer this Agreement on behalf of the State of New Mexico.

“Announced Promotion Price” are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

“Consumables” that are required for the operation of Equipment offered or supplied are included: printer cartridges, batteries, projector bulbs, etc. Consumables such as magnetic media, paper and generally available office supplies are excluded.

“Documentation” refers to manuals, handbooks, and other publications listed in the PSS, or supplied with products listed in the PSS, or supplied in connection with services. Documentation may be provided on magnetic media or may be downloaded from the Contractor’s web site.

“Educational Discount Price” means the price offered in a nationally announced promotion, which is limited to educational customers only.

“Equipment” means servers, SANs, NAS devices, Fibre Channel devices, tape drives, tape libraries, tape media computing hardware including upgrade components such as memory, storage drives, and spare parts.

"FCC" means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

“General Price Reduction Price” means the price offered to consumer, business or governmental purchaser at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

“Large Order Negotiated Price” or **“Multiple Unit Price”** means the price offered to specific Purchasing Entities under defined additional terms and conditions. Selection and pricing of Large Order Negotiated Prices shall be by mutual agreement of the parties. Large Order Negotiated Prices shall apply only to those items that meet the applicable additional terms and conditions (e.g., order quantity, time limitation, product configuration) negotiated by the parties. The negotiated price shall apply to a given Purchase Order or number of Purchase Orders submitted at the same time.

“Local-Area-Network” (“LAN”) refers to a high-speed, low-error data network covering a relatively small geographic area. LANs connect workstations, peripherals, terminals and other devices in a single building or other geographically limited area. Wireless transmission components and security devices are included. Cable and components required for the installation and operation of a LAN are included if installation services are offered. LAN hardware and software may be manufactured by a third party. Public data, voice or video transport services are excluded as well as hardware and software required in supporting a WAN.

“Master Price Agreement” mean an NMSPA approved Price Agreement that contains the foundation terms and conditions for the acquisition of Contractor’s Products and/or Services by Purchasing Entities.

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

“Political Subdivision” means local public governmental subdivisions of a state including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

“Price Agreement” means an indefinite quantity contract that requires the Contractor to furnish Products or Services to a Purchasing Entity that issues a valid Purchase Order.

“Products” means computer Equipment, Machines, Data Storage Hardware, Data Storage Management Software, Programs, Peripherals, LAN hardware and Software, and General Purpose Software but not services.

“Products and Services Schedule” or “PSS” refers to a complete list, grouped by major product and/or service categories, of the products and services provided by the contractor that consists of an item number, item description and the Purchasing Entity's maximum price for each product or service.

“Products and Services Schedule Prices” mean the maximum prices offered to Participating Entities exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices. All such products and services shall be listed on the Contractor's web site accessible via a URL.

“Purchasing Entity” means a State agency, educational institution, and non-State entities properly authorized by a the State to purchase the goods described in the solicitation.

“Purchase Order” means an electronic or paper document issued by the Purchasing Entity that directs the Contractor to deliver Products or Services pursuant to this Agreement.

“Reseller Agent” means a non-manufacturing company authorized to resell manufacturer Products and Services and who can maintain a PSS, accept and fulfill purchase orders, issue invoices and receive payments for Products and Services listed on the PSS at or below the price stated therein.

“Servicing Subcontractor” means a Prime Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities. Servicing Subcontractors shall be named individually. “Software” means machine-readable object code instructions that may be preloaded on Equipment or LAN hardware or listed separately in the PSS. The term “Software” applies to all parts of software and documentation, including new releases, updates, and modifications of software. For Software, the term “purchase” means “license”. Contractor shall deliver applicable licenses with the Software.

“Services” are broadly classed as installation/de-installation, maintenance, support, training, migration and optimization for Products offered or supplied (sold or leased) under the master price agreement. These types of services may include but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management,

recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk and any other directly related technical support service required for the effective operation of a Product offered or supplied. General consulting and all forms of application development and programming services are excluded.

