

**STATE OF NEW JERSEY  
PARTICIPATING ADDENDUM STANDARD TERMS AND CONDITIONS**

Under  
Western States Contracting Alliance ("WSCA")  
Contract for Data Communications Equipment and Associated OEM Maintenance and  
Training  
("WSCA Master Agreement")  
[State of Utah Contract Ref. No. AR-1470]

This Participating Addendum is made as of the last date of signature below (the "Effective Date"), by and between Enterasys Networks, Inc. ("Enterasys" or "Contractor" ), whose address is 50 Minuteman Road, Andover, MA 01810, and the State of New Jersey, Department of Treasury, Division of Purchase and Property ("Participating State" or "State") whose address is 33 West State Street, 8th Floor, PO Box 039, Trenton, New Jersey 08625, on behalf of the State of New Jersey and all "Authorized Purchasers" (as defined below).

**WHEREAS**, pursuant to N.J.S.A. 52:34-6.2, the Director of the Division of Purchase and Property ("Director") "may enter into cooperative purchasing agreements with one or more states for the purchase of goods and services"; and

**WHEREAS**, the State of Utah is acting as the Lead State for the procurement process resulting in WSCA Contracts for Data Communications Equipment, Associated OEM Maintenance and Training, awarded in accordance with the State of Utah RFP #DG7500; and

**WHEREAS**, the Division of Purchasing and General Services, an agency of the State of Utah, and Enterasys have entered into the State of Utah Cooperative Contract, Contract #AR-1470 ("WSCA Master Agreement"), which may be found at the following URL:  
[http://www.aboutwsca.org/content.cfm/id/wsca\\_enterasys](http://www.aboutwsca.org/content.cfm/id/wsca_enterasys); and

**WHEREAS**, WSCA permits other states to participate in the contracts, and the Director has determined that it is in the best interest of the State of New Jersey to participate in the WSCA contracts for the procurement of Data Communications Equipment and Associated OEM Maintenance and Training ; and

**WHEREAS**, the Director has determined that it is in the best interest of the State to enter into a Participating Addendum with Enterasys under the WSCA Master Agreement ; and

**WHEREAS**, the parties seek to enter into this Participating Addendum to memorialize the terms of their contractual relationship;

NOW THEREFORE, for good and valuable consideration, receipt of which hereby acknowledged, the parties to this Participating Addendum hereby agree as follows:

**1.0 Standard Terms and Conditions:**

The following terms and conditions will apply to this Participating Addendum made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the WSCA Master Agreement and should be read in conjunction with same unless the Participating Addendum specifically indicates otherwise.

1. If Contractor proposes changes or modifications or takes exception to any of the State's terms and conditions, the Contractor must so state specifically in writing. Any proposed change, modification or exception in the State's terms and conditions by the vendor will be a factor in the determination of an award of a contract.
2. All of the State's terms and conditions will become a part of the contract awarded as a result of this Participating Addendum, whether stated in part, in summary or by reference. In the event the vendor's terms and conditions conflict with the State's, the State's terms and conditions will prevail, unless the vendor is notified in writing of the State's acceptance of the vendor's terms and conditions.
3. The statutes, laws or codes cited are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.
4. If awarded a contract, the Contractor's status shall be that of an independent contractor and not as an employee of the State.

**2.0 Term and Extension Option:**

The term of this Participating Addendum shall be effective from the Effective Date and shall continue for a period ending on the Termination Date of the WSCA Master Agreement or when this Participating Addendum is terminated in accordance with the WSCA Master Agreement, whichever shall occur first. The State reserves the right, in its sole discretion, to extend this contract pursuant to any extension of WSCA/State of Utah Contract AR-1470 under the same terms and conditions as this Participating Addendum.

**3.0 Termination of Contract:**

1. For Convenience-
  - A. Notwithstanding any provision or language in this Participating Addendum to the contrary, the Director may terminate at any time, in whole or in part, any contract entered into as a result of this Participating Addendum for the convenience of the State, upon no less than 30 days written notice to Contractor.
  - B. Notwithstanding any provision or language in this Participating Addendum to the contrary, Enterasys may terminate at any time, in whole or in part, this Participating Addendum for convenience, upon no less than 90 days written notice to the State.

