



Response to the New Mexico State Purchasing Agency
on behalf of the State of New Mexico
and the Western States Contracting Alliance

**WESTERN STATES CONTRACTING ALLIANCE
COMPAQ COMPUTER CORPORATION
MASTER PRICE AGREEMENT
90-00151**

This Agreement is made and entered into by COMPAQ COMPUTER CORPORATION (“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 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.

“Announced Promotion Prices” are prices offered nationally to specific categories of customers (including WSCA Participants) for defined time periods under defined Terms and Conditions.

“Certified Education Partner” (CEPs) are contractor-certified networking specialists, who provide expert advice and guidance to customize solutions for specific educational technology needs, installation, and local service and support.

“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.

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

“Equipment” refers to desktop and laptop computers, servers, workstations, printers, displays, peripherals 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 maximum price for each product or service.

“Equipment and Service Schedule (ESS) prices” mean the prices offered to WSCA members exclusive of Announced Promotional Prices, Education Discount Prices, General Price Reductions, or Large Order Negotiated Prices.

“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.

“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 under the terms and conditions of this agreement with any and

all exceptions noted and agreed upon. The terms and conditions contained in any participating addendum shall effect 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 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 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 a indefinite quantity contract which requires the contractor to furnish products or services to a procuring agency which issues a valid purchase 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 an electronic or paper document issued by the procuring agency which directs the contractor to deliver products or services pursuant to this agreement.

“Servicing Subcontractors” refers to contractor authorized subcontractors who may be assigned by the procuring agency or contractor to service the products listed in a purchase order. Servicing contractors must be certified by contractor to service the products. Participating entities may select and designate a list of servicing subcontractors from a list of potential servicing subcontractors who are otherwise certified to perform services in a given geographic region. The list of selected servicing subcontractors must appear in the participating addendum.

“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 or services only upon the issuance and acceptance by contractor of valid “purchase orders”. Purchase orders may be issued to purchase the license for software or to purchase or lease products listed on the contractor’s 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 purchase order. Contractor may offer authorized educational institutions educational price discounts that result in prices below the ESS listed prices. Procuring agencies are requested to designate an authorized servicing contractor or certified education partner for each purchase order.

3. Title Passage

Title to equipment shall pass to the procuring agency upon acceptance.

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 purchase order only; no additional terms or conditions will be added to this agreement as the result of acceptance of a purchase order. In the event of any conflict among these documents, the following order of precedence shall apply:

- A. the terms and condition of this agreement;
- B. exhibits to this agreement;
- C. executed participating addendum(s);
- D. the list of products and services contained in the purchase 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 the procuring agency receives written notice from the contractor that payment is requested for services or within fifteen (15) days from the receipt of products, 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 certification. After the thirtieth day from the date that written certification of acceptance is issued, interest shall be paid on the unpaid balance due to the contractor at the rate of one and one-half percent per month. The procuring agency shall make a good-faith effort to pay within thirty (30) days after date of certification.

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 each purchase order.

C. Payment of Taxes

Payment of taxes for any money received under this agreement shall be the contractor's sole responsibility and shall be reported under the contractor's federal and state tax identification numbers. If a procuring agency is not exempt from sales, gross receipts, or local option taxes for the transaction, 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 with two one-year optional renewals. 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 issued if the product is ultimately accepted. At any time, contractor may terminate this agreement, in whole or in part, by giving the agreement administrator thirty (30) days written notice. Such termination shall not relieve contractor of warranty or other service obligations incurred under the terms of this agreement.

B. Termination for Cause

Either party may terminate this agreement for cause based upon material breach of this agreement by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach 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. Destination 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. The contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the procuring agency.

Unless otherwise agreed upon by the procuring agency, the contractor is responsible for the pick-up of returned equipment. Software and documentation will be returned via U.S Mail at the expense of the procuring agency.

- C. Unless otherwise arranged between the procuring agency and contractor, all shipments of products shall be by UPS, Federal Express Second Day, Airborne or Watkins.