“Software” means machine-readable object code instructions that may be preloaded on Equipment or LAN hardware or listed separately in the PSS. The term “Software” applies to all parts of software and documentation, including new releases, updates, and modifications of software. For Software, the term “purchase” means “license”. Contractor shall deliver applicable licenses to the Purchasing Entities with the Software.

“Storage Solution/Auxiliary Storage” means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS); Storage Area Networks (SAN); Tape Drives, Tape Libraries, and Tape Media.

“Trade In” refers to the exchange of used Equipment for new Equipment at a price reduced by the present day, depreciated value of the used Equipment.

“Travel” means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order.

“Wide Area Network” or “WAN” means a data network that servers users across a broad geographic area and often uses transmission devices provided by common carriers.

“Universal Resource Locator” or “URL” means a standardized addressing scheme for accessing hypertext documents and other services using the WWW browser.

2. Scope of Work

The Contractor shall deliver computing system Products and Services to Purchasing Entities in accordance with the terms of this agreement. This Agreement is a "Price Agreement". Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by Contractor of valid "Purchase Orders". Purchase Orders may be issued to purchase the license for software or to purchase or lease Products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees.

3. Title Passage

Title to equipment shall pass to the Purchasing Entity upon acceptance.

4. Permissive Price Agreement and Quantity Guarantee

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and Services from other sources during the agreement term. The NMSPA, make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

5. Order of Precedence

Each Purchase Order that is accepted by the Contractor shall become a part of the Agreement as to the Products and Services listed on the Purchase Order only; no additional terms or conditions will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders which are consistent with the Contractor's proposal. In the event of any conflict among these documents, the following order of precedence shall apply:

- a. Exhibits and amendments to this Agreement;
- b. Terms and conditions of this Agreement;
- c. The list of products and services contained in the purchase order;
- d. Contractor's proposal including best and final offer and
- e. The request for proposals document 50-000-00-00051.

6. Payment Provisions

All payments under this Agreement are subject to the following provisions:

a. Acceptance

A Purchasing Entity shall determine whether all Products and Services delivered meet the Contractor's published specifications. No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. Unless otherwise agreed upon between the Purchasing Entity and the Contractor, within fifteen (15) days from the date the Purchasing Entity receives written notice from the Contractor that payment is requested for Services or within fifteen (15) days from the receipt of Products, the Purchasing Entity shall issue a written **notice** of partial acceptance or rejection of the Products or Services. **Otherwise, the Products or Services shall be deemed accepted.**

b. Payment of Invoice

Payments shall be submitted to the contractor at the address shown on the invoice. Payment shall be tendered to the Contractor within thirty (30) days of the date of certification. After the thirtieth day from the date that written certification of acceptance is issued, interest shall be paid on the unpaid balance due to the contractor at the rate of one and one-half percent per month. The Purchasing Entity shall make a good-faith effort to pay within thirty (30) days after date of certification. Payments may be made via a Purchasing Entity's "Purchasing Card".

In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

c. Payment of Taxes

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

d. Invoices

Invoices shall be submitted to the Purchasing Entity.

7. Agreement Term

The Agreement is effective February 22, 2005 or the date, thereafter, signed by the NMSPA. The Agreement shall expire on February 21, 2008. The Agreement may be mutually renewed for one (1) additional one-year term or portion thereof unless terminated pursuant to the terms of this Agreement. In no event shall this agreement remain in effect beyond February 21, 2009.

8. Termination

The following provisions are applicable in the event that the agreement is terminated.

a. Termination for Convenience

At any time, the NMSPA may terminate this agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the NMSPA nor a Purchasing Entity has the right to terminate a specific purchase order for convenience after it has been issued if the product is ultimately accepted. At any time, Contractor may terminate this Agreement, in whole or in part, by giving the Agreement Administrator thirty (30) days written notice. Such termination shall not relieve Contractor of warranty or other Service obligations incurred under the terms of this Agreement.

b. Termination for Cause

Either party may terminate this Agreement for cause based upon material breach of this Agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

c. A Purchasing Entity's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall retain its rights in all Products and Services accepted prior to the effective termination date.

d. The Contractor's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and Services ordered and accepted prior to the effective termination date or expiration date, or ordered before the effective termination date or expiration date and ultimately accepted.

