

SOUTH CAROLINA  
PARTICIPATING ADDENDUM  
WESTERN STATES CONTRACTING ALLIANCE  
XIOTECH (United States) Inc.  
MASTER PRICE AGREEMENT  
Number A63316  
SC CONTRACT NUMBER: 05-S6656-A13683

This Addendum is between XIOTECH Corporation ("Contractor") and all participating South Carolina public procurement units (as defined by S.C. Code Ann. § 11-35-4610(5), as amended) or governmental bodies (as defined by S.C. Code Ann. § 11-35-310(18), as amended).

1. **Scope:** The Information Technology Management Office, a unit of the South Carolina Budget and Control Board's Division of the Chief Information Officer, submits this Participating Addenda for all SC Participants.

2. **Changes:**

AGREEMENT

A. Definitions:

Unless otherwise stated, terms used herein shall have the definitions assigned by Master Price Agreement A63316

"ITMO" means the Information Technology Management Office established by South Carolina Code Section 11-35-820, as amended.

"SC Participant(s)" means all participating South Carolina public procurement units (as defined by S.C. Code Ann. § 11-35-4610(5), as amended) or governmental bodies (as defined by S.C. Code Ann. § 11-35-310(18), as amended).

This Addendum is a "Participating Addendum" as defined in the Master Price Agreement, forms a part of the Master Price Agreement, and supersedes the Master Price Agreement to the extent of any inconsistency. The terms and conditions of this Addendum apply only to the relationship between SC Participants and Contractor.

Pursuant to Section 11-35-4810, South Carolina public procurement units, both state and local (as defined by S.C. Code Ann. § 11-35-4610(5), as amended) are authorized to participate in cooperative purchasing.

Pursuant to Section 11-35-510 of the South Carolina Code of Laws, ITMO is authorized to act as the statutory procurement agent for every state governmental body (as defined by S.C. Code Ann. § 11-35-310(18), as amended). Consistent with its statutory authority, ITMO is acting solely in a representative capacity and on behalf of such state governmental bodies.

Participation by local public procurement units (as defined by S.C. Code Ann. § 11-35-4610(3), as amended) in the Master Price Agreement is optional. By submitting an order and receiving delivery of an item pursuant to the Master Price Agreement, a local public procurement unit manifests its intent to be and is bound by the Master Price Agreement, including this addendum, unless the local public procurement unit has entered into a separate Participating Addendum.

Each SC Participant's obligations and liabilities are independent of any other SC Participant's obligations and liabilities. SC Participants are not obligated for any order submitted by another SC Participant and do not incur any liability with regard to any other SC Participant. ITMO is acting solely on behalf of SC governmental bodies and bears no liability for any damages that any party may incur with regard to the Master Price Agreement.

South Carolina Prompt Payment Statute: The obligations of any SC Participant are governed by Section 11-35-45 of the South Carolina Code of Laws, if the participant is a "governmental body," as that term is defined in Section 11-35-310(18).

This Addendum, any order against the Master Price Agreement, and any dispute, claim, or controversy relating to the either shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina. To the extent issues are not mutually resolved, the parties may pursue all remedies available pursuant to the governing law. Contractor agrees that no act by a SC Participant shall constitute waiver of either the SC Participant's sovereign immunity or the SC Participant's immunity under the Eleventh Amendment of the United State's Constitution.

- B. Tax Exempt: In order to exempt the State from the obligation to withhold taxes from payments due, Contractor shall, upon request by the State, register as required by South Carolina Code Section 12-8-550, as amended, and submit the appropriate form (Nonresident Taxpayer Registration Affidavit – Income Tax Withholding) in accordance with its instructions.
- C. Return Goods: Contractors will provide the State a Return Material Authorization (RMA) Number for returned equipment which includes, but is not limited to, software and its associated documentation. The contractor will provide instructions to the State for the proper implementation of the RMA.
- D. Products and Services NOT Provided by this Participating Addendum: Authorized purchasers may purchase, and contractors may supply, "Services" only as defined herein. For the purposes of this agreement, "Services" includes only those Services directly related to the installation and configuration of the equipment and operating software to allow the equipment to function in accordance with the manufacturer's specifications and those services related to maintenance of the equipment either to fulfill the Contractor's warranty or any services related to the routine maintenance of the equipment or service. "Services" do not include Professional Services for custom application design, or development, or other professional consulting services unrelated to the installation and/or configuration of equipment and/or

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software authorized under the Addendum. A partial list of equipment and services not authorized by this agreement are: Application Software, Consulting Services, Design Services, IT Temporary Professional Services, World Wide Web Services, Internet Based Educational Training Services, Leasing other than provided through Ontario Investment, Inc. and Copiers.

