

**WESTERN STATES CONTRACTING ALLIANCE
GATEWAY COMPANIES, INC.
MASTER PRICE AGREEMENT
91-00151**

This Agreement is made and entered into by Gateway Companies Inc., (“Contractor”) and the New Mexico State Purchasing Agent (“NMSPA”) on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance.

The parties agree as follows:

1. Definitions

“Agreement” means this Master Price Agreement and its exhibits.

“Agreement Administrator” refers to the individual appointed by the NMSPA to administer this agreement on behalf of the State of New Mexico, the participating WSCA members and other authorized purchasers.

“Documentation” refers to manuals, handbooks, and other publications and listed in the ESS or supplied with Products listed in the ESS or supplied in connection with Services.

“Equipment” refers to desktop and laptop computers, servers, workstations, printers, displays, peripherals (including digital cameras) and LAN and hardware components and spare parts listed in the Contractor’s ESS.

“Equipment and Services Schedule” (“ESS”) refers to a complete list, grouped by major Product categories, of the equipment, software, Services, media and documentation available for purchase by procuring agencies. The ESS contains an item number, item description and the current maximum price for each Product or service.

“Equipment and Service Schedule (ESS) prices” mean the prices offered to WSCA members.

“General purpose” includes the following classes of software: operating systems, report generators, spreadsheets, text and test processing, workgroup management, database, project management, messaging and electronic mail, graphics construction and presentation, publishing, data communications, statistical and/or analysis, imaging, compilers and interrupters, utilities, and programmer Productivity tools. Educational software designed for K-12 public schools and/or universities is included. Notwithstanding the foregoing, the definition in this paragraph shall not change or otherwise modify Contractor’s responsibilities under its Gateway TM Business Products Limited Warranty and Terms & Conditions Agreement (6/99), identified in Section 11 of this Agreement.

“Local-Area-Network” (“LAN”) refers to a high-speed communications system optimized for connecting information-processing equipment within a building or group of buildings. The communications devices that are required to transmit data between buildings via a public or private network are included.

“Participating Addendum” means a written statement of agreement signed by the appropriate participating entity authority and Contractor indicating the entities’ willingness to purchase and the Contractor’s willingness to provide Products and Services pursuant to and consistent with the terms and conditions of this Agreement. The terms specific to the Participating Addendum, including applicable jurisdiction, lease agreement, primary contact, price agreement number and authorized service providers shall affect only the purchases of procuring agencies within the jurisdiction of the participating entity signing the Participating Addendum. A Participating Addendum shall have no effect whatsoever on any other Participating Addendum or on the scope of this Agreement. One signed and one electronic copy of each Participating Addendum shall be filed with the Agreement Administrator within five (5) days after execution.

“Participating Entity” means a WSCA member state, a governmental entity within a WSCA member state or other authorized state or governmental entity that chooses to purchase Products and Services under the terms of this Agreement by executing a Participating Addendum.

“Price Agreement” means an indefinite quantity contract which allows the Contractor to furnish Products or Services to a Procuring Agency which issues a valid Order.

“Procuring Agency” means any New Mexico or participating state agency or local public body. State agency means department, commission, council, board, committee, institution, legislative body, agency, government corporation, or educational institution. Local public body means every political subdivision of the state and the agencies, instrumentalities and institutions thereof including all cities, counties, courts and public schools.

“Products” refers to equipment, software and documentation or any other item furnished under this Agreement but not to Services.

“Purchase Order” means any pre-paid transaction, such as a credit card purchase, Letter of Credit, electronic or paper document issued by the Participating entity which directs the Contractor to deliver Products or Services pursuant to this Agreement. This Agreement together with the 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 the Agreement shall not be added to or incorporated into this Agreement, 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 Agreement shall prevail and govern in the case of any such inconsistent or additional terms.

“Services” refers to maintenance services related to Products offered or supplied. All forms of application development services and other professional services are beyond the scope of this Agreement and may not be procured under the terms of this Agreement.

“Software” refers to general purpose software Products preloaded on equipment or listed separately in the ESS. The term “Software” applies to all parts of software, including new releases, updates, and modifications of software. For software, the term “purchase” means “license”.

“WSCA” means the Western States Contracting Alliance, a cooperative group contracting consortium for state government 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.

2. Scope of Work

The Contractor shall deliver computing system Products and Services to procuring agencies in accordance with the terms of this Agreement. This Agreement is a “price agreement.” Accordingly, the Contractor shall provide Products, Custom Integration Services (CIS), SpotShop, or Services. Orders may be issued to purchase the license for software or to purchase or lease Products listed on the Contractor’s ESS. A Procuring Agency may purchase any quantity of Product or Service listed in the Contractor’s ESS at the prices stated therein. For large orders, Contractor and Procuring Agency may negotiate quantity price discounts below the ESS price(s) for a given order. Contractor may offer authorized educational institutions educational price discounts that result in prices below the ESS listed prices.

3. Title Passage

Title to equipment shall pass to the Procuring Agency upon Acceptance as identified in Section 6A.

4. Quantity Guarantee

This Agreement is not an exclusive agreement. Procuring agencies may obtain computing system Products and Services from other sources during the Agreement term. The NMSPA and WSCA 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 will become a part of the Agreement as to the Products and Services listed on the Order only; no additional terms or conditions will be added to this Agreement as the result of acceptance of an Order. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. the terms and conditions of this Agreement;
- B. exhibits to this Agreement;
- C. executed Participating Addendum(s);
- D. the list of Products and Services contained in the Order;
- E. the request for proposals document; and
- F. Contractor's proposal including best and final offer.

6. Payment Provisions

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

A. Acceptance

A Procuring Agency shall determine whether all Products delivered to it meet the Contractor's published specifications. No payment shall be made for any Products until the Products have been accepted in writing by the Procuring Agency. Unless otherwise agreed upon between the Procuring Agency and the Contractor, within fifteen (15) days from the date of the invoice, the Procuring Agency shall issue a written certification of complete or partial acceptance or rejection of the Products or Services.

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 the invoice date. After the thirtieth day from the invoice date, interest shall be paid on the unpaid balance due to the Contractor at the rate of one and one-half percent per month. The Procuring Agency shall make a good-faith effort to pay within thirty (30) days of the invoice date.

In the event an Order is shipped incomplete (partial), the Procuring Agency must pay for each shipment as invoiced by the Contractor unless the Procuring Agency has clearly specified "No Partial Shipments" on the 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 Procuring Agency is not exempt from state and local sales, use tax, gross receipts, local option taxes for the transaction, excise, value-added or similar taxes

the Contractor shall be reimbursed by the Procuring Agency to the extent of any tax liability assessed.

D. Invoices

Invoices shall be submitted to the Procuring Agency.

7. Agreement Term

The Agreement is effective September 3, 1999 through September 2, 2002 and may be mutually renewed for two (2) additional one-year terms unless terminated pursuant to the terms of this Agreement. In no event shall this Agreement remain in effect longer than five (5) years from the effective date.

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 Procuring Agency has the right to terminate a specific Purchase Order for convenience after it has been delivered. 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 which 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 Procuring Agency's Rights

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

D. The Contractor's Rights

In the event the Agreement expires or is terminated for any reason, a Procuring Agency shall pay the Contractor all amounts due for Products and Services ordered and accepted prior to the effective termination date or ordered before the effective termination 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 Procuring Agency 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 Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Procuring Agency shall provide sixty (60) days notice, if possible, of its intent to terminate for non-appropriation. Such termination shall relieve the Procuring Agency, 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. Contractor shall ship all Products F.O.B. Destination. Risk of loss or damage to the Products shall pass to the Procuring Agency upon delivery to the Procuring Agency. Contractor agrees to assist the Procuring Agency with the processing of claims for such loss or damage and to expedite the processing of claims for such loss or damage and to expedite replacement of lost or damaged Products. Shipping and handling charges shall be included in the Product price on the ESS.

B. Whenever a Procuring Agency does not accept any Product and returns it to the Contractor, all related documentation furnished by the Contractor shall be returned also. Contractor's standard warranties described in paragraph 11 shall control which party bears the risk of loss or damage and shipping costs in the event a Procuring Agency does not accept any Product and returns it to the Contractor.

Unless otherwise arranged between the Procuring Agency and Contractor, all shipments of Products shall be by Contractor's preferred carrier for delivery by third business day. Product will be shipped by the most efficient means possible using Contractor's preferred carrier which will meet the delivery requirements in most cases.

11. Warranties

- A. The Products are covered under the warranties in effect at the time the Products are delivered. The warranties listed below are contained in Exhibit A, which are in effect as of the date of this Agreement.

Gateway TM Business Products Limited Warranty and Terms & Conditions Agreement (6/99).

- B. The parties acknowledge and agree that the warranties described in Exhibit A may be modified by Contractor, from time to time, in Contractor's sole discretion.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

- A. The Contractor shall defend, at its own expense, the State of New Mexico, participating entities and its 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 Procuring Agency based upon the Contractor's trade secret infringement relating to any Product or service provided under this Agreement, the Contractor agrees to reimburse the State for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the State of New Mexico or participating 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 Product 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 Procuring Agency the right to continue using the Product or Service;
 2. replace or modify the Product or Service so that it becomes non-infringing; or
 3. accept the return of the Product or Service and refund an amount equal to the depreciated value of the returned Product 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 Product or Service modified by the Procuring Agency to the extent such modification is the cause of the claim.

13. Price Discounts

The Procuring Agencies shall pay the prices contained in the ESS. Contractor shall in good faith negotiate other pricing and/or pricing discounts as appropriate, applicable and consistent with Contractor's pricing policies and practices. Contractor agrees to maintain ESS Product prices in accordance with the percentage discounts off of Gateway's Commercial List prices filed with the Agreement Administrator. Prices set forth in the ESS are subject to change without prior notice. Gateway will honor the volume discounts on file with the NMSPA.