9. Non-Appropriation

The terms of this Agreement and any purchase order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any purchase order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity to pay amounts due for multiple year agreements. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for non-appropriation. Such termination shall relieve the Purchasing Entity, its

officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order.

10. Shipment and Risk of Loss

- a. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.
- b. Whenever a Purchasing Entity does not accept Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence of the Purchasing Entity.
- c. Unless otherwise arranged between the Purchasing Entity and contractor, all shipments of Products shall be shipped **three-to-five day ground transportation** by a reliable and insured shipping company.

11. Warranties

- a. The Contractor agrees to warrant and assume responsibility for each Product that it licenses, leases, or sells, to the Purchasing Entity under this Agreement. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement. In general, the Contractor warrants that:
 1. The Product will do what the salesperson said it would do,
 2. The Product will live up to all specific claims that the manufacturer makes in their advertisements,
 3. The Product will be suitable for the ordinary purposes for which such Product is used,
 4. The Product will be suitable for any **special purposes** that the Purchasing Entity has relied on the Contractor's skill or judgment to consider when it advised the Purchasing Entity about the Product,
 5. The Product has been properly designed and manufactured, and
 6. The Product is free of significant defects or unusual problems about which the Purchasing Entity has not been warned.
 7. Exhibit A contains additional warranties in effect as of the date of this Agreement. The following is a list of the warranties attached as **Exhibit A**:
 - a) (Insert title)
 - b.) (Insert title)
 - c) (Insert title)

- b. Contractor may modify the warranties described in Exhibit A from time to time with the prior approval of the Agreement Administrator.
- c. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

- a. The Contractor shall defend, at its own expense, the State of New Mexico, Participating and Purchasing Entities and their agencies against any claim that any Product or Service provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Lead State for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:
 - 1. Give the Contractor prompt written notice of any claim;
 - 2. Allow the Contractor to control the defense or settlement of the claim; and
 - 3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.
- b. If any Products or Service becomes, or in the Contractor's opinion is likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:
 - 1. Provide a Purchasing Entity the right to continue using the Products or Services;
 - 2. Replace or modify the Products or Services so that it becomes non-infringing; or
 - 3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.

13. Price Guarantees

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, or Large Order Negotiated Price. Only General Price Reduction price decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

While price adjustments will be allowed as the referenced price list changes on any selected item, or as versions are updated to keep up with evolving technology, the percentage discount rates will not change significantly during the life of the contract. Offerors should propose and describe their commitment to maintain and upgrade (keep pace with the advance of technology) the component technology versions for a stated period of time or intervals.

For example, if a new Intel processor is available 12 months after the contract is signed, and the original percent discount off of identified index list was 29%, then the discount to be applied to the list price of the newly-defined Intel processor should be at or close to 29%.”

14. Product and Service Schedule

The Contractor agrees to maintain the PSS in accordance with the following provisions:

- a. The PSS prices for Products and Services will conform to the guaranteed prices discount levels on file with Agreement Administrator.
- b. The Contractor may change the price of any Product or Service at any time, based upon baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless prior approval is obtained from the Agreement Administrator.
- c. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS at any time. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the Agreement Administrator for similar Products or Services.
- d. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.
- e. Major model changes shall be incorporated in the PSS as soon as possible after the announcement. In conjunction therewith or as soon as possible, the Agreement Administrator shall negotiate and approve a price discount level for the new Product line as comparable as possible to the price discount level established for similar Products.
- f. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

15. Product Substitutions

Unless otherwise limited or prohibited in a Participating Addendum, the Contractor may make Product substitutions either to the internal system components, options or external Peripherals as long as the substitute item is the same or better technology at the same or lower price. Delivery order modifications will not be required. The invoice will reflect the actual Products shipped NOT the Products ordered. To effect administrative savings, Purchasing Entities are instructed to make payments in accordance with this paragraph without requiring a delivery order modification. The following note will appear on the invoice.