11. Warranties

- A. The products are covered under the warranties in effect at the time the products are delivered. Exhibit A contains the warranties in effect as of the date of this agreement. The following is a list of the warranties attached as Exhibit A which are the warranties that are in effect as of the date of this agreement:
 - a) Limited Warranty Statement
 - b) Compaq Products – Standard Warranty Summary found at www.compaq.com/support/paqfax/1217.html
 - c) Year 2000 Warranty Clarification
- 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 Guarantees

The procuring agencies shall pay the lower of the prices contained in the ESS or an announced promotion price, educational discount price, general price reduction price or large order negotiated price. Only general price reduction price decreases will apply to all subsequent orders accepted by contractor after the date of the issuance of the revised prices. Contractor agrees to maintain ESS product prices in accordance with the volume price discount guarantees filed with the agreement administrator. Prices set forth in the ESS are subject to change without prior notice.

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.
- G. Compaq has proposed a discount off of the National Education Pricelist (NEP)(ESS) for a majority of the WSCA pricing model. Compaq sometimes puts special value bundles onto the pricelist. These bundles are already priced at significant reductions off of the pricelist and cannot be further discounted at the %off pricing level. The WSCA customer can choose to either buy at the reduced value bundle pricing or purchase the individual components at the discount from list price established in the WSCA Price Agreement. Value Bundle pricing will not be discounted off of the already discounted list price.

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 technology at the same or lower price. Delivery order modifications will not be required. The invoice 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.

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

16. Technical Support

The contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to 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 **COMPAQ**-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. **COMPAQ**-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 **COMPAQ**-branded system is Year 2000 compliant.

18. Product Delivery

Contractor agrees to deliver products to procuring agencies within sixty (60) days after receipt of a valid purchase order.

19. Impracticality of Performance

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

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. 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 of New Mexico, participating entities and its agencies and employees harmless and shall indemnify the State of New Mexico, 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. Contractor shall not be liable for damages that are the result of negligence by the State of New Mexico, the participating entity, or its 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.

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 website 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 kick-backs.

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 refurbished.

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

The contractor shall not assign nor transfer any interest in this agreement or assign any claims for money due or to become due under this agreement without the prior written approval of the NMSPA.

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 website.
- 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.
- F. The administrator shall periodically verify 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 Limit of Liability shall survive the expiration of this agreement. Software licenses, lease, warranty and service agreements that were entered into under the terms and conditions of this agreement shall survive this agreement.

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:

Ron Smith
Manager, Public Sector Contracts
Compaq Computer Corporation
P.O. 692000, MS:590304
Houston, Texas 77269-2000

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 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.

47. Servicing Subcontractor

The procuring agency is requested to specify the name and address of a valid servicing subcontractor on each purchase order. Servicing subcontractors shall be authorized dealers of the contractor and approved by the participating entity. The list of approved servicing subcontractors for the entity shall appear on the participating addendum. If the procuring agency fails to specify a servicing subcontractor, the contractor may assign a servicing subcontractor from the list of servicing subcontractors on the appropriate participating addendum. The participating entity may amend the list of servicing subcontractors by providing contractor with a revised participating addendum.

48. Certified Education Partner

Procuring agencies that qualify for educational products and discounts may assign a certified educational partner to a purchase order. However, contractor may accept and process purchase orders without such assignments.

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

By: *Louis T. Higgins*
Louis T. Higgins
Date: 9-20-99

Contractor
COMPAQ COMPUTER CORPORATION

By: *[Signature]*
Title: Director - State & Local Gov't
Date: 9/19/99

EXHIBIT A

Limited Warranty Statement for the United States and Canada

Hardware Products Covered and Duration of Warranty

This Limited Warranty applies in the United States and Canada to Hardware Products manufactured or distributed by Compaq Computer Corporation (Compaq) under the Compaq brand name.

A Compaq Hardware Product is defined as a Compaq server, desktop, portable and certain Compaq options.

Consult the Hardware Product Warranty Tables (1) and (2) contained within this Limited Warranty for the restrictions and warranty period that applies to the Hardware Product you purchased and to determine where your warranty is valid. Contact your Compaq authorized reseller or Compaq if you have any questions about this Limited Warranty.

Compaq's obligations with respect to Software distributed by Compaq under the Compaq brand name are set forth in the applicable end user license agreement. Compaq has no other obligation to repair or replace software under this limited warranty. Non-Compaq Hardware and Software Products are provided on an "AS IS" basis. However, non-Compaq manufacturers, suppliers, or publishers may provide their own warranties.