Other items excluded from being purchased from this Participating Addendum are as follows:

Application Software: No Application Software will be allowed on the Participating Addendum. The State of South Carolina has a separate contract for Application Software.

- E. Item Substitution: No Substitutes will be allowed on Purchase Orders received from South Carolina procurement units without written permission from the issuing procurement unit.
- F. Reporting: All contractors will be required to process monthly usage reports electronically to the Information Technology Management Office (ITMO). The monthly reports shall be submitted by the last business day of the month for the previous month's actual sales. Monthly reports are required even if no activity has occurred. The monthly report shall include, but is not limited to, the following Data Elements:
- 1) South Carolina Contract Number: (Minimum Character length- 14 digits, 2 alpha, 10 numerical and 2 dashes. Example; 03-S5824-A1234)
  - 2) South Carolina Agency Code: (Minimum Character length- 7 digits, numerical. Example: 1188200)
  - 3) Agency Purchase Order Number: (Minimum Character length- 5 digits, numerical)
  - 4) Method of Payment: Purchase Order or South Carolina Purchasing Card "P-Card"
  - 5) Agency Purchase Order Date: (mm/dd/yy)
  - 6) Model Number or part Number of the Item(s) Procured on the referenced Purchase Order
  - 7) Quantity Amount: (Recommended character length- 13 digits, numerical with commas. 1,000,000,000)
  - 8) Purchase Order Unit Cost Amount: (Recommended character length- 13 digits, numerical with commas. 1,000,000,000)

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- 9) Invoice Amount: (Recommended character length- 15 digits, numerical with commas. 100,000,000,000)
- 10) Invoice Number: (Largest field from manufacturer "X")
- 11) Invoice Date: (mm/dd/yy)
- 12) RMA Amount: Return/Credit against a previous PO and invoice
- 13) RMA Date: (mm/dd/yy)
- 14) RMA Number: (mm/dd/yy)
- 15) Fulfillment Agent
- 16) Ship To and Bill To Address
- 17) Product Line
- 18) Product Family
- 19) Product Group

**Contractors may file usage reports electronically through the ITMO On-Line Vendor Usage Reporting System located at**

<http://www.cio.state.sc.us/itmo/main.htm>.

At the above the web site, please select **Online Contract Usage Reporting** and follow the instructions for registering. Help menus are available. If personal assistance is required please contact the buyer of the solicitation. If you have not registered as a Vendor, select "**New Vendor Registration**" and complete the registration process. If you are a registered vendor, then please select "**Change Vendor Profile.**" Vendors are required to keep their vendor information current. Vendors are reminded that having a State Vendor Number does not remove them from the requirement to register with the South Carolina Secretary of State and the South Carolina Department of Revenue.

- G. Contract History: The State of South Carolina has an auditing requirement for the retention of contract history. The retention for the contract history is three (3) years after the expiration date of the contract. Upon prior written request, the Contractor will make available to the State those records directly associated with Contractor's performance under the Addendum.
- H. Records Retention & Right to Audit: The State shall have the right to audit the books and records of the contractor as they pertain to this contract, both independent of, and pursuant to, S.C. Code Section 11-35-2220. Such books and records shall be maintained for a period of three (3) years from the date of final

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payment under the contract. The state may conduct, or have conducted, performance audits of the contractor. The State may conduct, or have conducted, audits of specific requirements of this bid as determined necessary by the State. Pertaining to all audits, contractor shall make available to the State access to its computer files containing the history of contract performance and all other documents related to the audit. Additionally, any software used by the contractor shall be made available for auditing purposes at no cost to the State. Notwithstanding anything to the contrary in the foregoing, Any audit will be subject to a confidentiality obligation and will take place upon not fewer than 20 days notice, during the Contractor's normal business hours, and in a manner that does not interfere unreasonably with the Contractor's operations.

- I. Administrative Fee: The Information Technology Management Office (ITMO) issues and maintains State term contracts for the benefit of governmental entities within the State of South Carolina. In order to maintain and enhance the quality and quantity of its State term contracts an administrative fee of one percent (1%) of the total actual sales will be assessed of each contractor. Total actual sales will be equal to gross sales less return goods and taxes as stated on the invoice. This includes all products, services and maintenance for the life of the contract.