"In accordance with the Product Substitutions paragraph in the Master Price Agreement, (name of contractor) has substituted a Product on this order. The substitution is the same or better technology at the same or lower price."

16. Technical Support

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the installation or operation of Products supplied by the

Contractor, during normal business hours that follow the State's work schedule.

17. Product Delivery

Contractor agrees to deliver Products to Purchasing Entities within 20 days after receipt of a valid Purchase Order, unless proof of reason for backorder is provided.

18. Impracticality of Performance

A party shall be excused from performance under this Agreement for any period that the party is prevented from performing as a result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

19. Records and Audit

Contractor agrees to maintain detailed records pertaining to the price of Services rendered and Products delivered for a period of three years from the date of acceptance of each Purchase Order. These records shall be subject to inspection by the Purchasing Entity and appropriate governmental authorities with the Purchasing Entity's state. The Purchasing Entity shall have the right to audit billings either before or after payment. Payment under this Agreement shall not foreclose the right of the Purchasing Entity to recover excessive or illegal payments.

20. Independent Contractor

The Contractor and its agents and employees are independent contractors and are not employees of the State of New Mexico or of any participating entity. The Contractor has no authorization, express or implied to bind the State of New Mexico or any participating entity to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the State of New Mexico or participating entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

21. Use of Servicing Subcontractors and Reseller Agents

The Contractor may subcontract Services and Purchase Order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

- a. Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum. All Purchasing Entity payments for Products or Services shall be made directly to the Contractor.
- b. If Reseller Agents are to be used, the name of the authorized Reseller Agent(s) shall be identified individually or by class in the applicable Participating Addendum. Reseller Agents may accept and fulfill a Purchase Order on behalf of the Contractor

as well as issuing invoices and receiving payments for Products and Services. The Purchase Order(s) shall include the Contractor's Master Price Agreement number. Reseller Agents shall abide by the terms and conditions of the Contractor's Master Price Agreement and all modifications made thereto by an applicable Participating Addendum. The Contractor is responsible for reporting all Reseller Agent sales as part of the utilization reporting described in Paragraph 46 of this Agreement.

22. Indemnification

The Contractor shall hold the State and its agencies and employees harmless and shall indemnify the New Mexico and its agencies and employees against any and all claims, suits, actions, liabilities and costs of any kind, including attorney's fees for personal injury or damage to property arising from the acts or omissions of the contractor, its agents, officers, employees or subcontractors. Contractor shall not be liable for damages that are the result of negligence by the State or its employees.

23. Amendments

This Agreement shall only be amended by written instrument executed by the parties.

24. Scope of Agreement

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement, and all prior agreements have been merged into this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

25. Invalid Term or Condition

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

26. Enforcement of Agreement

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

27. Web Site Maintenance

Contractor agrees to maintain and support an Internet website for access to the PSS, service selection assistance, problem resolution assistance, configuration assistance, Product descriptions, Product specifications and other aids in accordance with instructions provided by the Agreement Administrator. In addition, Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, purchase order tracking and reporting.

28. Equal Opportunity Compliance

The Contractor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which it's primary place of business is located. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

29. Limitation of Liability

The Contractor's liability to a Purchasing Entity for any cause whatsoever shall be limited to the purchase price paid to the contractor for the products and services that are the subject of the Purchasing Entity's claim. The foregoing limitation does not apply to Paragraphs 12 and 23 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special or consequential damages arising out of this Agreement or the use of the Products purchased by the Purchasing Entity hereunder.

30. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of the Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

31. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the Agreement Administrator to maintain, support and market this Agreement. The NMSPA reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the NMSPA, serving the needs of the Lead State and the Participating Entities adequately.