14. Equipment and Service Schedule

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

- A. The ESS prices for Products and Services will conform to the guaranteed prices discount levels.
- B. The Contractor may change the price of any Product or Service at any time, based upon list price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period.
- C. The Contractor may make Product model changes, add new Products, Product upgrades or Services to the ESS at any time and the pricing for the same shall incorporate, to the extent possible, similar or comparable price discount levels provided herein, as agreed by the parties.
- D. The Contractor agrees to delete obsolete and discontinued Products from the ESS on a timely basis.
- E. Major Product model changes shall be incorporated in the ESS as soon as possible after the announcement. In conjunction therewith or as soon as possible, the parties shall negotiate a price discount level for the new Product line as comparable as possible to the price discount level quoted herein for similar Products.
- F. The ESS shall be maintained by the Contractor on an Internet web site.

15. Product Substitutions

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 functionality at the same or lower price. Delivery order modifications will not be required. The invoice and/or packing slip will reflect the actual Product shipped NOT the Product ordered. To effect administrative savings, Procuring Agencies are instructed to make payments in accordance with this paragraph without requiring a delivery order modification. The following note will appear on the invoice when at point of order entry, the Contractor is knowledgeable of Product substitution(s).

"In accordance with the Product Substitutions paragraph in the Master Price Agreement, Gateway has substituted a Product on this order. The substitution is the same or better functionality at the same or lower price."

16. Technical Support

As provided in the warranty in Exhibit A, the Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Procuring Agency

personnel who wish to obtain competent technical assistance regarding the installation or operation of Products supplied by the Contractor.

17. Year 2000

The internal mechanisms for handling system time and date functionality in the Gateway-branded systems will not be affected by and will accommodate the rollover to the year 2000, and any date within the architecture range as detailed in the specifications for each Product offered on the ESS. Gateway-branded systems will work with and accommodate any compatible software which is itself Year 2000 compliant. However, Contractor is not responsible for any accessories, including software provided by third party suppliers, that improperly set, reset, or calculate dates. The Procuring Agency must satisfy itself that the software it chooses to use on Gateway-branded system is Year 2000 compliant.

18. Product Delivery

As of the effective date of the Agreement, average delivery times of the hardware system configurations proposed herein are currently running 10 to 30 business days after receipt of order. Add-on component delivery times are typically 15 business days after receipt of order. These delivery times are based on parts availability. Contractor may be contacted at the time of order placement for the most current lead-time. Contractor reserves the right to complete delivery within 45 days after receipt of order, pending parts availability.

19. Impracticality of Performance

In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement, except for payment, due to any Act of God, fire, casualty, flood, war, strike, lockout, epidemic, destruction of the production facilities, riot, insurrection, production material unavailability, or production personnel unavailability, or any other cause beyond the reasonable control of the party invoking this section, and if the party shall have used its reasonable efforts to mitigate its effects, the party shall give prompt written notice to the other party, its performance shall be excused, and the time for performance shall be extended for the period of delay or inability to perform due to such occurrences. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination.

20. 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 Procuring Agency and appropriate governmental authorities with the Procuring Agency's state. Any inspections or audits shall be performed upon reasonable notice to Contractor; at a reasonable time and location; and shall be coordinated through the Agreement Administrator who will schedule all inspections or audits with Contractor. Any and all costs and expenses of an inspection or audit shall be at the expense of the party performing the inspection or audit. The Procuring Agency shall have the right to audit billings either before or after payment. Payment under this Agreement shall not foreclose the right of the Procuring Agency to recover excessive or illegal payments.

21. 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, WSCA 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, WSCA, 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 State of New Mexico or participating entity as a result of this Agreement.

22. Use of Subcontractors

The Contractor may subcontract installation, training, warranty or maintenance Services. However, the Contractor shall remain solely responsible for the performance of this Agreement. All Procuring Agency payments for Products or Services shall be made directly to the Contractor. If subcontractors are to be used, the name of the authorized subcontractor(s) shall be identified in the applicable Participating Addendum(s).

23. Indemnification

The Contractor shall hold the state, participating entities and its agencies and employees harmless and shall indemnify the state, participating entities 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. The Contractor, its agents, officers, employees or subcontractors shall not be liable for damages that are the result of negligence of the state, participating entities and its agencies and employees.

To the extent permitted by State law, participating entities agree to be responsible for their own acts, errors or omissions pertaining to this Indemnification provision.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EVEN IF APPRISED OF THEM IN ADVANCE.

24. Amendments

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

25. 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.

26. 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.

27. 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.

28. Web Site Maintenance

Contractor agrees to maintain and support an Internet web site for access to the ESS, configuration assistance, Product descriptions, Product specifications and other aides 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.

29. 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.

30. Limitation of Liability

The Contractor's liability to a Procuring Agency for any cause whatsoever shall be limited to the purchase price paid to the Contractor for the Products and Services that are the subject the Procuring Agency'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 Procuring Agency hereunder, even if the Contractor has been advised of the possibility of such damages.

31. Applicable Law

This Agreement shall be governed by the laws of the State of New Mexico. The Procurement Code, Sections 13-1-28 through 13-1-199 NMSA 1978, imposes civil and misdemeanor criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities and kickbacks.

32. 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 State of New Mexico and the participating entities adequately.

33. Release

The Contractor, upon final payment of the amount due under this Agreement, releases the NMSPA, State of New Mexico 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 State of New Mexico 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.

34. 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 participating entity.

35. 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 performance of Services required under this Agreement.

36. Replacement Parts

Replacement parts may be new or serviceably used.

37. FCC Certification

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

38. Site Preparation

A Procuring Agency shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any equipment or service and shall bear the costs associated with the site preparation.

39. Assignment

Neither party shall 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 other party.

40. Agreement Administrator

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

- A. The administrator shall provide instructions concerning the contents of the Contractor's web site.
- B. The administrator will facilitate dispute resolution between the Contractor and procuring agencies. Unresolved disputes shall be presented to the NMSPA for resolution.
- C. The administrator shall promote the use of the Agreement by WSCA members and other participating entities.
- D. The administrator shall advise the NMSPA regarding the Contractor's performance under the terms and conditions of the Agreement.
- E. The administrator shall receive and approve quarterly price Agreement utilization reports and the administration fee payments for WSCA; and the administrator, not the Contractor, is responsible for furnishing entity-specific reports to Participants from these quarterly utilization reports..
- F. The administrator shall periodically verify that the Product prices in the ESS conform with the Contractor's volume price guarantees.

42. Survival

Certain paragraphs of this Agreement including but not limited to Patent, Copyright, Trademark, and Trade Secret Indemnification; Indemnification; and Limitation 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.

43. Lease Agreements

Contractor may lease equipment to procuring agencies in accordance with terms and conditions approved by the appropriate governing authority for the Procuring Agency's jurisdiction. Such approval shall be indicated in the Participating Addendum.

44. Succession

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

45. 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:

Gateway Companies, Inc.
610 Gateway Drive
North Sioux City, SD 57049
Attn: Kris Mogensen, Contract Administrator
Mailstop: R-30

Copy to:

Gateway, Inc.
General Counsel
4545 Towne Centre Court, Mailstop: SD-04
San Diego, CA 92121

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.

46. Administration Reporting and Fees

The Contractor agrees to provide periodic price Agreement utilization reports to the Agreement Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

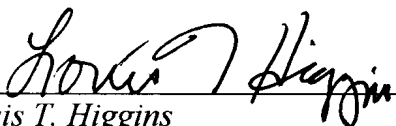
The periodic report shall include the gross sales for the period subtotaled by Procuring Agency name or identifying number, within the Procuring Agency's state name. The report shall be accompanied with a check payable to Western States Contracting Alliance for an amount equal to one-tenth of one percent (0.0010) of the gross sales for the period. The Agreement Administrator will provide the reports, as requested, to each Participating Entity

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 the price Agreement or termination of the price Agreement for cause.

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

Contractor: Gateway Companies, Inc.

By: 
Louis T. Higgins
Date: 9-21-99

By: 
Tim McCabe, Director, Gateway Companies, Inc
Date: September 15, 1999

**EXHIBIT A
WARRANTY**

**PLEASE READ THIS DOCUMENT CAREFULLY!
IT CONTAINS IMPORTANT INFORMATION
ABOUT YOUR RIGHTS AND OBLIGATIONS AS WELL AS
LIMITATIONS AND EXCLUSIONS THAT APPLY TO YOU**

**GATEWAY™ BUSINESS PRODUCTS
LIMITED WARRANTY AND TERMS & CONDITIONS
AGREEMENT**

GATEWAY COMPANIES, INC.
610 GATEWAY DRIVE
N. SIOUX CITY, SOUTH DAKOTA 57049

THIS AGREEMENT CONTAINS THE LIMITED WARRANTY AND TERMS AND CONDITIONS THAT APPLY TO GATEWAY GP-SERIES, E-SERIES, ALR SERVER, SOLO, GATEWAY PROFILE, AND DESTINATION LINES OF COMPUTERS AND SERVICES PURCHASED DIRECTLY FROM GATEWAY COMPANIES, INC. ("GATEWAY") OR ONE OF ITS AUTHORIZED RESELLERS ("RESELLER"). THE TERM "PRODUCT" MEANS GATEWAY-BRANDED HARDWARE DESCRIBED IN YOUR PURCHASE RECEIPT OR INVOICE. THE TERM "PRODUCT" DOES NOT INCLUDE SOFTWARE, NON-GATEWAY-BRANDED EXTERNAL HARDWARE PERIPHERALS SUCH AS JOYSTICKS, PRINTERS, SCANNERS, ETC., AND THEIR RELATED DOCUMENTATION (COLLECTIVELY "ACCESSORIES"). PLEASE BE CERTAIN TO READ THE INDIVIDUAL WARRANTIES FOR ACCESSORIES CONTAINED IN THE SHIPPING CARTONS. "SERVICES" MEANS THE SERVICES DESCRIBED IN SECTION 4 THAT YOU PURCHASED FROM GATEWAY, AS IDENTIFIED ON YOUR PURCHASE RECEIPT OR INVOICE. YOU AGREE THAT THIS AGREEMENT APPLIES TO YOUR PURCHASE OF THE PRODUCT, ACCESSORIES AND SERVICES. AFTER YOUR LIMITED MONEY BACK GUARANTEE EXPIRES, THE REMAINING PROVISIONS OF THIS AGREEMENT WILL CONTINUE TO APPLY.