2. For cause-

- A. Where a contractor fails to perform or comply with a contract, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract upon 10 days notice to the contractor with an opportunity to respond.
- B. Where a contractor continues to perform a contract poorly as demonstrated by formal complaints, late delivery, poor performance of service, short-shipping etc., so that the Director is repeatedly required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq. the Director may terminate the contract upon 10 days notice to the contractor with an opportunity to respond.

3. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.

In the event of termination under this section, the contractor will be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

**4.0 Scope of Services:**

- a. The WSCA Master Agreement, as now or hereafter amended, made by the original parties thereto during the term of this Participating Addendum, is incorporated herein as if set forth at length. All rights and obligations between the Parties are governed by the terms of the WSCA Master Agreement, as amended by this Participating Addendum (the "Agreement").
- b. The suite of products and services available under the New Jersey Participating Addendum to any Authorized Purchaser are as set forth in the price lines in WSCA AR-1470 Price List but specifically do not include voice, video, telephony or IP telephony products and services.
- c. Enterasys shall deliver a copy of the required Quarterly Volume Reports (January 15<sup>th</sup>, April 15<sup>th</sup>, July 15<sup>th</sup> and October 15<sup>th</sup>) described in the WSCA Master Agreement, Attachment B, Section 16, to the State Primary Contact set forth above. The Participating State will accept such reports directly from its Resellers, as defined below.

**5.0 Authorized Purchasers:**

"Authorized Purchasers" under this Participating Addendum shall mean the following:

- 1. State agencies.
- 2. Quasi-State Agencies - A "Quasi-State Agency" is any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member, as defined in N.J.S.A. 52:27B-56.1, provided that any sale to any such bi-state governmental entity is for use solely within the State of New Jersey.

3. Political Subdivisions, Volunteer Fire Departments And First Aid Squads, And Independent Institutions Of Higher Education - Counties, municipalities and school districts as defined in N.J.S.A. 52:25-16.1., volunteer fire departments, volunteer first aid squads and rescue squads as defined in N.J.S.A. 52:25-16.2 , independent institutions of higher education as defined in N.J.S.A. 52:25-16.5, provided that each purchase by the independent institution of higher education shall have a minimum cost of \$500. The extension to counties, municipalities, school districts, volunteer fire departments, first aid squads and independent institutions of higher education must be under the same terms and conditions, including price, applicable to the State.
4. State Colleges - as defined in State College N.J.S.A. 18A:64-60.
5. County Colleges - State county college as defined in N.J.S.A. 18A:64A-25.9.

All other participants other than State agencies are responsible for the full cost of their purchases.

#### 6.0 Fulfillment Partners (subcontractor):

Enterasys has the right to utilize resellers, (hereafter "Reseller(s)") as fulfillment agents under this Agreement, e.g., for direct order taking, processing, fulfillment or provisioning. However, this contract may not be subcontracted or assigned by the Contractor, in whole or in part, without the prior written consent of the Director of the Division of Purchase and Property. Such consent, if granted, shall not relieve the Contractor of any responsibilities under this Participating Addendum.

Enterasys and the State agree to the minimum of 3 and maximum of 6 Resellers under this Participating Addendum.

Resellers may be removed and/or added ("substituted") with a thirty (30) day notification request to the State during the Agreement term, but under no circumstance shall the total number of resellers exceed the aforementioned maximum.

Enterasys and the State reserve the right to remove an authorized Reseller at its discretion for cause, not meeting established vendor criteria, or where the addition of the entity would violate any state or federal law or regulation.

The name, address and contact information for Enterasys -approved Resellers shall be separately set forth at the Enterasys website, as amended by Enterasys during the term of this Participating Addendum, including any applicable technical certifications or general limitations (e.g., geographic) or Enterasys' qualifying criteria as applicable (qualifying criteria).

To the extent any of the services and products to be supplied under the terms of this Participating Addendum are provided by any third party other than Enterasys or an affiliate under a subcontract or other arrangement with Enterasys, such services, which include, by way of example but not limitation, delivery, installation, repair, maintenance and other services, shall be provided, if feasible, by companies whose home office is located with the State of New Jersey.