Terms of the Warranty

Compaq warrants that the Hardware Product you have purchased from Compaq or from a Compaq authorized reseller is free from defects in materials or workmanship under normal use during the warranty period. The warranty period commences on the date of purchase. Your sales receipt, showing the date of purchase of the Hardware Product, is your proof of the date of purchase. This warranty extends only to you, the original Purchaser. It is not transferable to anyone who subsequently purchases the Hardware Product from you. It excludes expendable parts.

During the warranty period, Compaq will, at no additional charge, repair or replace defective parts with new parts or, at the option of Compaq, serviceable used parts that are equivalent or superior to new parts in performance.

All exchanged parts and Products replaced under this warranty will become the property of Compaq. If, after repeated efforts, Compaq is unable to restore the Product to good working order, you are entitled to a refund of the purchase price.

For the Portable Hardware Products listed in the Hardware Warranty Table (1), this Limited Warranty is valid at any Compaq authorized service provider location worldwide. Compaq is not responsible for any handling fees or import duties. For all other Hardware Products, this Limited Warranty is valid only within the United States and Canada, and within the country in which the Hardware Product was purchased.

The Limited Warranty extends only to Products purchased from Compaq or from a Compaq authorized reseller. This Limited Warranty also does not extend to any Product that has been

damaged or rendered defective (a) as a result of accident, misuse, or abuse; (b) as a result of an act of God; (c) by operation outside the usage parameters stated in the Product's User's Guide; (d) by the use of parts not manufactured or sold by Compaq; (e) by modification of the Product, or (f) as a result of service by anyone other than Compaq, a Compaq authorized reseller, or a Compaq authorized service provider. Compaq is not responsible for damages to or loss of any programs, data, or removable storage media. Contact your local Compaq authorized service provider for geographic restrictions, proof of purchase requirements, response time commitments and other specific on-site service requirements.

EXCEPT AS EXPRESSLY SET FORTH IN THIS WARRANTY, COMPAQ MAKES NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. COMPAQ EXPRESSLY DISCLAIMS ALL WARRANTIES NOT STATED IN THIS LIMITED WARRANTY. ANY IMPLIED WARRANTIES THAT MAY BE IMPOSED BY LAW ARE LIMITED TO THE TERMS OF THIS EXPRESS LIMITED WARRANTY.

Limitation of Remedy

Compaq is not liable for any damages caused by the Product or the failure of the Product to perform, including any lost profits, lost savings, incidental damages, or consequential damages. Compaq is not liable for any claim made by a third party or made by you for a third party.

This limitation applies whether damages are sought, or a claim made, under this warranty or as a tort claim (including negligence and strict product liability), a contract claim, or any other claim. This limitation cannot be waived or amended by any person. This limitation of liability will be effective even if Compaq or an authorized representative of Compaq has been advised by you of the possibility of any such damages. This limitation, however, will not apply to claims of personal injury.

Compaq Products - Standard Warranty Summary for U.S

SERVER PRODUCTS	Warranty Parts Coverage¹	Warranty Labor Select from any of the following options:		
		On-Site^{1,2}	Carry-In¹	Pick-Up^{1,3}
All ProLiant server products, Prosignia 200, 300, 500, and TaskSmart	3 years	3 years	3 years	-
ProSignia 720, 740	3 years	Year 1	Year 1	-

¹ Warranty period is measured from time of initial purchase. Compaq will cover the cost of all necessary parts and labor during the indicated time periods.

² Compaq Accelerated Onsite Response Warranty Upgrades for Server products are available via PaqFax #1250

³ Pick-up service not available for server products.

WORKSTATIONS PRODUCTS	Warranty Parts Coverage¹	Warranty Labor Select from any of the following options:		
		On-Site^{1,2}	Carry-In¹	Pick-Up³
Professional WorkStation 5000/5100, 6000, 8000, AP and SP series	3 years	Year 1	Year 1	-

¹ Warranty period is measured from time of initial purchase. Compaq will cover the cost of all necessary parts and labor during the indicated time periods.

² Pick-up service not available for Workstation products.