1. GENERAL TERMS OF SALE

A. INSPECTION OF PRODUCT UPON RECEIPT. You must examine the Product and Accessories when you receive them. If any item is damaged or missing, you must notify Gateway at once. Gateway will not consider any claim for damaged or missing items more than thirty (30) days from the date of delivery.

B. SHIPMENT & TITLE. Gateway will arrange shipping of the Product and Accessories to your address. Title to the Product and Accessories passes to you upon delivery to the carrier and risk of loss passes to you upon delivery. The costs of shipping and handling will be shown on your purchase receipt or invoice. Gateway will inform you of estimated shipment dates, but it will not be responsible for delays in delivery due to events beyond its control, including shortage of materials, labor strikes, transportation failures, or acts of God.

C. PRICE & PAYMENT. Your total price for the Product, Accessories and Services will be stated on your purchase receipt or invoice. Prices and configurations advertised are subject to change without notice or obligation prior to acceptance of your order. Prices advertised do not include shipping and handling, or applicable sales taxes, and these will be added to the price you pay. Any existing or new taxes or fees charged by any governmental authority will be added to your purchase receipt or invoice.

D. FINANCING OPTIONS; NON-PAYMENT OR LATE PAYMENTS. If you make monthly payments through a Gateway-sponsored financing program, you are legally obligated to make the specified payment monthly. If you fail to make payment or make late payments, you may be charged interest on overdue amounts, and may be subject to other sanctions permitted by law. The total payments will be based on the Product, Accessories and Services you purchase and the financing package you select.

E. REMANUFACTURED PRODUCTS. Your Product and its components are new or equivalent to new in accordance with industry standards, unless you ordered a remanufactured Product as shown on your purchase receipt or invoice. Remanufactured Products are systems that contain components (or entire systems) that have been owned by other clients and returned to Gateway.

2. LIMITED MONEY BACK GUARANTEE. Gateway offers a limited money back guarantee for thirty (30) days on new Products and Accessories and five (5) days on remanufactured Products and Accessories. The limited money back guarantee is not available on Products and Accessories purchased from a Reseller. **TO RECEIVE A REFUND UNDER THE LIMITED MONEY BACK GUARANTEE, YOU MUST NOTIFY GATEWAY OF YOUR DESIRE TO RETURN THE PRODUCT AND ACCESSORIES WITHIN THIRTY (30) DAYS OR FIVE (5) DAYS, AS APPLICABLE, FROM THE DATE YOU RECEIVED YOUR PRODUCT. YOU MUST ALSO RETURN THE PRODUCT AND ALL ACCESSORIES TO GATEWAY'S DESIGNATED ADDRESS WITHIN SEVEN (7) DAYS AFTER YOU RECEIVE A RETURN MERCHANDISE AUTHORIZATION ("RMA") KIT AND OTHERWISE FOLLOW THE PROCEDURES SET FORTH IN THIS SECTION 2.**

A. Gateway will refund the original purchase price of the Product, Accessories, unperformed Services and applicable sales taxes. SHIPPING, HANDLING, INSURANCE FEES, AND FEES FOR SERVICES THAT HAVE BEEN PERFORMED (INCLUDING APPLICABLE SALES TAXES) THAT YOU PAID WHEN YOU BOUGHT YOUR PRODUCT AND ACCESSORIES ARE NOT REFUNDABLE, AND WILL BE DEDUCTED FROM YOUR REFUND.

B. Contact Gateway Client Support with your Client ID number, system serial number, and order number. We will provide you with an RMA kit, which will include an RMA number, authorize the return of your Product and/or Accessories, and provide other instructions and requirements. YOUR REFUND MAY BE DELAYED IF YOU DO NOT FOLLOW THE RMA PROCEDURES INCLUDED WITH THE RMA KIT.

C. Ship the Product and/or Accessories to the appropriate addresses printed on the labels contained in the RMA kit using the original boxes and packing material. Write the RMA number in large, clear characters on the outside of each box you ship. You must include a copy of your packing slip with the returned Product and Accessories to establish proof of purchase. You must also return all disks, cables, and manuals supplied with the Product and Accessories. YOU ARE RESPONSIBLE FOR THE PRODUCT AND ACCESSORIES UNTIL GATEWAY RECEIVES THEM, AND YOU ARE RESPONSIBLE FOR ALL SHIPPING, HANDLING, AND INSURANCE CHARGES. ANY OF THESE CHARGES PAID BY GATEWAY WILL BE DEDUCTED FROM YOUR REFUND.

D. The returned Product and Accessories must be in the same condition as you received them. You must return all pre-loaded software with the Product to obtain a refund for the Product, and you may only return pre-loaded software if you choose to return the Product. You may return other software only if the package has not been opened.

E. If you are expecting a refund, please allow a reasonable period of time for the Product and/or Accessories to arrive at Gateway. Gateway will inspect the Product and/or Accessories and, after they are accepted, process your refund within seven (7) business days. Gateway will notify you if your Product and/or Accessories are not accepted.

F. THE LIMITED MONEY BACK GUARANTEE IS NOT A WARRANTY. GATEWAY MAY CHANGE OR CANCEL IT AT ANY TIME BEFORE ACCEPTING YOUR ORDER.

To International Clients

The limited money back guarantee for international clients is the same as for clients within the United States. Please call Gateway Technical Support if you wish to exercise the limited money back guarantee. In all cases, Gateway will not be responsible for any shipping and handling charges to and from Gateway, or paying or refunding customs fees, taxes, or VAT that may be due.

3. PRODUCT LIMITED WARRANTY; DISCLAIMER OF WARRANTIES.

A. DISCLAIMER OF WARRANTIES. THIS LIMITED WARRANTY IS THE ONLY WARRANTY APPLICABLE TO THE PRODUCT. ANY IMPLIED WARRANTY IS LIMITED IN DURATION TO THE LIMITED WARRANTY PERIOD DESCRIBED IN SECTION 3(B) BELOW. NO ORAL OR WRITTEN INFORMATION (INCLUDING BUT NOT LIMITED TO THE LIMITED MONEY BACK GUARANTEE), OR ADVICE GIVEN BY GATEWAY, ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS LIMITED WARRANTY.

ANY AND ALL LIABILITY OF GATEWAY, GATEWAY 2000, INC. AND THEIR AFFILIATES UNDER THIS AGREEMENT, INCLUDING ANY FAILURE OF THE PRODUCT TO BE YEAR 2000 COMPLIANT, IS EXPRESSLY LIMITED TO THE PRICE YOU HAVE PAID FOR THE PRODUCT AND ACCESSORIES. YOUR SOLE REMEDY AGAINST THEM IN ANY DISPUTE UNDER THIS AGREEMENT SHALL BE TO SEEK RECOVERY OF THE AMOUNTS YOU HAVE PAID, PURSUANT TO SECTION 9, UPON THE PAYMENT OF WHICH THEY SHALL BE RELEASED FROM AND DISCHARGED OF ALL FURTHER OBLIGATIONS AND LIABILITY TO YOU. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL, INCIDENTAL OR INDIRECT DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR REVENUE, ECONOMIC LOSS, LOSS OF DATA, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE OR REPLACEMENT EQUIPMENT, FACILITIES OR SERVICES, DOWN TIME, YOUR TIME, THE CLAIMS OF THIRD PARTIES, AND INJURY TO PROPERTY, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING BUT NOT LIMITED TO, BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, AND EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS OR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS OR EXCLUSIONS MAY NOT APPLY TO YOU.

B. STATEMENT OF LIMITED WARRANTY. Gateway warrants to the original end-user that the Product (**excluding** Accessories) will be free from defects in materials and/or workmanship from the date of shipment for the period indicated on your purchase receipt or invoice, except for portable batteries, docking stations, and Gateway-branded big screen monitors (27 inches or larger) for which the warranty period is one year from the date of shipment unless otherwise specifically indicated on your purchase receipt or invoice. During the warranty period, Gateway will, at its option: (1) provide replacement parts necessary to repair the Product, (2) replace the Product with a comparable Product, or (3) refund the amount you have paid for the Product, **LESS DEPRECIATION**, upon its return. Any replacement parts or Products will be new or serviceably used, comparable in function and performance to the original part or Product, and warranted for the remainder of the original warranty or thirty (30) days from the date of shipment of the replacement parts or Products, whichever is longer. Purchasing additional parts or Products from Gateway does not extend this warranty period.

C. LABOR & ON-SITE SERVICE. Gateway will provide factory labor to resolve Product warranty issues from the date of shipment for the period indicated on your purchase receipt or invoice and will provide on-site warranty Service for these issues from the date of shipment for the period indicated on your purchase receipt or invoice. On-site warranty Service is not available for mice, monitors, docking stations, keyboards and similar external components of the Product.

D. THIS LIMITED WARRANTY IS NOT TRANSFERABLE.

E. GATEWAY DOES NOT WARRANT ANY ACCESSORIES. Please refer to the individual warranty provided by the manufacturer of each Accessory. Defective Accessories, including CDs, DVDs, diskettes or other software media, that are delivered with your Product will be replaced by Gateway or its suppliers for thirty (30) days from the date you received your Product. **YOU ARE RESPONSIBLE FOR THE ACCESSORIES UNTIL GATEWAY RECEIVES THEM, AND YOU ARE RESPONSIBLE FOR ALL SHIPPING, HANDLING, AND INSURANCE CHARGES.**

F. Gateway's fax/modems do not work in every country. Please contact Gateway's International Client Support about specific countries before you travel abroad.

G. YEAR 2000 READINESS DISCLOSURE. The Product accessed using a Gateway-supplied BIOS will accurately process date data (including, but not limited to calculating, comparing and sequencing dates and calculating leap year) before, during, and after the calendar year 2000 A.D. when used in accordance with its product documentation and provided all other products used in combination with the Product properly exchange data with it.