The Administrative Fee will be remitted monthly in the form of a check to:

The Information Technology Management Office  
Jay Lopez  
4430 Broad River Road.  
Columbia, South Carolina 29210

Each remittance will include the period covered and the contract number. The monthly administrative fee shall be submitted by the last business day of the month for the previous month's actual sales.

- J. Change in Contractor Representatives: The Contractor will email the South Carolina point of contact within seven (7) days of any change of Participating Addendum contacts and contact information.
- K. Intentionally Deleted.
- L. Purchasing Card: South Carolina has entered into an agreement for a Visa Card to provide the State with purchasing card services. The purchasing card allows state agencies to make authorized purchases from a vendor without the requirement to issue a purchase order. Purchasing cards are issued to select employees authorized to purchase for the agency. Cardholders can make purchases directly from any vendor that accepts the purchasing card. State Agencies may request authorization from the Materials Management Officer, Mr. Voight Shealy, to use the purchasing card to pay for the purchase of goods and services from these state term contracts otherwise the purchasing card can only be used for goods approved by the State and the maximum purchase per transaction is \$2,500.

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- M. Indemnification: The State of South Carolina, its officers, agents, and employees shall be held harmless from liability from any claims, damages, and actions of any nature arising from the use of any materials furnished by the contractor, that is found by a court of competent jurisdiction to have infringed a third party's patent, copyright or proprietary data provided that such liability is not attributable to negligence on the part of the using agency or failure of the using agency to use the materials in the manner outlined by the contractor in descriptive literature or specifications submitted with the contractor's proposal.
- N. CISG and UCITA: The parties expressly agree that neither the UN Convention on the International Sale of Goods nor the Uniform Computer Information Transactions Act shall apply to this agreement.
- O. Protection of Human Health & the Environment: The State of South Carolina requires all contractual activities to be in compliance with local, state, and federal mandates concerning "protection of human health and the environment". Contractor agrees to comply with applicable law concerning Human Health and the Environment.
- P. Termination by State:  
Notice of Termination: In the event of any termination of the contract, the State shall give notice of such termination in writing to the contractor. Notice of termination will be sent by certified mail, return receipt requested.
- Q. Termination for Non-Appropriations: Funds for this contract are payable from state and/or federal appropriations. In the event no funds or insufficient funds are appropriated and budgeted in any fiscal year for payments due under this contract, the State shall immediately notify contractor or its assignee, of such occurrence, and this contract shall create no further obligation of the State as to such current or succeeding fiscal year, and shall be null and void, except as to the portions of payments herein agreed upon for funds which shall have been appropriated and budgeted. In such event, this contract shall terminate on the last day of the year for which appropriations were received without penalty or expense to the State of any kind whatsoever. After such termination of this contract, the State shall have no continuing obligation to make purchases under this contract. No right of action or damages shall accrue to the benefit of the contractor or its assignee as to that portion of this contract, which may so terminate.
- R. Termination for Convenience: This contract may be terminated for any reason by the Information Technology Management Office providing a 30 day advance notice, in writing, is given to the contractor. In the event that this contract is terminated or canceled upon request and for the convenience of the State without thirty (30) days advance written notice, then the State shall negotiate reasonable termination costs, if applicable.
- S. Termination for Cause: This Participating Addendum may be canceled and terminated by the State at any time within the Participating Addendum period whenever it is determined by the State that the contractor has materially breached

or otherwise materially failed to comply with its obligations hereunder. The State will not be liable for any termination costs; the thirty (30) days advance notice requirement is waived. However, the State agrees to provide the Contractor with a ten (10) day period to cure the breach or material failure prior to proceeding with the default termination.

- T. Termination by Contractor: Notices of termination of this contract by the contractor must be received in writing by the Information Technology Management Office at least ninety (90) days before the requested contract termination date.
- U. Insolvency: This Participating Addendum is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy.
- V. Delivery: All items shall be delivered as stated in a resulting Participating Addendum or purchase order. All items shall be FOB destination. The term FOB destination shall mean delivered and unloaded at the agency's designated receiving site with all charges for transportation and unloading paid by the contractor. These charges are to be included in the price of the product, not invoiced separately.
- W. Warranty: All equipment shall be warranted for a minimum of 1 (one) year or the standard warranty; whichever is greater, from the date of final acceptance, to include parts and labor.
- X. Manual Orders: For those procurement units that do not have or do not use electronic ordering, the contractor agrees to input/key orders received via mail or fax into their order processing system.