## 7.0 Ordering and Compensation:

Pricing shall be in accordance with the terms set forth in the WSCA Master Agreement.

The State of New Jersey Contract number and the WSCA Master Agreement number ("AR-1470") MUST be shown on all Purchase Orders issued against this Participating Addendum.

All orders and payments will be issued directly to an authorized Reseller and shall be in accordance with the terms set forth in the WSCA Master Agreement.

In the event of a manufacturer's or Contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the effective contract period. The Director of Purchase and Property must be notified, in writing, of any price reduction within five (5) days of the effective date. Failure to report price reductions will result in cancellation of contract for cause.

For every contract the term of which spans more than one fiscal year, the State's obligation to make payment beyond the current fiscal year is contingent upon legislative appropriation and availability of funds.

The State of New Jersey now offers State contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State Agency's use of the p-card, however, is optional. P-card transactions do not require the submission of either a contractor invoice or a State payment voucher. Purchasing transactions utilizing the p-card will usually result in payment to a contractor in three days. A Contractor should take note that there will be a transaction processing fee for each p-card transaction. To participate, a contractor must be capable of accepting MasterCard. For more information, call your bank or any merchant services company.

Payments shall be made to the Resellers pursuant to the provisions of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-33 et seq. The Act requires state agencies to pay for goods and services within sixty (60) days of the agency's receipt of a properly executed State Payment Voucher or within sixty (60) days of receipt and acceptance of goods and services, whichever is later. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest will not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act. Contractor's Resellers are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest quote.

Discount periods shall be calculated starting from the next business day after the recipient has accepted the goods or services received a properly signed and executed State Payment Voucher form and, when required, a properly executed performance security, whichever is latest.

The date on the check issued by the State in payment of that Voucher shall be deemed the date of the State's response to that Voucher.

**8.0 Delivery Guarantees:**

Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the WSCA Master Agreement.

The contractor shall be responsible for the delivery of material in first class condition to the Authorized Purchaser's using agency under this Participating Addendum and in accordance with good commercial practice.

Items delivered must be strictly in accordance with the WSCA Master Agreement.

**9.0 Performance Guarantee:**

The Contractor hereby certifies that:

1. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice.
2. All equipment supplied to the State and operated by electrical current is UL listed where applicable.
3. All new machines are to be guaranteed as fully operational for the period stated in the Enterasys Networks Standard Warranty from time of written acceptance by the State. The Contractor and/or Reseller will render prompt service , regardless of geographic location.
4. Sufficient quantities of parts necessary for proper service to equipment will be maintained at distribution points and service headquarters.
5. Trained and/or Contractor-certified technicians and/or engineers are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 24-hour period or within the time accepted as industry practice.
6. During the warranty period the contractor shall replace any material which is rejected for failure to meet the requirements of this WSCA Master Agreement according to standard RMA procedure.
7. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the WSCA Master Agreement. The contract shall not be considered complete until final approval by the State's using agency is rendered.

## 10.0 State Laws Requiring Mandatory Compliance by All Contractors:

### ***Sales and Use Tax Act-***

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury the use tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all their sales of tangible personal property delivered into the State.

### ***Set-Off for State Tax Notice-***

Please be advised that, pursuant to P.L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

### ***New Jersey Prevailing Wage Act-***

Pursuant to the New Jersey Prevailing Wage Act (N.J.S.A. 34: 11-56.26 et seq.), Enterasys guarantees that it has not been suspended or debarred by the Commissioner, New Jersey Department of Labor and Workforce standards for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; Enterasys also guarantees that it will comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required and to the extent applicable to this Participating Addendum.

### ***Anti-discrimination-***

All parties to any contract with the State of New Jersey agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A.10:5-1 et seq. and N.J.S.A.10:5-31 through 10:5-38, and all rules and regulations issued there under.

### ***Americans with Disabilities Act-***

The Contractor and its Resellers agrees to abide by the provisions of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

### ***Worker and Community Right to Know Act-***

The provisions of N.J.S.A. 34:5A-1 et seq. which requires the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the Act.