H. EXCLUSIONS. THIS LIMITED WARRANTY COVERS NORMAL USE. GATEWAY DOES NOT WARRANT AND IS NOT RESPONSIBLE FOR:

- 1. DAMAGE CAUSED BY FAILURE TO PROVIDE A SUITABLE INSTALLATION OR OPERATING ENVIRONMENT FOR THE PRODUCT AND/OR ACCESSORIES;**
- 2. DAMAGE DURING SHIPMENT, OTHER THAN ORIGINAL SHIPMENT TO THE CLIENT IF GATEWAY'S CARRIER IS USED;**
- 3. DAMAGE CAUSED BY IMPACT WITH OTHER OBJECTS, DROPPING, FALLS, SPILLED LIQUIDS, OR IMMERSION IN LIQUIDS;**
- 4. DAMAGE CAUSED BY A POWER SURGE OR A DISASTER SUCH AS FIRE, FLOOD, WIND, EARTHQUAKE, OR LIGHTNING;**
- 5. DAMAGE CAUSED BY UNAUTHORIZED ATTACHMENTS, ALTERATIONS, MODIFICATIONS OR FOREIGN OBJECTS;**
- 6. DAMAGE CAUSED BY ACCESSORIES;**
- 7. DAMAGE CAUSED BY THE USE OF THE PRODUCT OR ACCESSORIES FOR PURPOSES OTHER THAN THOSE FOR WHICH THEY ARE CUSTOMARILY USED;**
- 8. DAMAGE FROM IMPROPER INSTALLATION OR MAINTENANCE;**
- 9. DAMAGE CAUSED BY ANY OTHER ABUSE, MISUSE, MISHANDLING, OR MISAPPLICATION;**
- 10. CONSUMABLE PRODUCTS;**
- 11. ACCESSORIES OR OTHER PRODUCTS OR SERVICES OF COMPANIES OTHER THAN GATEWAY;**
- 12. DAMAGE CAUSED BY PROGRAMS, DATA, VIRUSES, OR OTHER FILES;**
- 13. DAMAGE RESULTING FROM YOUR FAILURE TO BACK-UP YOUR DATA OR OTHER FILES; OR**
- 14. YEAR 2000 PROBLEMS CAUSED BY NON-GATEWAY PRODUCTS, SOFTWARE, OR ACCESSORIES.**

I. OBTAINING WARRANTY SERVICE. To obtain service under this limited warranty, you must contact Gateway Technical Support. You may contact Gateway Technical Support via a variety of on-line, telephone, and other methods to diagnose hardware issues. Gateway will provide hardware diagnosis by one of these methods for no additional charge from the date of shipment for the period indicated on your purchase receipt or invoice. After that period has expired, Gateway may charge you a fee to diagnose hardware issues. If Gateway determines that your Product or one of its parts is defective, Gateway may authorize the replacement of a part or the Product. If labor or on-site Service is available for your Product or issue as described in Section 3.C, the technician may utilize these means to resolve your issue. You may be asked to take your Product to a Gateway authorized service center to obtain warranty service. **PLEASE NOTE, ON-SITE SERVICE AND PRODUCT/PART REPLACEMENT ARE AT GATEWAY'S SOLE DISCRETION AND ARE CONSIDERED OPTIONS OF LAST RESORT. IN ADDITION, ON-SITE AND FACTORY WARRANTY SERVICE ARE ONLY AVAILABLE FOR THE PERIODS SET FORTH IN SECTION 3.C.** Gateway Technical Support personnel will work to resolve issues professionally and quickly, however, you must reasonably assist Gateway in providing technical support services. Procedures for handling parts and replacements are outlined below. Procedures for handling on-site warranty Service are outlined in Section 4. Warranty service may be denied or limited if your account is not in good standing, including outstanding debt for replacement parts not returned to Gateway. If you choose to contact Gateway in writing, send your request for warranty service to the following address: Gateway Companies, Inc., Attn: Warranty Department, 610 Gateway Drive, North Sioux City, South Dakota 57049.

Whether you are obtaining replacement parts, having repairs, or returning the entire Product and Accessories for a replacement, the following procedures must be followed. **FAILURE TO FOLLOW THE PROCEDURES SET OUT IN THIS SECTION MAY RESULT IN DELAYS IN THE REPLACEMENT OF PARTS, REPAIR, OR REPLACEMENT OF YOUR PRODUCT, OR MAY RESULT IN ADDITIONAL CHARGES TO YOUR ACCOUNT. GATEWAY RESERVES THE RIGHT TO REFUSE TO ACCEPT PRODUCTS WHERE THESE PROCEDURES ARE NOT FOLLOWED.**

1. If your technician decides that you need a replacement part(s) or replacement Product, he or she may require a credit card authorization or other security to receive replacement part(s) or Product and may require you to pay the cost of shipping the replacement part(s) or Product to you and the cost of returning the defective part or Product to Gateway. The technician will then authorize shipment of the required part(s) or Product to you. An RMA Kit will be included with the replacement part(s) or system. **YOU ARE FINANCIALLY RESPONSIBLE FOR THE REPLACEMENT PART(S) OR PRODUCT. YOU MUST RETURN THE DEFECTIVE PART(S) OR PRODUCT UNLESS YOU ARE AUTHORIZED IN WRITING BY GATEWAY TO RETAIN OR DISPOSE OF THE PART(S) OR PRODUCT. IF YOU FAIL TO RETURN THE DEFECTIVE PART(S) OR PRODUCT WITHIN SEVEN (7) DAYS OF RECEIPT OF THE RMA KIT, YOU WILL BE RESPONSIBLE FOR THE ORIGINAL SALES VALUE OF THE REPLACEMENT PART(S) OR PRODUCT. YOU ARE RESPONSIBLE FOR PAYING ALL SHIPPING, HANDLING, AND INSURANCE CHARGES RELATED TO THE SHIPMENT OF PARTS OR PRODUCT TO AND FROM GATEWAY FOR REPAIR AND REPLACEMENT.**

2. If your technician decides that Gateway will repair part(s) or Product, he or she will provide you with instructions about how to return the part(s) or Product to Gateway for repair. Include a brief summary of the problem. Include your Client ID number, Product

serial number, and order number. List the name and telephone number of the person Gateway is to contact with any questions regarding the system and/or repair. Gateway will repair your Product as quickly as is reasonably possible.

3. Back up all files before returning the Product and/or Accessories for repair or replacement. Gateway recommends that you have an external back-up system at all times to reconstruct lost or altered files, data, or programs. GATEWAY IS NOT RESPONSIBLE FOR ANY LOSS OF YOUR DATA.

4. You acknowledge and agree that the diagnostic or repair Services of Gateway are provided without any obligation of confidentiality or non-disclosure on the part of Gateway, its employees or agents. You are advised to delete or otherwise remove from the Product, prior to delivering the Product to Gateway, any files or data you consider private, confidential or proprietary. You understand and agree that a failure to delete or otherwise remove such files or data shall constitute your waiver of any privacy, confidentiality or proprietary rights with respect to such files or data. If your Product contains software that enables Gateway technicians to diagnose and repair problems with your Product remotely, you hereby consent to such remote access to your Product by Gateway solely for such diagnostic and repair purposes.

5. Return any Product or Accessories in the original packing materials, or if these are not available, other suitable packing materials to prevent further damage. Use the labels contained in your RMA Kit, if applicable. Write the RMA number in large, clear characters on the outside of each box you ship. FAILURE TO USE THESE LABELS OR INCLUDE THE RMA NUMBER MAY RESULT IN DELAYS.

6. FOR YOUR PROTECTION, INSURE THE SHIPMENT FOR FULL REPLACEMENT VALUE. YOU ARE RESPONSIBLE FOR ANY DAMAGE TO THE PRODUCT OR ACCESSORIES WHICH OCCURS DURING SHIPMENT TO GATEWAY.

WITH REGARD TO REPAIRS, REPLACEMENT PARTS OR PRODUCT REPLACEMENTS, GATEWAY IS NOT RESPONSIBLE FOR DAMAGE CAUSED BY ANY OF THE CONDITIONS LISTED IN PARAGRAPH 3.H, "EXCLUSIONS."

To International Clients

The limited warranty is the same for clients who are located outside of the United States, except as stated in this paragraph. To obtain warranty service, you must contact Gateway in the same country from which the Product was shipped. On all orders for replacement parts or Product, you must pay for the replacement parts or Product and shipping and handling costs before Gateway will ship the replacement parts or Product. Gateway will refund the cost of the replacement parts or Product when you return the defective parts or Product to Gateway. Shipping and handling charges are not refundable. **GATEWAY IS ALSO NOT RESPONSIBLE FOR ANY CUSTOMS FEES, TAXES, OR VAT THAT MAY BE DUE. YOU ARE RESPONSIBLE FOR THESE CHARGES, EVEN IF YOU REFUSE DELIVERY OF THE PRODUCT. ON ALL ORDERS FOR SERVICE, YOU ARE RESPONSIBLE FOR SHIPPING, HANDLING, AND INSURANCE CHARGES TO AND FROM GATEWAY, CUSTOMS FEES, TAXES, OR VAT THAT MAY BE DUE.**

4. ON-SITE SERVICES. Gateway provides both on-site warranty Service and installation and other Services in accordance with the terms and conditions of this Agreement. If you purchased on-site warranty Services when you purchased your Product, they are available for the time period described in Section 3.C. Other Services provided by Gateway to you are optional and require the payment of a separate fee. You may purchase Services at the time you purchase your Product or by calling Gateway after your original purchase. Please contact Gateway Client Support for current prices and availability. Confirmation of your purchase of Services may be required before Gateway provides the Service under this Agreement. Services may be provided by independent contractors.

A. DESCRIPTION OF SERVICES.

1. On-Site Warranty Service. Gateway will install replacement parts in your Product as necessary to correct defects covered under the limited warranty applicable to the Product.

2. Installation Services. A Gateway authorized technician will install and verify the operation of your Product. This service does not include network installation.