DESKTOP PRODUCTS	Warranty Parts Coverage¹	Warranty Labor Select from any of the following options:		
		On-Site^{1,2}	Carry-In¹	Pick-Up^{1,3}
Presario 500, 700, 900 series	3 years	Year 1	3 years	-
Presario 2100, 3000, 4000, 6000, 8000 series	1 year	1 st 90 days	Year 1	-
Presario 5500, 7100, 9500 series	3 years	Year 1	Year 1	-
Presario 7200, 9200, 9600 series	3 years	1 st 90 days	Year 1	-
DeskPro 2000, 4000, 6000 Series (including 4000N and 4000S, EN and EP models)	3 years	Year 1	Year 1	-
Prosignia 310, 330	3 years	Year 1	Year 1	-
All other desktop products	3 years	Year 1	3 years	-

¹ Warranty period is measured from time of initial purchase. Compaq will cover the cost of all necessary parts and labor during the indicated time periods.

² Warranty extensions are available for additional years of onsite service- see PaqFax #1250 (or PaqFax 1226 for Presario products). For more information on CAREPAQ service offers, see the Compaq Services website at <http://www.compaq.com/support> or call Compaq Presales Support at 1-800-344-4825.

³ Pick-up service not available for desktop products.

PORTABLE PRODUCTS	Warranty Parts Coverage ¹	Warranty Labor Select from of the following options		
		On-Site ^{1,2}	Carry-In ¹	Pick-Up ¹
Armada 1100	1 year	-	Year 1	Year 1
Armada 1500/1700/SB Families	1 year	-	Year 1 ³	Year 1 ⁴
Armada 4100/7300/7700 Families	3 years	-	3 years	3 years
Armada 3500/6500 Armada 7400/7800	3 years	-	3 years ³	3 years ⁴
Prosignia 120, 140, 160	3 years	-	Year 1 ³	Year 1 ⁴
LTE 5000 Series	3 years	-	3 years	3 years
Concerto	3 years	-	3 years	3 years
Contura Aero	3 years	-	3 years	3 years
LTE Elite	3 years	-	3 years	3 years
Contura 400 Series	3 years	-	3 years	3 years
Presario 1000 Family	1 year	-	Year 1	Year 1

¹ Warranty period is measured from time of initial purchase. Compaq will cover the cost of all necessary parts and labor during the indicated time periods. Compaq portables purchased in the U.S. carry a Worldwide Limited Warranty.

² On-site service is not included as part of the portable Limited Warranty. Warranty extensions and upgrades are available for additional service coverage, including on-site. See PaqFax #1250 (or PaqFax 1226 for Presario products). For more information on CAREPAQ service offers, see the Compaq Services website at <http://www.compaq.com/support> or call Compaq Presales Support at 1-800-344-4825.

³ Carry-in service is available only in countries outside the U.S. and Canada.

⁴ Pick-up and delivery service is provided on a second business day total turnaround time basis. Eligibility for second business day return is limited by geographic location. For service, call Compaq at 1-800-OKCOMPAQ. Only available within the U.S. and Canada.

MONITORS	Warranty Parts Coverage ¹	Warranty Labor Select from of the following options		
		On-Site ^{1,2}	Carry-In ¹	Pick-Up ^{1,3}
Presario Integrated monitor/CPU	3 years	same as CPU	same as CPU	-
Presario 1410, 1510 monitors	1 year	1 st 90 days	Year 1	-
Presario 1425, 1525, 1725 monitors	1 year	1 st 90 days	Year 1	-
ProLinea Net 1 monitors/CPU	3 years	same as CPU	same as CPU	-
V70, V75, V90, V900, V1000 monitors	3 years	Year 1	Year 1	-
Performance monitors ⁴	3 years	Year 1	Year 1	-
TFT500 Monitors (excluding backlight) ^{5,6}	3 years	Year 1	Year 1	-
TFT500 backlight ^{5,6}	1 year	Year 1	Year 1	-
All other monitors	1 year	Year 1	Year 1	-

¹ Warranty period is measured from time of initial purchase. Compaq will cover the cost of all necessary parts and labor during the indicated time periods.

² Warranty extensions are available for additional years of service- see PaqFax #1225 (or see PaqFax #1226 for Presario products).

³ Pick-up service not available for monitor products. Some monitors (V40, V50, V55, V70, V75, V90, V900, V1000, P50, P70, P75, P110, P1610, S700, S900, QVision 210) are covered by Compaq's 48-hour monitor swap program: See PaqFax #1219 for details.

⁴ Performance monitors include the Compaq 151FS-444, 171FS-491, QV172-454, QV200-481, S700, S900 P50, P70, P110 and P1610, V900 and V1000 monitors only.

⁵ The backlight component for TFT Flat Panel Display monitors is a separately warranted hardware product.