### ***Compliance Laws-***

The Contractor agrees to with all local, state and federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

### ***Compliance Codes-***

The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor will be responsible for securing and paying all necessary permits, where applicable.

## **11.0 Liabilities:**

### ***Copyright Liability-***

The contractor shall hold and save the State of New Jersey, its officers, agents, servants and employees, harmless from liability of any nature or kind for or on account of the use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of his contract.

### ***Indemnification-***

The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith on account of the loss of life, property or injury or damage to the person, body or property of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract.

This indemnification obligation is not limited by, but is in addition to the insurance obligations contained in this agreement.

### ***Insurance-***

Contractor shall secure and maintain in force for the term of the contract liability insurance as provided herein. When engaged by an Authorized Purchaser to provide services on Authorized Purchaser premises, the Contractor shall provide upon request within five (5) business days following the execution of the Purchase Order current certificates of insurance for all coverage and renewals thereof, to the Authorized Purchaser naming the Authorized Purchaser as an Additional Insured. Contractor will endeavor to give thirty days written notice of cancellation to such certificate holder.

The insurance to be provided by the contractor shall be as follows:

1. Comprehensive General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Comprehensive General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as Additional Insured. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic, unamended, and unendorsed Comprehensive General Liability Insurance occurrence coverage forms or its equivalent currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage.
2. Automobile liability insurance which shall be written to cover Hired and Non-Owned autos. Limits of liability for bodily injury and property damage shall not be less than \$1 million per occurrence as a combined single limit.
3. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
  - A. \$1,000,000 BODILY INJURY, EACH OCCURRENCE
  - B. \$1,000,000 DISEASE EACH EMPLOYEE
  - C. \$1,000,000 DISEASE AGGREGATE LIMIT

#### 12.0 Miscellaneous:

##### *Standards Prohibiting Conflict of Interest-*

The following prohibitions on vendor activities shall apply to all contracts and purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988):

1. No Contractor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such Contractor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i of any such officer or employee, or partnership, firm or corporation with which they are employed or associated or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
2. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
3. No Contractor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such Contractor to, any State officer or employee or special State officer or employee or having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any

instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding the present or proposed relationship does not present the potential, actual or appearance, of a conflict of interest.

4. No Contractor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
5. No Contractor shall cause or influence, or attempt to cause or influence, any State officer or employees or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
6. The provisions cited in this paragraph shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with the Contractor under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines in the Executive Commission on Ethical Standards may promulgate under the provisions contained herein.

***Assignment of Antitrust Claim(S) -***

The Contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the Contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this Participating Addendum.

In connection with this assignment, the following are the express obligations of the contractor:

1. It will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
2. It will advise the Attorney General of New Jersey:
  - A. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
  - B. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.

3. It will notify the defendants in any antitrust suit of the fact of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice will be sent to the Attorney General of New Jersey.

Furthermore, it is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

#### **Mergers, Acquisitions and Dissolutions-**

##### **Merger or Acquisition:**

If, subsequent to the Effective Date, the Contractor shall merge with or be acquired by another firm, for purposes of this contract only, the documents set forth below must be submitted to the Director for approval within thirty (30) days of completion of the merger or acquisition. Any such merger or acquisition will require the assignment of the WSCA Master Agreement pursuant to the provisions related thereto set forth therein.

1. Corporate resolutions prepared by the awarded Contractor and new entity ratifying acceptance of the original WSCA Master Agreement terms, conditions and prices, as may be amended.
2. Contractor must complete the State of New Jersey Certification Requirements stated below, pursuant to the provisions contained herein within thirty (30) calendar days, after completion of merger and/or acquisition.
3. Vendor Federal Employer Identification Number.
4. Ownership Disclosure: Within thirty (30) days after any merger or acquisition subsequent to the Effective Date, the Contractor must disclose the names and addresses of all of its owners and potential owners which hold or may acquire 10% or more of its stock or interest. The Contractor has the continuing obligation to notify the Participating State of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed. Compliance with this provision does not give rise to any rights to the Contract to the acquirer or resulting entity (in the case of a merger) without the written consent of the Director.