3. Network Installation Services. A Gateway authorized technician will install and connect the network cards, applicable software and Products purchased from Gateway as part of a business network solution. You must ensure that proper network wiring is available and that your existing products meet the minimum requirements necessary for connection to your network. Please call Gateway Client Support for information on the minimum requirements for this service. **Please Note:** The Gateway technician will not perform troubleshooting on your network wiring. All troubleshooting of wiring requested by you shall be subject to a separate fee. If installation Services are required to be rescheduled due to network wiring issues, you may incur additional charges.

4. Gateway ALR Server Hardware Diagnostic Services. Under this Service, Gateway will dispatch an authorized technician to your place of business to diagnose issues covered under the limited warranty applicable to your Gateway ALR server Product. On-site diagnostics are not available for mice, keyboards, monitors, or non-Gateway branded hardware. To initiate on-site diagnostics, you must contact Gateway as described in Section 3.I and Gateway will attempt to diagnose and resolve your issue remotely. If Gateway determines your issue is covered under the limited warranty applicable to your Product and cannot be diagnosed over the phone, then within four (4) hours Gateway will dispatch an on-site technician to complete the diagnosis of your issue. Gateway will work diligently to resolve your issue, but it cannot guarantee that your issue will be resolved in any particular time. The on-site visit will be for issue diagnostics only. If the technician determines that a replacement part or Product is needed, it will be ordered and installed under Gateway's standard on-site service policies. You may purchase coverage under this Service for terms of up to three (3) years, running from the date of shipment of the Product. Because this Service is not available in some locations, Gateway may not be able to provide the Service if you move your server Product from the location to which it was originally shipped by Gateway.

5. Gateway ALR Server 4 Hour Response Service. Under this Service, Gateway will dispatch an authorized technician to your place of business to diagnose and repair issues covered under the limited warranty applicable to your Gateway ALR server Product. On-site repairs under this Service apply to components of the Product necessary to keep it up and running. On-site diagnostics and repairs are not available for mice, keyboards, monitors, or non-Gateway branded hardware. To initiate on-site diagnostics and repair, you must contact Gateway as described in Section 3.I and Gateway will attempt to diagnose and resolve your issue remotely. If Gateway determines your issue is covered under the limited warranty applicable to your Product and on-site repair service is necessary to restore your Product to an up-and-running condition, then within four (4) hours Gateway will dispatch an on-site technician to complete the diagnosis of your issue and install replacement parts as necessary to restore your Product to an up-and-running condition. Gateway will work diligently to resolve your issue, but it cannot guarantee that your issue will be resolved in any particular time. Cosmetic and similar repairs that do not materially affect the operation of your Product will be resolved under Gateway's standard on-

site service policies. You may purchase coverage under this Service for terms of up to three (3) years, running from the date of shipment of the Product. Because this Service is not available in some locations, Gateway may not be able to provide the Service if you move your server Product from the location to which it was originally shipped by Gateway. This service may not be available for up to 30-days after your Product is delivered to you, depending on your system configuration and parts stocking levels in your service area. During this start-up period, Gateway will use its best efforts to restore your Product to an up-and-running condition as soon as possible.

6. Data Migration Services. A Gateway technician will transfer data from an old personal computer to a new Product purchased from Gateway. The cost of this service is based on the amount of data that is transferred: up to 200 mb, 400 mb, and greater than 400 mb. In addition, you may be charged extra fees if you do not perform all of your responsibilities as set forth in this Agreement or if it necessary to reschedule service because you have not performed these responsibilities. Only data files of standard format (e.g. *.xls, *.doc, *.ppt file extensions) will be transferred, no individual file may exceed 95 mb, no application software, operating system software, or databases will be transferred, and the operating system of the old personal computer must be Microsoft 3.1 or a subsequent release. Please call Gateway Client Support for information on additional technical requirements for this Service Upgrade. Data migration services are available only in conjunction with system installation services. Data migration service is available in the continental United States. In addition to the other responsibilities set forth in this Agreement, you are responsible for completing the following tasks before the technician arrives:

- a. Creating a single folder (or directory) named “**Migrate**” and transferring to this folder all data that you want transferred from the from your old personal computer to your new Product;
 - b. Conducting an anti-virus scan on the data prior to the service appointment;
 - c. Ensuring all aspects of software security, including performing and reloading backups and licensing;
 - d. Converting data to new file formats (e.g. WordPerfect to Word);
 - e. Noting the size of “**Migrate**” folder or directory before and after migration service to ensure that all data was successfully transferred;
 - f. Ensuring that systems are prepared and functional for migration services;
 - g. Creating a backup copy of all data that will be transferred;
 - h. Ensuring that there are an adequate number of electrical outlets for old equipment and new equipment to be utilized at the same time;
 - i. Ensuring that old equipment is in working condition for data migration services (e.g. functional serial/parallel ports, system boots properly, etc.);
 - j. Obtaining “quick fixes” from OEMs that may be need to address any compatibility issues that occur post migration.
- 7. Deinstallation Services.** Gateway will disconnect the monitor, keyboard, mouse, and peripherals from your old personal computer, box the system using packing materials you supply (you may use the packing materials from your new Product, if sufficient), and transport the old system to a central location within the same building or floor on a dolly or utility cart that you supply. Deinstallation services are available only in conjunction with system installation services. Deinstallation services are available in the continental United States.

8. Disposition Management Services. Gateway will provide transportation and disposition of used PC products, described as monitors (up to 21 inches), keyboards, mice, printers, scanners, portable and desktop personal computers (“Eligible Assets”). Title to all Eligible Assets passes to Gateway when they are picked up from your location. Disposition Management Services are available in the continental United States in those areas located in a business zone (not available for residential locations). In addition to the other responsibilities set forth in this Agreement, you are responsible for completing the following tasks before the technician arrives:

- a. **Packaging the Eligible Assets in individual cartons not exceeding 30 inches in length, 27 inches in width and 42 inches in height (deinstallation services are available from Gateway for a separate fee, although you must tape al cartons closed);**
 - b. Completing the “*Inventory Worksheet for Disposition Management*” and submitting it to Gateway (assets not appearing on the inventory may be refused for shipment or subject to an additional fee);
 - c. Having all Eligible Assets, packaged and ready for shipping, assembled at one location on the scheduled pick-up day.
- 9. International Parts Exchange for Portable Computers.** From the date of shipment for the period stated in your purchase receipt or invoice, Gateway will provide you with access in selected international locations to replacement parts for warranty repairs to your portable computer Product. Available locations, hours of service, and parts availability change from time to time. To initiate service, you must contact Gateway Technical Support at 605-232-2885 for a diagnosis of your issue and follow other applicable procedures for obtaining warranty service. If Gateway determines that a replacement part or Product is needed, Gateway will direct you to the nearest service depot where you may go to obtain the replacement part or Product. You may elect to have the replacement part or Product shipped to you from the nearest service depot for an additional charge.

B. AVAILABILITY OF SERVICES. Gateway will provide the Services described in this Agreement for Products located in the United States, Puerto Rico, and Canada. Services are available during reasonable business hours. The location and hours of service may vary, and on-site Services may not be available in all locations. **PLEASE CONSULT WITH YOUR PRODUCT SALES REPRESENTATIVE BEFORE PURCHASING A SERVICE TO DETERMINE WHETHER SERVICE IS AVAILABLE AT YOUR LOCATION AND THE HOURS OF AVAILABILITY. GATEWAY RESERVES THE RIGHT TO REFUSE OR CANCEL SERVICE TO A CLIENT IF GATEWAY DETERMINES THAT YOU HAVE FAILED TO COMPLY WITH ANY OF YOUR RESPONSIBILITIES DESCRIBED IN SECTION 4.D BELOW.**

C. SCHEDULING ON-SITE SERVICE. Contact Gateway Technical Support to obtain on-site Service. On-site Service appointments will be scheduled and conducted as indicated below:

1. When Gateway determines that on-site service is necessary, a Gateway authorized technician will contact you and, using the estimated delivery time for the part or Product to be installed, the Gateway technician will schedule an Estimated Time of Arrival (“ETA”).
2. On the day of the scheduled service appointment, the technician will contact you to verify that the part or Product to be installed has arrived at your location. If the part or Product has not yet arrived, you must inform the technician and schedule a new appointment.
3. After the technician completes the on-site Service and reviews the repairs with you, you must pack up the non-functioning part or Product and return it to Gateway as described in Section 4.I, “Obtaining Warranty Service”.

D. CLIENT RESPONSIBILITIES. For all on-site Services described in this Agreement, you are responsible for the following obligations. You acknowledge and agree that Gateway's provision of on-site Services is contingent on your full satisfaction of these obligations. Your responsibilities include:

1. Ensuring that the technician is not exposed to unsafe, unhealthy, abusive, violent or illegal activities, environment or conduct;
2. Ensuring that the Product to be installed or serviced is present at the actual service or installation location;
3. Providing the Gateway technician with full access to the location where the installation or on-site Service will be performed;
4. Ensuring the installation or service area is free from loose plastic, papers and styrofoam cups, any of which could cause static charges;
5. Providing a suitable installation and operating location for the Product, which location, at a minimum, is designed to (a) support the size and weight of the Product; (b) provide sufficient space, electrical power, and, if applicable, network cable for the Product, (c) contain the appropriate number and types of electrical outlets, analog phone jacks, and, if applicable, network cables, within reach of the Product, and (d) avoid the possibility of damage caused by impact with other objects, falls, spilled liquids or immersion in liquids, or misuse (a list of the specific requirements for each Product is available from Gateway Technical Support);
6. Ensuring that the Product to be serviced or installed is located in a environment that poses no potential health or safety hazard to the Gateway technician;
7. Backing up proprietary and confidential information and maintaining a procedure external to the hardware products for reconstruction of lost or altered files, data, or programs (**GATEWAY SHALL NOT BE RESPONSIBLE FOR LOSS OF ANY CLIENT DATA**);
8. Removing any third-party, non-Gateway products prior to the arrival of the Gateway authorized technician;
9. Providing the Gateway technician with operating system software and applicable drivers supporting Gateway hardware (on diskette or CD) used during normal operation;
10. Correctly packaging and returning non-functioning parts, Products or Accessories to Gateway;
11. **HAVING A REPRESENTATIVE 18 YEARS OF AGE OR OLDER PRESENT WHEN THE GATEWAY AUTHORIZED TECHNICIAN IS PROVIDING ON-SITE SERVICE**; and
12. Any other obligations reasonably required by Gateway Technical Support or the Gateway authorized technician in order to provide the Services pursuant to this Agreement.