⁶ Warranty extensions for the TFT monitors and a separate parts-only backlight replacement program are available via PaqFax 1225.

HANDHELD PRODUCTS	Warranty Parts Coverage ¹	Warranty Labor Select from the following options		
		On-Site ²	Carry-In ²	Pick-Up ¹
PC Companion C120, C140, C120+	1 year	-	-	Year 1

¹ Warranty period is measured from time of initial purchase. Compaq will cover the cost of all necessary parts and labor during the indicated time periods.

² Carry-in, on-site service not available for PC Companion handheld products.

NETELLIGENT NETWORKING PRODUCTS	Warranty Parts Coverage ¹	Warranty Labor Select from any of the following options:		
		On-Site ^{1,2}	Carry-In ¹	Pick-Up ^{1,3}
Routers	3 years	Year 1	Year 1	-
Repeater Hubs	3 years	-	-	-
Switching Hubs	3 years	-	-	-
Network Interface Controllers (NICs)	3 years	same as CPU ⁴	same as CPU ⁴	-

¹ Warranty period is measured from time of initial purchase. Compaq will cover the cost of all necessary parts and labor during the indicated time periods.

² Warranty extensions are available for additional years of on-site service (see PaqFax #1225)

³ Pick-up service not available for Netelligent and Networking products.

⁴ The term "same as CPU" refers to Compaq CPUs only.

OPTIONS ¹	Warranty Parts Coverage ²	Warranty Labor Select from the following options		
		On-Site ²	Carry-In ²	Pick-Up ^{2,3}
All standard options	1 year	same as CPU ⁴	same as CPU ⁴	same as CPU ⁴
Special Options:				
Uninterruptable Power Supply	3 years	3 years	3 years	-
Rack-Mountable UPS	3 year	3 year	3 year	-
ProLiant Storage System	3 years	3 years	3 years	-
Rack-Mountable ProLiant Storage System	3 years	3 years	3 years	-
SCSI Storage Expander	3 years	3 years	3 years	-
Rack-Mountable SCSI Storage Expander	3 years	3 years	3 years	-
Compaq 22U Rack	3 years	3 years	3 years	-
Compaq 44U Rack	3 years	3 years	3 years	-
Compaq PC Card Modems ⁵	5 years	-	5 years	5 years
Rechargeable Battery Packs	1 year	Year 1	Year 1	Year 1

¹ Options are warranted for one year or the remaining warranty of the Compaq CPU on which they are installed (whichever is longer).

² Warranty period is measured from time of initial purchase. Compaq will cover the cost of all necessary parts and labor during the indicated time periods.

³ Pick-up service available for options installed in portable units only.

⁴ The term "same as CPU" refers to Compaq CPUs only.

⁵ Includes all Compaq PC Card Modems, except Compaq SpeedPaq Modem 144/P, Compaq PCMCIA 2400/9600 Data + Fax Modem, 10 Base-T Ethernet LAN Card and Compaq PCMCIA 14.4 Data + Fax Modem which carry a 3 year warranty. Compaq Modems that are not PC Card are considered standard options and carry a 1 year warranty.

1. Types of Limited Warranty Coverage

On-Site Service

Allows the customer to request that a warranty repair event take place at the customer's location.

Carry-In Service

Requires the customer to carry their Compaq hardware to an authorized service location for warranty repair.

Pick-Up Service

Compaq arranges for the pickup, warranty repair, and return of customer's unit - including any necessary packaging and shipping expense. Pick-up warranty available in the US only. Pick-up Service on Armada 1700, SB, 3500, 6500, 7400 and 7800 units (only) is provided on a second business day total turnaround time basis (Restrictions may apply due to geographic limitations).

48-hour Monitor Swap

Some monitors are eligible for coverage under the Compaq "End User Replaceable Parts" program. This allows customers to receive a whole unit replacement for a malfunctioning in-warranty monitor. Please refer to PaqFax document #1219 for details on utilizing the program, and for information on which monitors qualify for this level of service.

2. Options Warranty

Standard options carry a one-year parts and carry-in labor limited warranty. Once installed in or on a Compaq CPU, the option carries the longer of either a one-year warranty or the remainder of the warranty period for the Compaq unit in which it is installed. The labor coverage type (on-site, carry-in, or pick-up) will be determined by the labor coverage type for the CPU in which it is installed. If an option is installed in or on a non-Compaq product or a Compaq product that is out-of-warranty, the option's warranty remains at one year (carry-in service only). The only exceptions are monitors and special options.

