

PARTICIPATING ADDENDUM

COMPUTER EQUIPMENT, SOFTWARE, PERIPHERALS AND RELATED SERVICES MASTER PRICE AGREEMENT

Between

XIOtech Corporation

WSCA Contract Number A63316

and

State of Minnesota

Contract Number 432988

- 1. Scope:** The State of Minnesota, various state agencies and departments, and currently active cooperative purchasing venture members ("customer" - as defined in Minnesota Exhibit A) may purchase the products and services available in this Contract. This agreement is not a purchase order, nor does it guarantee any purchases to be made by the customer.
- 2. Changes:** The additional terms and conditions contained in Minnesota Exhibit A, attached, are hereby incorporated by reference. In the event of a conflict between the terms contained within Minnesota Exhibit A and WSCA Master Price Agreement ("Price Agreement"), Minnesota Exhibit A shall control. The parties agree that this provision of the Participating Addendum supercedes the Standard Contract Terms and Conditions set forth in the Price Agreement. In the event that any provision of this Participating Addendum or Price Agreement is contrary to Minnesota law, such provision shall be null and void. This Agreement shall be governed by Minnesota law.

No other changes to the Master Price Agreement are necessary.

3. Primary Contact:

The primary participating entity contact, for participation by "Customers" as defined in Scope above, for this participating addendum is as follows:

Participating Entity Name: State of Minnesota
Name: Bernadette Kopischke, CPPB
Address: Department of Administration
Materials Management Division
50 Sherburne Ave., 112 Administration Bldg.
St. Paul, MN 55155
Telephone: 651.296.3778
Fax: 651.297.3996
E-mail: bernie.kopischke@state.mn.us

The primary Contractor contact for this participating addendum is as follows:

Name: Mary Reuss
Contractor: Xiotech Corporation
Address: 6455 Flying Cloud Drive, Eden Prairie, MN 55344-3305
Telephone: 952.983.2433
Fax: 952.983.2527
E-mail: mary_reuss@xiotech.com

4. Servicing Subcontractors:

All purchase orders shall be sent and payments made directly to the Contractor. Service Subcontractors are not authorized to receive or accept purchase orders or payments.

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.

The Master Price Agreement Number and the State of Minnesota Contract Number MUST be shown on all Purchase Orders issued against this Agreement.

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

Contract Vendor:

Xlotech Corp.

By: [Signature]
Name: STEVEN E. RIDER
Title: CEO
Date: 10-1-04

**Government Entity: State of Minnesota
Materials Management Division**

In accordance with Minn. Stat. § 16C.03, Subd. 3

By: [Signature]
Name: Bernadette Kopischke
Title: Asst. Mgmt. Spec.
Date: 10/6/04

**State of Minnesota
Commissioner of Administration**

Or delegated representative
By: [Signature]
Date: 6 OCT 04

Lead State: State of Minnesota

17

Minnesota Exhibit A
Minnesota General Conditions

1. **DEFINITIONS.**
 - a. State Agencies. This term applies only to State of Minnesota agencies, as defined in Minn. Stat. §§ 15.01 and 15.021.
 - b. Customer. This term applies to any State of Minnesota agency or CPV member.
 - c. State. This term applies to all State of Minnesota agencies and CPV members.
2. **EFFECTIVE DATE.** Pursuant to Minnesota law this Participating Addendum shall be effective upon the date of final execution by the State
3. **CONTRACT TERM.** The Term of this Contract shall be for two (2) years with the option to renew up to (thirty-six) 36 months, upon written agreement of both parties.
4. **ANTITRUST.** The Contract Vendor hereby assigns to the State of Minnesota any and all claims for overcharges as to goods and/or services provided in connection with the Contract resulting from antitrust violations which arise under the antitrust laws of the United States and the antitrust laws of the State.
5. **INDEMNIFICATION AND HOLD HARMLESS.** The Contract Vendor shall indemnify, protect, save and hold harmless the State, its representatives and employees from any and all claims or causes of action, including all legal fees for personal injury or damage to real property or tangible personal property incurred by the State arising from the negligent or willful and wrongful acts or omissions of the Contract Vendor or its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contract Vendor may have for the State's failure to fulfill its obligations pursuant to the Contract. The Contract Vendor shall not be liable for damages that are the result of negligence or willful misconduct by the State, its representatives, subcontractors or employees.
6. **LAWS AND REGULATIONS.** Any and all services, articles or equipment offered and furnished shall comply fully with all State and federal laws and regulations, including Minn. Stat. § 181.59 and Minn. Stat. Ch. 363 prohibiting discrimination.
7. **GOVERNING LAW.** This Contract shall be construed in accordance with, and its performance governed by, the laws of the State of Minnesota. Except to the extent that the provisions of the Contract are clearly inconsistent therewith, the Contract shall be governed by the Uniform Commercial Code (UCC) as adopted by the State. To the extent the Contract entails delivery or performance of services, such services shall be deemed "goods" within the meaning of the UCC, except when to so deem such services as "goods" is unreasonable.
8. **JURISDICTION AND VENUE.** This Contract, its amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. USA. Venue for all legal proceedings arising out of the Contract, or breach thereof, shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota.