##### **Dissolution:**

If, during the term of the WSCA Master Agreement, the Contractor's partnership, joint venture or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved partnership or corporation must submit to the Director, in writing, the names of the parties proposed to perform the contract and the names of the parties to whom payment should be made. No payment will be made until all parties to the dissolved partnership, joint venture or corporation submit the required documents to the Director.

If the Contractor is:

- (1) a corporation, it must provide a copy of the corporate resolution to dissolve;
- (2) a partnership, the written statement of the partnership, general partner, receiver or custodian thereof that the partnership has dissolved; and
- (3) a joint venture, the written agreement of the principal parties thereto to dissolve the joint venture.

The Contractor shall promptly provide notice to the Director and Agency of all information related to any such merger, acquisition and/or dissolution.

#### ***Complaints-***

The Contract Compliance & Administration Unit ("CCAU") of the Division Purchase and Property acts as the arbiter between State agencies and contract vendors for allegedly failing to comply with the terms, conditions, and specifications of the bid and awarded contract. Filing formal complaints helps determine whether the requirements of the contract have been met and insures that the goods or services purchased have been properly received. Furthermore, filing formal complaints provides feedback to Purchase Bureau buyers when evaluating future contract awards. Vendors with a history of complaints for failure to comply with the contract can be bypassed when awarding a contract during the next bid cycle or optional term extension(s) under this Participating Addendum. Failure to file complaints may result in non-complying vendors receiving subsequent State contracts and/or failure of the State to prudently expend tax dollars.

A formal complaint should be filed when the contract vendor or State Agency fails to comply with contract requirements. Vendors are expected to deliver the ordered commodities or perform the requested services exactly as specified in the contract or purchase order. A formal complaint should be filed if the vendor or State Agency fails to meet its contractual obligations. Formal Complaints are governed by N.J.A.C. 17:12-4.1. et seq. and uses PB-36 form to file the document.

Complaints are filed for one or more reasons, but not limited to following:

1. • Failure to deliver the product ordered
2. • Late Delivery
3. • Incomplete Delivery
4. • Product/service does not meet specifications
5. • Product is defective or substandard
6. • Product delivered is an unacceptable or unauthorized substitute
7. • The services rendered are unsatisfactory or incomplete
8. • Vendor renders inadequate performance
9. • Agency does not adhere to contract specifications

#### ***Reciprocal Action against an Out-of-State Contractor-***

In accordance with N.J.S.A. 52:32-1.4 and N.J.A.C. 17:12-2.11, the State of New Jersey will invoke reciprocal action against an out-of-State contractor whose state or locality maintains a preference practice for their Contractors. For states having preference laws, regulations, or practices, New Jersey will use the annual surveys compiled by the Council of State Governments, National Association of State Purchasing Officials, or the National Institute of Governmental Purchasing to invoke reciprocal actions. The State may obtain additional information anytime it deems appropriate to supplement the above survey information.

Any Contractor or Reseller having evidence of out-of-State local entities invoking preference practices should complete the form which may be found at <http://www.state.nj.us/treasury/purchase/forms/pbat01.pdf> with a copy of appropriate documentation.

***Announcements and/or Advertisements-***

All publicity and/or public announcements pertaining to this Participating Addendum shall be approved in writing by the State and Enterasys prior to release.

Contractor must obtain prior written (email) approval, no less than seven (7) business days before release for any and all advertisements pertaining to this contract during its effective term. Any and all authorized Resellers may not directly send advertisements to any and all Authorized Purchasers without explicit written approval from the Contractor.

***Contractor and/or Reseller Facilities Inspection-***

The State reserves the right to inspect the Contractor and/or Reseller's establishment before and after making an award, for the purposes of ascertaining whether the Contractor has the necessary facilities for performing the contract, and for ongoing contract compliance.

***Claims-***

The following shall govern claims made by the contractor against the State concerning interpretations of the contract, contractor performance and/or rescission of the contract award: All claims asserted against the State and/or agency by the contractor shall be subject to the New Jersey Tort Claims Act N.J.S.A. 59: 1-1, et seq., and New Jersey Contractual Liability Act N.J.S.A. 59:13-1, et seq.