3. Spare Parts Warranty

All spare parts carry a 90-day parts and carry-in labor limited warranty. Once installed in or on a Compaq CPU, the spare part carries the longer of either 90 days or the remainder of the warranty period for the Compaq unit in which it is installed. The labor coverage type (on-site, carry-in, or pick-up) will be determined by the labor coverage type for the CPU in which it is installed. If a part is installed in or on a non-Compaq product or a Compaq product that is out of warranty, the spare part's warranty remains at 90 days (carry-in service only).

4. Warranty Transfer

Standard Limited Warranties are valid only in the country in which the unit is purchased, with the exception of some Compaq Portable products. Compaq Portable products, with the exception of the Presario 1000 Compaq portable come standard with a world-wide, carry-in limited warranty (per the terms of the product's Limited Warranty Statement).

5. Warranty (On-site) Response Time

The Compaq Limited Warranty provides a best effort response for on-site repairs, with a goal of second business day. Compaq and Compaq Authorized Service Providers are committed to providing customers the fastest commercially reasonable response time possible. Response time is dependent upon factors such as customer availability, location, and resource availability.

6. Non-Compaq Hardware

Compaq's warranty obligations extend only to products and parts manufactured or distributed by Compaq Computer Corporation under the Compaq brand name. Non-Compaq hardware and software are provided on an "AS IS" basis. However, non-Compaq manufacturers, suppliers or publishers may provide their own warranties.

Compaq's warranty will not extend to any Compaq product that has been damaged or rendered defective by the use of parts not manufactured or distributed by Compaq.

7. Warranty Documentation

Each product is packaged with warranty and service information that details the specific warranty terms and conditions for the customer. The warranty and service information is the legal warranty document and contains information on warranty coverage type and length for all Compaq products.

8. Pre-Failure Warranty

Compaq Server products using Compaq Insight Manager 2.0 or greater software are covered by the Compaq Pre-Failure Warranty. Compaq Insight Manager is a powerful software tool that delivers intelligent monitoring and alerting capabilities to maximize server uptime and performance. This software tool is included for use with your server product. Components covered by the Pre-Failure Warranty are AECC memory and hard drives (except the 535MB drive) using Compaq IDA, Compaq IDA-2 or Compaq SMART SCSI Array Controllers. Compaq Insight Manager monitors the performance of these components and if a pre-established performance threshold is exceeded, the monitored component can be replaced prior to actual failure. The server CPU must be under warranty.

Pre-Failure Warranty also applies to Compaq Desktop and Portable products using Intellisafe hard drives and Compaq Intelligent Manageability.

9. Warranty Extensions

Compaq offers customers several ways to extend or upgrade their warranty coverage. Some Warranty Extension products are available as CAREPAQs. Some Warranty Extension contracts are available directly from Compaq by completing PaqFax document #1225 for commercial products, or PaqFax document #1226 for Presario products, or by contacting a Compaq Authorized Reseller. Warranty Extensions may be purchased anytime during the warranty period. For refurbished product warranties and warranty extensions, see the information in item #11 below.

10. Compaq CAREPAQs

Compaq offers several packaged services, which make it both convenient and economical for customers to purchase service contracts. CarePaqs are currently offered in four categories:

- Software Services
- Hardware Services
- Warranty Extensions
- Installation & Start-up Services

For detailed information on the portfolio of Compaq CAREPAQ products, please reference PaqFax document #1250: Compaq CAREPAQ Information matrix.

11. Refurbished Products

Products refurbished by Compaq and sold through a Reseller are covered by a one-year parts and carry-in limited warranty. A separate limited warranty statement is included on the outside of the box to reflect this difference. Stickers are placed on the box to indicate that the product has been refurbished. Compaq refurbished products can be identified by an "R" in the first character of the serial number. Compaq refurbished products sold through Compaq Works are covered by a 90-day parts and carry-in (to Compaq Works only) limited warranty. Compaq refurbished products sold through a Compaq authorized auction are covered by a 30-day parts and carry-in limited warranty. Certain refurbished products sold through brokers carry no manufacturer's warranty. Compaq's electronic warranty databases, accessible by any Compaq Authorized Reseller or Service Provider, will reflect the specific warranty entitlement for every unit manufactured or refurbished by Compaq. Customers can upgrade the limited warranty of a reconditioned product up to two years, total. A warranty upgrade contract can be purchased directly from Compaq or through a Compaq authorized reseller. Warranty upgrades can be purchased anytime during the warranty period. To order a refurbished product warranty upgrade, use PaqFax #1227: Refurbished Product - Warranty Upgrade Order form, or contact your Compaq Authorized Reseller.