In addition, to reduce the risk of electrical damage to your system caused by power fluctuations, Gateway encourages the use of an uninterrupted power supply, which can be purchased from Gateway.

E. SERVICE WARRANTY; DISCLAIMER OF WARRANTIES. Gateway warrants only that the Services will be performed in a professional and workmanlike manner. **ANY IMPLIED WARRANTIES ARE LIMITED TO THE TERM OF THIS AGREEMENT. NO INFORMATION OR ADVICE (WRITTEN OR ORAL) PROVIDED TO YOU BY GATEWAY OR ITS CONTRACTORS, WILL CREATE A WARRANTY BY GATEWAY OR INCREASE THE SCOPE OF THIS AGREEMENT. THIS AGREEMENT GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE. SOME STATES DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU.**

ANY LIABILITY OF GATEWAY, GATEWAY 2000, INC. AND THEIR AFFILIATES AND SUPPLIERS FOR SERVICES PROVIDED UNDER THIS AGREEMENT IS EXPRESSLY LIMITED TO THE FEES YOU HAVE PAID FOR THE SERVICE GIVING RISE TO THE CLAIM. YOUR SOLE REMEDY AGAINST THEM IN ANY DISPUTE UNDER THIS AGREEMENT SHALL BE TO SEEK RECOVERY OF THE AMOUNTS YOU PAID, UPON THE PAYMENT OF WHICH THEY SHALL BE RELEASED FROM AND DISCHARGED OF ALL FURTHER OBLIGATIONS AND LIABILITY TO YOU. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY DIRECT, INDIRECT, SPECIAL, EXEMPLARY, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR REVENUE, ECONOMIC LOSS, LOSS OF DATA, LOSS OF USE OF THE PRODUCT OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE OR REPLACEMENT EQUIPMENT, FACILITIES OR SERVICES, DOWN TIME, YOUR TIME, THE CLAIMS OF THIRD PARTIES, AND INJURY TO PROPERTY, REGARDLESS OF THE NATURE OF THE CLAIM, INCLUDING BUT NOT LIMITED TO, BREACH OF WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR STRICT LIABILITY, AND EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

5. TECHNICAL SUPPORT. Gateway provides a range of basic technical support options for the Product via a variety of on-line, telephone, and other methods. Using one of these methods, Gateway will help you reinstall the operating system and factory-installed software on your Product and restore it to the original factory configuration at no additional charge from the date of shipment for the period indicated on your purchase receipt or invoice. In addition, you will receive support (via on-line, telephone or other methods) for thirty (30) days from the date of delivery of your Product for any network operating system ("NOS") delivered to you by Gateway for use with a Product. Gateway will assist you with the (i) installation of the NOS software on your Product; (ii) configuration of the NOS software so that it works with the networked Gateway computers you have purchased; and (iii) setup of the NOS software so that it is fully integrated with the third party Accessories you have purchased from Gateway. Gateway also will use commercially reasonable efforts to assist you during this period with technical troubleshooting with issues associated with the NOS software, and assistance with NOS error messages. Gateway technical support does not include any other support for the network environment in which any Product or Accessory may be installed, except as otherwise provided in a separate agreement between you and Gateway.

Many of these technical support options are available to you for a variety of other issues without charge. Gateway will inform you before it provides you with technical support for which a fee will be charged. Gateway may change the means through which it provides technical support at any time. Some current support methods are listed below. It is likely that many of your questions will be answered by the documentation shipped with, and information loaded on, the Product. **GATEWAY DOES NOT GUARANTEE ISSUE OR ERROR RESOLUTION FOR ALL PROBLEMS YOU EXPERIENCE WITH A NOS.**

GATEWAY TECHNICAL SUPPORT DOES NOT INCLUDE ANY OF THE FOLLOWING, EXCEPT AS OTHERWISE PROVIDED IN A SEPARATE AGREEMENT BETWEEN THE CLIENT AND EITHER GATEWAY OR A THIRD PARTY SERVICE PROVIDER DESIGNATED BY GATEWAY:

1. **FREE SOFTWARE OR NOS TUTORING.** Software tutoring is available for an additional fee. Please call for availability and prices.
2. **NETWORK HARDWARE INSTALLATION.**
3. **NETWORK CONFIGURATION OR INTEGRATION.**
4. **NOS SUPPORT ON THIRD PARTY HARDWARE.**
5. **ON-SITE SUPPORT FOR NOS SOFTWARE DELIVERED TO YOU BY GATEWAY.**
6. **SUPPORT FOR ANY APPLICATION SOFTWARE.**
7. **SUPPORT FOR ANY ACCESSORIES (INCLUDING SOFTWARE OR NOS) OR OTHER PRODUCTS PURCHASED FROM THIRD PARTY VENDORS.**

GATEWAY DOES NOT PROVIDE FREE SOFTWARE TUTORING OR CUSTOMIZATION, OR SUPPORT FOR ANY OTHER ACCESSORIES, INCLUDING SOFTWARE, OR ANY PRODUCTS PURCHASED FROM THIRD PARTY VENDORS. GATEWAY MAY PROVIDE FEE-BASED SUPPORT FOR THESE OR ANY OTHER ISSUES FALLING OUTSIDE THE SCOPE OF BASIC TECHNICAL SUPPORT. YOU WILL BE NOTIFIED OF ANY APPLICABLE FEE BEFORE GATEWAY TECHNICAL SUPPORT BEGINS RESOLUTION OF YOUR ISSUE.

A. PRODUCT MANUALS. A number of manuals and other publications accompanied your Product and Accessories. In addition, there are a number of help files loaded on your Product. We recommend that you carefully review these materials.

B. GATEWAY INTERNET SITES. We also recommend that before calling technical support, you go to Gateway's sites on the Internet. It is likely that you can find answers to most, or all, of your questions there.

<http://www.gateway.com>
<http://www.gateway.net>

You can find information regarding Frequently Asked Questions (FAQs), technical documentation and updated driver files. **GATEWAY DOES NOT SUPPORT DRIVERS AND PATCHES OBTAINED FROM NON-GATEWAY SITES.**

C. ON-LINE SERVICES. You can also obtain answers to your technical support questions through the on-line services listed below. These services contain public forums, downloadable files and e-mail support. These services are available at the addresses below.

<u>Service</u>	<u>Address</u>
Internet E-mail Options"	http://www.gateway.com/support and click on "Contact
America Online	keyword gateway

D. GATEWAY.YOUR.WAY: 888-888-0520. The download service provides you with access to software patches, drivers and upgrades. You can access gateway.your.way 24 hours a day, except during maintenance periods.

E. AUTOMATED TROUBLESHOOTING SYSTEM (ATS): 800-846-2118. The ATS is accessible by telephone 24 hours a day, 7 days a week, except during maintenance periods. The ATS can be used for common troubleshooting of Product components.

F. FAXBACK SERVICE (MENU DRIVEN; WE FAX INFORMATION BACK TO YOU!): 800-846-4526.

G. TELEPHONE NUMBERS. If you cannot find answers online, you can call technical support. Gateway can help you beyond the period or with issues other than those described above, but you may be required to pay for the technical support. Call volume can vary dramatically and affect your ability to reach Gateway technical support and/or the time you may be required to wait to speak to a technician.

1. **Client Relations: 800-846-2000** The Gateway Client Relations department can assist you with non-technical questions. This is the number to call to change your address or to inquire about orders, bills, and invoices.
2. If you need support on a computer (desktop, portable, Destination, or server product) used in a **Small Business or home office (99 or fewer employees)**, call **877-485-1460**.
3. If you need support on a computer (desktop, portable, Destination, or server product) used in a **Medium sized Business (100-500 employees)**, call **877-485-1464**.
4. If you need support on a computer (desktop, portable, Destination, or server product) used in a **Large Business or Corporation (more than 500 employees)**, call **877-621-1192**.
5. If you need support on a computer (desktop, portable, Destination, or server product) used in a **Federal Agency**, call **877-621-1193**.
6. If you need support on a computer (desktop, portable, Destination, or server product) used in a **State or Local Government Agency or Educational Institution**, call **877-621-1194**.
7. **FEE-BASED TECHNICAL AND TUTORIAL SUPPORT: 800-229-1103 (charge per incident); 900-555-4695 (charge per minute).** Call one of these numbers if you have issues that fall outside the scope of the technical support package you purchased with your Product.
8. **INTERNATIONAL TECHNICAL SUPPORT: 605-232-2191.**
9. **TECHNICAL TELECOMMUNICATIONS DEVICE FOR THE DEAF (TDD): 800-846-1778.**

6. TRADEMARKS. Gateway 2000, Inc. is the sole and exclusive owner of the name "Gateway" and any and all Gateway trademarks, trade names, trade logos and trade dress appearing on, attached to or described in the Products, and you acquire no rights to these trademarks.

7. SOFTWARE & HARDWARE. You agree to comply with the terms and conditions of any applicable end-user license agreements, and in all cases where software programs have been pre-loaded on the Product, you agree that by turning on the Product, you accept the terms and conditions of the end-user license agreements. Many software and hardware components of the Product may vary in performance, functionality, and compatibility from retail (off-the-shelf) versions. Gateway may use various suppliers of components for Products.

8. GOVERNING LAW. This Agreement is governed by the laws of the State of South Dakota, without giving effect to conflicts of law rules.

9. DISPUTE RESOLUTION. Any dispute, controversy, or claim against Gateway, Gateway 2000, Inc. or its affiliates arising out of or relating to this Agreement, its interpretation, or the breach, termination or validity thereof, or any related purchase shall be resolved exclusively

and finally by arbitration administered by the American Arbitration Association (AAA) under its rules (www.adr.org). You may file for arbitration at any AAA location in the United States upon the payment of \$100 of any applicable filing fee. The arbitration will be conducted before a single arbitrator, and will be limited solely to the dispute or controversy between you and Gateway. The arbitration shall be held in any mutually agreed upon location in person, by telephone, or online. Any decision rendered in such arbitration proceedings will be final and binding on each of the parties, and judgment may be entered thereon in a court of competent jurisdiction. The arbitrator shall not award either party special, exemplary, consequential, punitive, incidental or indirect damages, or attorneys' fees and each party irrevocably waives any such right to recover such damages. The parties will share the costs of the arbitration, (including the arbitrator's fees, if any) in the proportion that the final award bears to the amount of the initial claim.