9. **HUMAN RIGHTS.** The Contract Vendor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of this Contract.
10. **PURCHASE ORDERS.** The State requires that there will be no minimum order requirements or charges to process an individual purchase order. The Contract number and the PO number must appear on all documents (e.g., invoices, packing slips, etc.).
11. **PURCHASING CARD.** The Contract Vendor will accept a purchasing card for order placement in addition to accepting a purchase order, without passing the processing fees for the purchasing card back to the State.
12. **PARTICIPATING ADDENDUM AMENDMENTS.** Except as provided herein, the Participating Addendum shall be modified only by written amendment duly executed by an authorized representative of the State and the Contract Vendor. No alteration or variation of the terms and conditions of the Participating Addendum shall be valid unless made in writing and signed by the parties as required by law. Every amendment shall specify the date on which its provisions shall be effective. An approved Participating Addendum amendment means one approved by the authorized signatories of the Contract Vendor as required by law.
13. **TERMINATION OF THE PARTICIPATING ADDENDUM.** The Participating Addendum may be canceled by the State or the Commissioner of Administration at any time, with or without cause, upon 30 days written notice to the Contract Vendor. In the event the Contract Vendor is in default, the Contract Vendor shall be afforded thirty days to correct such default. If such default persists, the contract is subject to immediate cancellation to the extent allowable by applicable law, upon the 30th day. In the event of such a cancellation, the Contract Vendor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted. The Participating Addendum may be canceled by the Contract Vendor upon 60 days written notice to the AMS.
14. **ADMINISTRATIVE PERSONNEL CHANGES.** After execution of this Participating Addendum the State must be notified of intended changes in the Contract Vendor's administrative personnel as soon as practicable.
15. **PUBLICITY.** Any publicity given to the program, publications or services provided resulting from the Contract, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contract Vendor, or its employees individually or jointly with others, or any subcontractors, shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Contract, prior to its approval by the Acquisition Management Specialist.

The Contract Vendor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Contract without the prior written consent of the AMS. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.



16. **NOTICES.** If one party is required to give notice to the other under the Contract, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. Either party must notify the other of a change in address for notification purchases. All notices to the State shall be addressed as follows:

Bernadette Kopischke, CPPB
Acquisition Management Specialist
50 Sherburne Avenue
112 Administration Bldg.
St. Paul, MN 55155
E-mail: bernie.kopischke@state.mn.us
Fax: 651.297.3996

17. **MINNESOTA REPORTING REQUIREMENTS AND ADMINISTRATIVE FEE.** On a quarterly basis, the Contract Vendor shall return to the Department of Administration, Materials Management Division, a fee of .25% (.0025, one-quarter of one percent) of the total sales during that quarter, to assist with the cost of administering the Contract. The administrative fee shall be remitted to the State within 30 days of the end of the quarter. The quarter periods are January 1 to March 31, April 1 to June 30, July 1 to September 30, and October 1 to December 31 of any given year. The Contract Vendor must provide a report detailing the total sales to State agencies and CPV members. The report must be submitted with the check on or before the required 30 days after the end of the quarter.
18. **PROFESSIONAL SERVICES.** For State agencies, Professional Services must be related to the purchase of equipment from this Contract and are limited to \$25,000 per project.
19. **ELECTRONIC FUNDS TRANSFER (EFT) PAYMENT METHOD AND STRUCTURE.** In accordance with Minn. Stat. § 16A.40 the Contract Vendor is required to provide their bank routing information to the Minnesota Department of Finance to enable payments to be made through EFT.
- TV