Year 2000 Warranty Clarification

Compaq commercial and consumer desktop PCs, portable PCs, servers and workstations purchased on or after October 7, 1997 pass the YMARK2000 test (Version 97.08.15). Failure to pass the YMARK2000 test, by any such product, will be treated by Compaq as a defect covered under its limited product warranty, subject to warranty limitations.

Past Products - ROM BIOS Upgrades

Compaq has also retained NSTL to test past products that you may have previously purchased from Compaq prior to October 7, 1997. For these products, ROM BIOS upgrades may be required to pass the test. Upgrades are available for many past products. Some past products may not be able to pass the YMARK2000 test, so you may wish to consider replacing them. Please visit the Product Tables for status of your product.

For any product purchased prior to October 7, 1997 requiring a ROM BIOS upgrade, you are responsible for installing the upgrade. If you have a service agreement in place with Compaq or an authorized Compaq service provider, unless specifically stated otherwise in the agreement, such upgrades are not covered. Please refer to your agreement for a full statement of your coverage.

Additional Information

The YMARK2000 test only tests the hardware's and firmware's ability to support the transition to the Year 2000 and not that of options (including the PC companion), operating systems or software applications. Despite a system's ability to pass the YMARK2000 test, actual roll-over results may vary depending on factors including but not limited to other hardware, operating systems, software applications, environmental factors (including temperature) and power supply. Compaq is currently testing its own applications and is in the process of publishing the results on this website. For information on the operation of third-party operating systems and software applications, again, see Compaq's white paper Preparing for the Year 2000.

Tests of Compaq products through October 7, 1997 were conducted exclusively by NSTL. Under NSTL's guidance, Compaq is now conducting self-testing on new products as they are released.

The products of Tandem, a Compaq company, are not covered by Compaq's Year 2000 Compliance Program. Tandem has its own independent Year 2000 Compliance Program. For more information, visit the Tandem site at <http://www.tandem.com>.

PROGRAM NOTICES

THE LIMITED WARRANTIES FOR COMPAQ PRODUCTS ARE EXCLUSIVELY SET FORTH IN THE DOCUMENTATION ACCOMPANYING SUCH PRODUCTS AS CLARIFIED BY THIS WEB PAGE. COMPAQ IS NOT LIABLE FOR ANY DAMAGES CAUSED BY PRODUCTS OR THE FAILURE OF PRODUCTS TO PERFORM, INCLUDING ANY LOST PROFITS, LOST SAVINGS, INCIDENTAL DAMAGES, OR CONSEQUENTIAL DAMAGES. COMPAQ IS NOT LIABLE FOR ANY CLAIM MADE

BY A THIRD PARTY OR MADE BY YOU FOR A THIRD PARTY. THIS LIMITATION APPLIES WHETHER DAMAGES ARE SOUGHT, OR A CLAIM IS MADE, UNDER WARRANTY OR AS A TORT CLAIM (INCLUDING NEGLIGENCE AND STRICT PRODUCT LIABILITY), A CONTRACT CLAIM, OR ANY OTHER CLAIM. THIS LIMITATION OF LIABILITY WILL BE EFFECTIVE EVEN IF COMPAQ OR AN AUTHORIZED REPRESENTATIVE OF COMPAQ HAS BEEN ADVISED BY YOU OF THE POSSIBILITY OF ANY SUCH DAMAGES. THIS LIMITATION OF LIABILITY, HOWEVER, WILL NOT APPLY TO CLAIMS FOR PERSONAL INJURY. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES SO THE FOREGOING LIMITATION MAY NOT APPLY. THE MCGRAW-HILL COMPANIES, INCLUDING NATIONAL SOFTWARE TESTING LABORATORIES DIVISION, MAKES NO GUARANTIES OR WARRANTIES AS TO THE ACCURACY OR COMPLETENESS OF OR RESULTS TO BE OBTAINED FROM ACCESSING AND USING THE YMARK2000 TEST OR OTHER INFORMATION ON ITS WEBSITE. NEITHER THE MCGRAW-HILL COMPANIES NOR ITS AFFILIATES SHALL BE LIABLE TO ANY USER OR ANYONE ELSE FOR ANY INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, IN THE YMARK2000 TEST OR OTHER INFORMATION OR FOR ANY DAMAGES RESULTING THEREFROM.