10. COMPLIANCE WITH LAWS AND REGULATIONS. You must comply with all applicable export laws and regulations of the United States and other applicable countries if you export the Product outside the country.

11. SEVERABILITY. If any provision contained in this Agreement is or becomes invalid, illegal, or unenforceable in whole or in part, such invalidity, illegality, or unenforceability shall not affect the remaining provisions and portions of this Agreement.

12. GENERAL. You may not assign this Agreement without Gateway's prior written consent. Gateway 2000, Inc. and its affiliates are intended beneficiaries of this Agreement. In case of any inconsistency between this Agreement and any other agreement included with or relating to your Product, this Agreement shall take precedence.

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AMENDMENT #01

WESTERN STATES CONTRACTING ALLIANCE
GATEWAY COMPANIES, INC.
MASTER PRICE AGREEMENT #91-00151

This bilateral Amendment #01 is entered into by Gateway Companies, Inc. (“Contractor”) and the New Mexico State Purchasing Agent (“NMSPA”) on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers. This Amendment #01 to the Master Price Agreement (the “Agreement”) is effective on date signed by NMSPA (“Effective Date”), and is issued to modify the Agreement as enumerated in the following:

1. Paragraph 1, Services is amended to read as follows: "Services" refers to maintenance, **installation, training or technical support** services related to the products offered or supplied. **Professional services directly related to the implementation or use of the products offered or supplied are included, up to the dollar amount allowed by each State that has signed a Participating Addendum, at the prices set forth in the Contractor's ESS.** All other forms of application development services or other professional services are beyond the scope of this agreement and may not be procured under the terms of this Agreement.

2. **This revised definition shall not apply to orders placed in the State of Colorado. The definition of "services" for Colorado orders shall be governed by the original contract (including priced services in the original proposal) until a clarified "services" definition and pricing is added via a participating addendum with the Colorado State Purchasing Office.**

IN WITNESS WHEREOF, the Parties have caused this Amendment #01 to be signed by their duly authorized representatives, in two (2) original counterparts, on the date(s) indicated below.

STATE OF NEW MEXICO

CONTRACTOR:
Gateway Companies, Inc.

By: _____

By:

Name: Louis T. Higgins
State Purchasing Agent

Name: Kimberly A. Hepburn
Title: Contracts Manager

Date: _____

Date: _____

AMENDMENT #02

WESTERN STATES CONTRACTING ALLIANCE
GATEWAY COMPANIES, INC.

MASTER PRICE AGREEMENT #91-00151

This bilateral Amendment #02 is entered into by Gateway Companies, Inc. (“Contractor”) and the New Mexico State Purchasing Agent (“NMSPA”) on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers. This Amendment #02 to the Master Price Agreement (the “Agreement”) is effective on date signed by NMSPA (“Effective Date”), and is issued to modify the Agreement as enumerated in the following:

Paragraph 7, Agreement Term, is amended to read as follows: The agreement is effective September 3, 1999 through September 2, 2003 with one (1) one-year optional renewal. In no event shall this agreement remain in effect longer than five (5) years from the effective date.

Paragraph 46, Administration Reporting and Fees, is amended to read as follows:

The Contractor agrees to provide periodic price Agreement utilization reports to the Agreement Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

The periodic report shall include the gross sales for the period subtotaled by Procuring Agency name or identifying number, within the Procuring Agency's state name. The report shall be accompanied with a check payable to Western States Contracting Alliance for an amount equal to one-half of one-tenth of one percent (0.0005) of the gross sales for the periods from October 1, 2001 through September 30, 2002. The Agreement Administrator will provide the reports, as requested, to each Participating Entity

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 the price Agreement or termination of the price Agreement for cause.

IN WITNESS WHEREOF, the Parties have caused this Amendment #02 to be signed by their duly authorized representatives, in two (2) original counterparts, on the date(s) indicated below.

State of New Mexico

Gateway Companies, Inc.

By: _____

By:

Name: Louis T. Higgins
State Purchasing Agent

Name: _____
Title: _____

Date: _____

Date: _____

AMENDMENT #03

WESTERN STATES CONTRACTING ALLIANCE
GATEWAY COMPANIES, INC.
MASTER PRICE AGREEMENT #91-00151

This bilateral Amendment #03 is entered into by Gateway Companies, Inc. (“Contractor”) and the New Mexico State Purchasing Agent (“NMSPA”) on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers. This Amendment #02 to the Master Price Agreement (the “Agreement”) is effective on date signed by NMSPA (“Effective Date”), and is issued to modify the Agreement as enumerated in the following:

Paragraph 7, Agreement Term, is amended to read as follows: The agreement is effective September 3, 1999 through September 2, 2004. In no event shall this agreement remain in effect longer than five (5) years from the effective date.

Paragraph 45, Notification, is amended to read as follows:

Copy to:
Gateway Companies, Inc.
General Counsel, MD PWY 21
14303 Gateway Place
Poway, CA 92064

Paragraph 46, Administration Reporting and Fees, is amended to read as follows:

The Contractor agrees to provide periodic price Agreement utilization reports to the Agreement Administrator in accordance with the following schedule:

<u>Period End</u>	<u>Report Due</u>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

The periodic report shall include the gross sales for the period subtotaled by Procuring Agency name or identifying number, within the Procuring Agency's state name. The report shall be accompanied with a check payable to Western States Contracting Alliance for an amount equal to one-half of one-tenth of one percent (0.0005) of the gross sales for the periods from October 1, 2002 through September 2, 2004. The Agreement Administrator will provide the reports, as requested, to each Participating Entity

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 the price Agreement or termination of the price Agreement for cause.

IN WITNESS WHEREOF, the Parties have caused this Amendment #03 to be signed by their duly authorized representatives, in two (2) original counterparts, on the date(s) indicated below.

State of New Mexico

Gateway Companies, Inc.

By: _____

By:

Name: _____

State Purchasing Agent

Title: _____

Date: _____

Date: _____

AMENDMENT #04

WESTERN STATES CONTRACTING ALLIANCE
GATEWAY COMPANIES, INC.
MASTER PRICE AGREEMENT #91-00151

This bilateral Amendment #04 is entered into by Gateway Companies, Inc. (“Contractor”) and the New Mexico State Purchasing Agent (“NMSPA”) on behalf of the State of New Mexico and the participating members of the Western States Contracting Alliance and other authorized purchasers. This Amendment #03 to the Master Price Agreement (the “Agreement”) is effective on date signed by NMSPA (“Effective Date”), and is issued to modify the Agreement as enumerated in the following:

Section 8. Pricing Level and Guarantee of Gateway’s Response to RFP 90-00151 is hereby modified in accordance with the Discount Obligation (Attachment 1) of this Amendment.

IN WITNESS WHEREOF, the Parties have caused this Amendment #04 to be signed by their duly authorized representatives, in two (2) original counterparts, on the date(s) indicated below.

State of New Mexico

Gateway Companies, Inc.

By: _____

By:

Name: Louis T. Higgins
State Purchasing Agent

Name: Sara DenBeste
Title: Senior Manager - Contracts

Date: _____

Date: _____

AMENDMENT #04

DISCOUNT OBLIGATION

WESTERN STATES CONTRACTING ALLIANCE
GATEWAY COMPANIES, INC.
MASTER PRICE AGREEMENT #91-00151

Gateway will provide a sales volume price discount. When the Cumulative Inception-to-Date Sales Volume (“ITD SV”) for all WSCA Participating Entities of Gateway reaches the thresholds shown below, Gateway will apply the greater discount listed to all prospective Orders placed by WSCA Participating Entities for that Product Series.

ITD SV will be calculated within thirty (30) days after the end of each quarter. The increased discount(s) will be applied to Orders issued on the first of the month of the following quarter. The increased discounts are not retroactive. The new volume price discounts will be permanent thereafter and will not be based on attaining the Sales Volume (“SV”) on a yearly basis.

Product Series	*Discount Obligation	Volume Sales of \$500 Million Discount Obligation	Volume Sales of \$750 Million Discount Obligation
E-Series	9%	10%	11%
300 Series	0%	0%	0%
500/700 Series	3%	4%	5%
Portables (Solos)			

S1xxx Series	0%	0%	0%
S400 Series	0%	0%	0%
S2xx, S450, and S6xx Series	6%	6.25%	6.5%
Servers			
9xx "C" Series	9%	10%	11%
Profiles	9%	10%	11%
Training	9%	9%	9%
Add-ons	3%	4%	5%
Accessory Store Items	3%	3%	3%

* Gateway is providing a firm-fixed discount off of our Commercial Products and Price List ("List"). Shipping charges are applied to the discounted price.

Gateway reserves the right to adjust the above discounts given to any particular Participating Entity based on the administrative fee that may be charged to Gateway by such Participating Entity.

As a point of clarification, discounts do not apply to: custom configurations, special promotions, limited time offers, software bundles, extended warranties or services, nor to taxes, transportation, special packaging, storage, insurance or other expenses that are your responsibility under this Agreement.



WSCA/NASPO Contract Administration

112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529
<http://www.mmd.admin.state.mn.us>

ASSIGNMENT AGREEMENT

This Assignment Agreement is by and among the State of Minnesota, acting through its commissioner of Administration ("Assigned Lead State"), the State of New Mexico, acting through its secretary of General Services ("Original Lead State"), and (Gateway Companies, Inc) ("Contractor").