32. Release

The Contractor, upon final payment of the amount due under this Agreement, releases the NMSPA, the Lead State and Participating Entities its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

33. Confidentiality

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Purchasing Entity.

34. Conflict of Interest

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the Contractor's performance under this Agreement.

35. Replacement Parts

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be refurbished.

36. FCC Certification

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

37. Site Preparation

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and shall bear the costs associated with the site preparation.

38. Assignment

The Contractor shall not assign nor transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the NMSPA. Contractor may assign lease payments in accordance to specific provisions stated in a Purchasing Addendum.

39. Agreement Administrator

The NMSPA shall appoint an Agreement Administrator whose duties shall include but not be limited to the following:

- a. The Agreement Administrator may provide instructions concerning the contents of the Contractor's website.
- b. The Agreement Administrator will facilitate dispute resolution between the Contractor and Purchasing Entities. Unresolved disputes shall be presented to the NMSPA for resolution.
- c. The Agreement Administrator shall advise the NMSPA regarding the Contractor's performance under the terms and conditions of this Agreement.
- d. The Agreement Administrator shall receive and approve quarterly price agreement utilization reports and the administration fee payments.
- e. The Agreement Administrator shall periodically verify the Product and Service prices in the PSS conform to the contractor's volume price and other guarantees. The

Agreement Administrator may require the Contractor to perform web site audits to accomplish this task.

- f. The Agreement Administrator shall conduct annual Contractor performance reviews.
- g. The Agreement Administrator shall maintain an Agreement administration website containing timely and accurate information.

40. Survival

Certain paragraphs of this agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limit of Liability shall survive the expiration of this agreement. Software licenses, lease, warranty and service agreements that were entered into under the terms and conditions of this Agreement shall survive this Agreement.

41. Lease Agreements

Contractor may lease Equipment and Software to Purchasing Entities in accordance with terms and conditions approved by the appropriate governing authority for the Purchasing Entity's jurisdiction. Such approval shall be indicated in the Participating Addendum.

42. Succession

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

43. Notification

Either party may give written notice to the other party in accordance with the terms of this paragraph 45. Any written notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery if delivered by personal service or hand delivery or three business days after being mailed.

To NMSPA:

New Mexico State Purchasing Agent
Purchasing Division
Joseph M. Montoya State Building, Room 2016
1100 St. Francis Drive
Santa Fe, New Mexico 87505

Or

P.O. Drawer 26110
Santa Fe, New Mexico 87502-0110

To Contractor:

Integrity Networking Systems, Inc.
4601 Columbine Avenue
Albuquerque, NM 87113

Either party may change its representative or address above by written notice to the other in accordance with the terms of this Paragraph 45. The carrier for mail delivery and notices shall be the agent of the sender.

44. Administration Reporting and Fees

- a. The Contractor agrees to provide periodic utilization reports to the Agreement Administrator in accordance with the following schedule: monthly.
- b. The state expects winning contractors to provide monthly spend reporting and paid invoice reporting by the fifteenth (15) day of the month or next business day thereof. Reporting must be provided in an electronic format (spreadsheet or database) and should at a minimum capture the following fields:

Monthly Spend Reporting

- Manufacturer part #
- Manufacturer
- Description
- Category
- Quantity
- Unit price
- Extended Price
- Purchasing Agency
- Invoice Number

Invoice Reporting

- Invoice Status (paid/unpaid) by invoice number
- Invoice Status (paid/unpaid) by Purchasing Agency

NOTE: The product configurations for each appendix / product category have been assigned a specific configuration number as defined in the “Data Storage HW & Servers_Reporting Template.xls.”

The report details listed above are critical to the state for compliance monitoring. The reporting template is to be used to standardize the format for reporting of items sold under this contract only.