**Comment [m1]:** SC requires final acceptance because of installation of equipment and testing to be sure the product works before warranty begins.

- 3. **Lease Agreements:** Unless Xiotech agrees to use the State's Hardware Lease Manager, Ontario Leasing, as seen in Attachment A below, no leasing of any product will be authorized for the term of the WSCA Contract 05-S6656-.
- 4. **Primary Points of Contact:** The South Carolina primary point of contact for this Participating Addendum is:

Tammy Cash, CPPB  
Office of Information Technology  
4430 Broad River Road  
South Carolina, 29210  
Phone: (803) 239-8513  
Fax: (803) 896-0099  
City: Columbia  
E-mail: [tcash@cio.sc.gov](mailto:tcash@cio.sc.gov)

The primary Contractor contact for this participating addendum is as follows:  
**Name:** Mary A. Reuss

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**Contractor:** Xiotech Corporation  
**Address:** 6455 Flying Cloud Drive  
**Telephone:** 952/983-2435  
**Fax:** 952/983-6950  
**E-mail:** mary\_reuss@xiotech.com

5. **Price Agreement Number:** All purchase orders issued by procuring agencies within the jurisdiction of this Participating Addendum shall include the State of South Carolina contract number **05-S6656-13683. (assigned just prior to final documents being sent to vendor)**
  
6. **Income Tax Credit for State Contractors Having Subcontracts with MINORITY Firms:** References: SC §12-6-3350 -- Taxpayers, who utilize certified minority subcontractors, may take a tax credit equal to 4% of the payments they make to said subcontractors. The payments claimed must be based on work performed directly for a South Carolina state contract. The credit is capped at \$25,000 per year or the total tax liability; whichever is lesser. The taxpayer is eligible to claim the credit for 6 consecutive taxable years beginning with the taxable year in which the credit is first claimed. There is no carry forward of unused credits.

The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Taxpayers must maintain evidence of work performed for a State contract by the minority subcontractor.

Questions regarding the tax credit and how to file are to be referred to:

**SC Department of Revenue**

Research and Review  
Phone: (803) 898-5786  
FAX: (803) 898-5888

**Reference: SC §11-35-5010 - Definition for Minority Subcontractor**

**SC §11-35-5230 (B) - Regulations for Negotiating with State Minority Firms:**

The subcontractor must be certified as to the criteria of a "Minority Firm" by the Governor's Office of Small and Minority Business Assistance (OSMBA). Certificates are issued to subcontractors upon successful completion of the certification process.

Questions regarding subcontractor certification are to be referred to:

Governor's Office of Small and  
Minority Business Assistance  
Phone: (803) 734-0657  
FAX: (803) 734-2498

7. This Addendum and the Price Agreement 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

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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 shall prevail and govern in the case of any such inconsistent or additional terms.

8. Servicing Subcontractors:

XIOTECH's use of Servicing Subcontractors, if any, will vary State by State and will be identified in the individual Participating Addendum, or on the individual website for the Participating Entity.

**All orders are to be issued directly to:**

Name: Mary A. Reuss  
Contractor: Xiotech Corporation  
Address: 6455 Flying Cloud Drive  
Telephone: 952/983-2435  
Fax: 952/983-6950  
E-mail: mary\_reuss@xiotech.com

**And all payments are to be issued to:**

Name: Mary A. Reuss  
Contractor: Xiotech Corporation  
Address: 6455 Flying Cloud Drive  
Telephone: 952/983-2435  
Fax: 952/983-6950  
E-mail: mary\_reuss@xiotech.com

- 9: Consistent with Paragraph 37 of the Master Price Agreement, replacement parts may not, unless warranted as new, be refurbished unless the relevant purchase order expressly addresses the use of refurbished replacement parts.

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

FOR SOUTH CAROLINA GOVERNMENTAL BODIES:

The undersigned person warrants that he or she is authorized to execute the contract and legally bind the governmental bodies thereto.

		XIOTECH Corporation	
Signature:	<u>Jeff Patterson for</u>	Signature:	<u>Darin McCreavey</u>
Printed Name:	<u>Tammy Cash, CPPB</u>	Printed Name:	<u>DARIN M. CREAVEY</u>
Title:	<u>IT Procurement Manager</u>	Title:	<u>CFO</u>
Date:	<u>3/3/08</u>	Date:	<u>02.29.08</u>

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