WHEREAS, the Original Lead State has an agreement with the Contractor, Contract No. (SPD #91-000-00-00151), effective (September 3, 1999), through (September 2, 2004), to provide direct-from-manufacturer computer equipment, software and services; and

WHEREAS, the Original Lead State wishes to assign all management and administration of this Contract to the Assigned Lead State;

NOW THEREFORE, the parties agree to the following:

1. This Assignment Agreement will become effective upon its approval and execution by the parties and approval of the appropriate Assigned Lead State officials, pursuant to Minn. Stat. § 16C.05, subd. 2.
2. The Contractor hereby acknowledges the requirement of the Original Lead State to assign to the Assigned Lead State all the overall management and administration interests, rights, responsibilities, duties, and other provisions set forth in the Contract, which is attached and incorporated as Attachment B, provided the Original Lead State, the Assigned Lead State and the Contractor agree to all provisions set forth in this Assignment Agreement, including Attachment A.
3. The Original Lead State will provide the Assigned Lead State all participating addendums, web files in its possession, and utilization reports of the Original Lead State. The Original Lead State has no knowledge of any default by the Contractor of any of its obligations under the contract as of the date of execution of this assignment agreement.
4. The Assigned Lead State is ready, willing, and able to perform all of the duties, obligations, and responsibilities of the Contract, and the Assigned Lead State accepts assignment of all the provisions of the Contract.

IN WITNESS WHEREOF, the parties have caused this Assignment Agreement and Attachment A to this Assignment Agreement (attached) to be duly executed intending to be bound thereby.



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1. ORIGINAL LEAD STATE

The Original Lead State certifies that the appropriate person(s) have executed this document on behalf of the Original Lead State as required by law.

By: [Signature]
Title: STATE Purchasing Agent
Date: 6/25/04

By: _____
Title: _____
Date: _____

**3. ASSIGNED LEAD STATE
MATERIALS MANAGEMENT DIVISION**

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

By: Bernadette Kojischke
Title: Acquisition Management Specialist
Date: 7/20/04

2. CONTRACTOR

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: [Signature] **Keith J. Frauendorfer**
Title: MANAGER
Date: 6-18-04 BIDS AND PROPOSALS

By: _____
Title: _____
Date: _____

**4. ASSIGNED LEAD STATE
COMMISSIONER OF ADMINISTRATION**

Or delegated representative.

By: [Signature]
Date: 20 July 04



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ATTACHMENT A

The Contract being assigned by this Assignment Agreement are amended to include this, Attachment A. These are basic requirements of Minnesota statute and policy, if they are in direct conflict with clauses or requirements in the Original Contract (as amended), Minnesota statute and policy shall prevail.

Contractors have agreed to these statutory and policy requirements in the Participating Addendum entered into between the Contractor(s) and Minnesota. Those clauses included in the existing Participating Addendum are identified in **bold**.

- 1. GOVERNING LAW.** The Contract will be construed in accordance with and 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 will be governed by the Uniform Commercial Code (UCC) as adopted by the State of Minnesota. To the extent the Contract entails delivery or performance of services, the services will be deemed "goods" within the meaning of the UCC, except when to deem such services as "goods" is unreasonable.
- 2. LAWS AND REGULATIONS.** Any and all services, articles or equipment offered and furnished must comply fully with all local, State, and federal laws and regulations, including Minn. Stat. § 181.59 prohibiting discrimination.
- 3. JURISDICTION AND VENUE.** The Contract, amendments and supplements thereto, shall be governed by the laws of the State of Minnesota. 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.
- 4. SEVERABILITY.** If any provision of the Contract, including items incorporated by reference, is declared or found to be illegal, unenforceable, or void, then both the State and Contractor will be relieved of all obligations arising under the provision; if the remainder of the Contract is capable of performance, it will not be affected by the declaration or finding and will be fully performed.
- 5. SURVIVABILITY.** The following rights and duties of the State and responder will survive the expiration or cancellation of the resulting Contract(s). These rights and duties include, but are not limited to the paragraphs on Indemnification and Hold Harmless, State Audits, Government Data Practices Act, Governing Law, Jurisdiction and Venue, Intellectual Property Indemnification, and Publicity.
- 6. ASSIGNMENT.** The Contractor shall not sell, transfer, assign, or otherwise dispose of the Contract or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of the Contract. Failure to do so may result in the



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Contractor being held in default. This consent requirement includes reassignment of the Contract due to a change in ownership, merger, or acquisition of the Contractor its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign the Contract to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of the Contract.

7. **CANCELLATION OF THE CONTRACT.** The contract may be cancelled by the State or the commissioner of Administration at any time, with or without cause, upon 30 days' written notice to the Contractor. In the event the Contractor is in default, the contract is subject to immediate cancellation to the extent allowable by applicable law. In the event of cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.
8. **FORCE MAJEURE.** Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.
9. **COPYRIGHTED MATERIAL WAIVER.** The State reserves the right to use, reproduce, and publish responses in any manner necessary for State agencies and local units of government to access the responses, including but not limited to photocopying, State Intranet/Internet postings, broadcast faxing, and direct mailing. In the event that a response contains copyrighted or trademarked materials, it is the responder's responsibility to obtain permission for the State to reproduce and publish the information, regardless of whether the responder is the manufacturer or reseller of the products listed in the materials. By signing its response, the responder certifies that it has obtained all necessary approvals for the reproduction and/or distribution of the contents of its response and agrees to indemnify, protect, save and hold the State, its representatives and employees harmless from any and all claims arising from the violation of this section and agrees to pay all legal fees incurred by the State in the defense of any such action.
10. **INSURANCE.** Certificates of insurance, including workers' compensation insurance coverage requirements of Minn. Stat. Ch. 176, must be submitted upon request.



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11. **STATE AUDITS (Minn. Stat. § 16C.05, Subd. 5).** The books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Contract must be made available to and subject to examination by the Legislative Auditor and/or the State Auditor for a minimum of six years after the end of the Contract.
12. **SUBCONTRACTORS.** In the event the Contractor hires subcontractors IN MINNESOTA to perform all or some of the duties of the Contract, the Contractor understands that Minn. Stat. § 16A.1245 requires that any such subcontractor be paid within 10 days of the Contractor's receipt of payment from the State for undisputed services provided by the subcontractor. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under the Contract. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor any amounts due from the Contractor for work performed under the Contract and deduct said payment from any remaining amounts due the Contractor. Before any such payment is made to a subcontractor, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights to the State, including but not limited to any copyright it may have in the work performed under the Contract, consistent with the intellectual property rights ownership section of the Contract. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under the Contract, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.
13. **RISK OF LOSS OR DAMAGE.** The State is relieved of all risks of loss or damage to the equipment during periods of transportation, installation, and during the time the equipment is in possession of the State, unless and until such time as unencumbered title for the goods is vested in the State and the goods are in exclusive possession of the State.
14. **INDEMNIFICATION AND HOLD HARMLESS.** The Contractor 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 incurred by the State arising from the negligent performance of the Contract by the Contractor its agents, employees, or subcontractors. This clause shall not be construed to bar any legal remedies the Contractor may have with the State's failure to fulfill its obligations pursuant to the Contract. Contract shall not be liable for damages that are the result of negligence by the State, a participating entity or their employees.
15. **GOVERNMENT DATA PRACTICES ACT.** The Contractor must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State in accordance contract, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the responder in accordance with this contract. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data referred to in this article by either the responder or the State.

In the event the Contractor receives a request to release the data referred to in this article, the responder must immediately notify the State. The State will give the responder instructions concerning the release of the data to the requesting party before the data is released.



WSCA/NASPO Contract Administration

112 Administration Building

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St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

16. **ORGANIZATIONAL CONFLICTS OF INTEREST.** The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons, a vendor is unable or potentially unable to render impartial assistance or advice to the State, or the vendor's objectivity in performing the contract work is or might be otherwise impaired, or the vendor has an unfair competitive advantage. The Contractor agrees that, if after award, an organizational conflict of interest is discovered, an immediate and full disclosure in writing must be made to the Assistant Director of the Department of Administration's Materials Management Division which must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organization conflict of interest is determined to exist, the State may, at its discretion, cancel the contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the contract and did not disclose the conflict to the contracting officer, the State may terminate the contract for default. The provisions of this clause must be included in all new subcontracts for work to be performed similar to the service provided by the prime contractor, and the terms "contract," "contractor," and "contracting officer" modified appropriately to preserve the State's rights.



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**AMENDMENT NUMBER: FIVE (5)
TO CONTRACT NUMBER: formerly NM SPD # 91-000-00-00151
now MN A62172**

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and Gateway Companies, Inc (Contractor).

WHEREAS, the Lead State has a Contract with the Contractor identified as No. NM SPD # 91-000-00-00151/MN A62172, effective September 3, 1999, through September 2, 2004, to provide direct-from-manufacturer computer equipment, software and services; and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

WHEREAS, the terms of the Contract and previous amendments thereto expressly state that the term of the Contract ends on September 2, 2004.

SINCE, WSCA/NASPO and the Contractor are currently engaged in entering into a new Contract for direct-from-manufacturer contract which will become effective on September 1, 2004, both parties have agreed that extending Contract MN A62172 will protect currently authorized participating entities from not having access to a contract to support their technology purchasing requirements.

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

1. That Contract No. NM SPD # 91-000-00-00151/MN A62172 is extended through December 31, 2004.
2. That the Contractor agrees that as soon as each individual Participating Addenda is fully executed, this extension will no longer be effective and the Contractor will treat all subsequent transactions under the terms and conditions of the new contract.
3. That, if the Lead State and the Contractor fail to enter into the new contract by September 1, 2004, this amendment is not valid and all contractual relationships with the Contractor will cease.

This Amendment is effective beginning on September 2, 2004, and shall remain in effect until December 31, 2004, or until the Contract is canceled or lapses, based on 3 above, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

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IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. CONTRACTOR

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: *[Signature]*
Duane Wichman for Mary Jane Sweeney

Title: Manager, Contracts

Date: _____

By: _____

Title: _____

Date: _____

2. LEAD STATE

MATERIALS MANAGEMENT DIVISION

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

By: *[Signature]*

Title: Acquisition Management Specialist

Date: 2/29/04

3. LEAD STATE

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: *[Signature]*

Date: 29JUL04