- c. The Contractor agrees to include all Reseller Agent sales in the periodic utilization reports described above. In addition, the Contractor agrees to provide a supplemental Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name.
- d. The Contractor agrees to provide with the quarterly utilization report a supplemental report of the number and type of units taken back within state name.
- e. The utilization reports shall be submitted to the Agreement Administrator via electronic mail in a Microsoft Excel spreadsheet format.
- g. If requested by the Agreement Administrator, the Contractor agrees to provide supporting Purchase Order detail records on mutually agreed magnetic media in a mutually agreed format.
- h. The failure to file the utilization reports and fees on a timely basis shall constitute

grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.

45. Default and Remedies

- a. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:
 1. Nonperformance of contractual requirements; or
 2. A material breach of any term or condition of this Agreement.
- b. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.
- c. If the default remains after the opportunity for cure, the non-defaulting party may:
 1. Exercise any remedy provided by law or equity;
 2. Terminate the Agreement a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
 3. Impose liquidated damages, as specified in a Participating Addendum;
 4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations.

46. Audits

- a. The Contractor agrees to assist the Agreement Administrator or designee with web site Product and pricing audits based on mutually acceptable procedures.
- b. The Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

47. Extensions

Unless prohibited by provision in a Participating Addendum, Contractor may, at the sole discretion of Contractor, offer Products and Services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the governmental entity has no liability whatsoever concerning payment for Products or Services. It is further understood that the Contractor is under no obligation to report the revenue or pay an administration fee on the sales from such organizations and individuals.

48. Standard Configurations Semi-Annual Update Process

After inception of the contract, a meeting with each contractor(s) will be required to discuss what, if any, standard configurations changes are necessary for a given band/sub-

category of data storage hardware or midrange to high-end servers. This process is to account for new updates in component technology and/or the obsolescence of models proposed and contracted through the RFP. This process is also to account for potential changes in the state's requirements for a given configuration and its related upgrade/downgrade options.

While price adjustments will be allowed as the referenced price list changes on any selected item, or as versions are updated to keep up with evolving technology, the percentage discount rates will not change significantly during the life of the contract. Offerors should propose and describe their commitment to maintain and upgrade (keep pace with the advance of technology) the component technology versions for a stated period of time or intervals.

For example, if a new Intel processor is available 12 months after the contract is signed, and the original percent discount off of identified index list was 29%, then the discount to be applied to the list price of the newly-defined Intel processor should be at or close to 29%.

49. Mandatory Value-Added Contractor Support – All Categories

The following mandatory support services must be offered by the offeror at close of bid to support their own hardware.

Contractor must have on-staff or through an authorized national dealer network or through no more than one additional authorized service provider an existing, and experienced technical support personnel, trained on the offeror's products as bid, consisting of not less than *three* technicians across New Mexico. Of those three technicians at least one must be a NOS technician, specifically certified in the operating system(s) that the contractor's hardware is to support. If a third party service organization is bid, the Offeror must demonstrate that the third party organization's service engineers, identified to fulfill the requirements herein, have been formally trained by the respective data storage hardware / server hardware O.E.M.

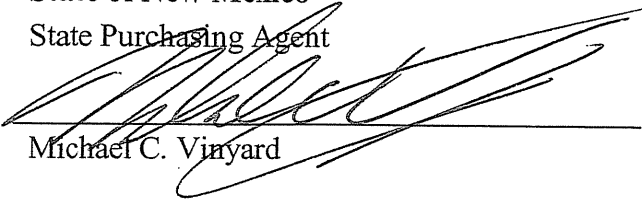
Contractor must also maintain a telephone support service which must not exceed an on-hold time of more than 5 minutes on initial call.

50. OEM Branded Hardware

The Contractor's products must be OEM branded equipment. "White-boxes" or equipment that is not manufactured by an OEM may not be sold to the State.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by the New Mexico State Purchasing Agent, below.

State of New Mexico
State Purchasing Agent



Michael C. Vinyard

Date: 3-17-05

Integrity Networking Systems Inc:



Glenn Perkal

Date: 2/20/05

State of New Mexico
Office Of The Chief Information Officer



Roy Soto Date: 3/16/05