AMENDMENT #01
WESTERN STATES CONTRACTING ALLIANCE
COMPAQ COMPUTER CORPORATION
MASTER PRICE AGREEMENT #90-00151

This bilateral Amendment #01 is entered into by Compaq Computer Corporation (“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 10.C, Shipment and Risk of Loss, is amended to read as follows:

Unless otherwise arranged by the procuring agency and the contractor, all

shipments of products shall be UPS, Fed Ex Second Day, Airborne, Watkins,
Eagle, USPS or other comparable, reliable and insured shipping company.

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

Compaq Computer Corporation

BY: _____

BY:

Name: Louis T. Higgins
State Purchasing Agent

Name: Ron Smith
Director Public Sector Contacts

Date: _____

Date: _____

AMENDMENT #02
WESTERN STATES CONTRACTING ALLIANCE
COMPAQ COMPUTER CORPORATION
MASTER PRICE AGREEMENT #90-00151

This bilateral Amendment #02 is entered into by Compaq Computer Corporation (“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:

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 subtitled 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 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

Compaq Computer Corporation

BY: _____

BY:

Name: Louis T. Higgins
New Mexico State Purchasing Agent

Name: Ron Smith
Director Public Sector Contacts

Date: _____

Date: _____

AMENDMENT #03
WESTERN STATES CONTRACTING ALLIANCE
COMPAQ COMPUTER CORPORATION
MASTER PRICE AGREEMENT #90-00151

This bilateral Amendment #03 is entered into by Compaq Computer Corporation (“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 December 31, 2002 as follows:

The contractor name is changed from Compaq Computer Corporation to Hewlett-Packard Company. The new Federal ID # is 94-1081436. Hewlett-Packard Company will assume all legal rights and obligations as transferred from Compaq Computer Corporation. Reconfirming the correct remit to address:

Hewlett Packard
PO Box 277205
Atlanta, GA 30384-7205

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

Compaq Computer Corporation

BY: _____

BY:

Name: Louis T. Higgins
New Mexico State Purchasing Agent

Name: Ron Smith
Public Sector Contacts

Date: _____

Date: _____

AMENDMENT #04
WESTERN STATES CONTRACTING ALLIANCE
HEWLETT PACKARD COMPANY
MASTER PRICE AGREEMENT #90-00151

This bilateral Amendment #04 is entered into by Hewlett Packard Company (“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 #04 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 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 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 #04 to be signed by their duly authorized representatives, in two (2) original counterparts, on the date(s) indicated below.

STATE OF NEW MEXICO

Hewlett Packard Company

BY: _____

New Mexico State Purchasing Agent

Date: _____

BY:

Name: Ron Smith
Director Public Sector Contacts

Date: _____



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 (Hewlett Packard Education/Government) ("Contractor").

WHEREAS, the Original Lead State has an agreement with the Contractor, Contract No. (SPD #90-000-00-00151), 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.



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>

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: _____

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]
Title: Contract Mgr
Date: 6-5-04

By: _____
Title: _____
Date: _____

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

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

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

**4. ASSIGNED LEAD STATE
COMMISSIONER OF ADMINISTRATION**
Or delegated representative

By: [Signature]
Date: 20 June 04



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>

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. Contractor 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.



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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 # 90-000-00-00151
now MN A62173**

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and Hewlett Packard Education/Government (Contractor).

WHEREAS, the Lead State has a Contract with the Contractor identified as No. NM SPD # 90-000-00-00151/MN A62173, 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 A62173 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 # 90-000-00-00151/MN A62173 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]

Title: Contracts Mgr

Date: July 28 2004

By: _____

Title: _____

Date: _____

2. LEAD STATE

MATERIALS MANAGEMENT DIVISION

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

By: Bernadette Kopychko

Title: Acquisition Management Specialist

Date: 7/28/04

3. LEAD STATE

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: [Signature]

Date: 28 Jul 04