***Tax Exemption-***

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22- 75-0050K.

***Request for Additional Information-***

The Director reserves the right to request all information which may assist in making a contract award, including factors necessary to evaluate the Contractor's financial capabilities to perform the contract. Further, the Director reserves the right to request a Contractor to explain, in detail, how the bid price was determined.

***Maintenance of Records-***

The contractor shall maintain records for products and/or services delivered against the contract for a period of three (3) years from the date of final payment. Such records shall be made available to the State upon request for purposes of conducting an audit or for ascertaining information regarding dollar volume or number of transactions.

### 13.0 Order of Precedence:

This Participating Addendum and the WSCA Master Agreement between the parties and supersede all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. There are no conditions, understandings, agreements, representations or warranties, expressed or implied, that are not specified herein.

No term or provision of this Participating Addendum shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or any subsequent breach, except as may be expressly provided in the waiver or consent.

This Participating Addendum and any and all litigation arising there from or related thereto shall be brought in State court in the State of New Jersey and governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles.

### 14.0 The State of New Jersey Mandatory Certification Requirements:

The following certifications are required by the State and must be filed with Division of Purchase and Property prior to the Effective date:

1. New Jersey Business Registration Certificate (BRC) (N.J.S.A. 52:32-44);
2. New Jersey Set-Off for State taxes and Child Support (N.J.S.A. 54:49-19);
3. New Jersey Ownership Disclosure Form (N.J.S.A. 52:25-24.2);
4. New Jersey Local Unit "Political Contribution Disclosure Compliance" Law (Chapter 271, P.L. 2005) and Chapter 19, P.L. 2004 (as amended by P.L. 2005, c.51) (N.J.S.A. 19:44A-20.4 et seq.);
5. Executive Order No. 117 Compliance Form;
6. New Jersey Services Disclosure Certification Form (N.J.S.A.52:34-13.2);
7. New Jersey Equal Employment Opportunity Compliance (N.J.S.A.10:5-31 et seq. and N.J.A.C.17:27);
8. New Jersey Certification in Compliance with MacBride Principles and Northern Ireland Act of 1989 (N.J.S.A. 52:34-12.2);
9. Disclosure of Investigations and Actions Involving a Contractor
10. Election Law Enforcement Commission Annual Disclosure Statement; Pursuant to P.L.2005, c.271, §3. Any business entity that has received \$50,000 or more in a calendar year through agreements or contracts with public entities, must file an annual disclosure Business Entity Annual Statement (Form BE) with the New Jersey Election Law Enforcement Commission. The statement is required to be filed electronically by March 30th of each year and will report information relevant to the previous calendar year. Filing instructions are available on its website at [www.elec.state.nj.us](http://www.elec.state.nj.us);
11. New Jersey Public Works Contractor Registration Act; Pursuant to N.J.S.A. 34:11-56.28 et seq. the New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors or lower tier subcontractors who bid on or engage in any contract for public work be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464 or <http://www.nj.gov/labor/lsse/lspubcon.html>

15.0 Primary Contacts:

The primary participating entity contacts for this Participating Addendum are as follows:

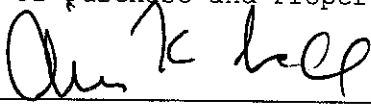


Name: Marianne Bixler  
Title: Buyer  
Participating Entity Name: Division of Purchase and Property,  
Department of the Treasury,  
State of New Jersey  
Address: 33 W. State Street  
P.O. Box 230  
Trenton, NJ 08625-0230  
Telephone: (609) 292-2194  
Fax: (609) 633-3634  
E-mail: Marianne.Bixler@treas.state.nj.us

The primary Contractor contact for this Participating Addendum is as follows:

Name: Joanna Sabal  
Title: Contracts Administrator  
Contractor: Enterasys Networks, Inc.  
Address: 50 Minuteman Road  
Andover, MA 01810  
Telephone: 978-684-1063  
Fax: 978-684-1420  
E-mail: jsabal@enterasys.com

The parties hereto agree that this Participating Addendum may be executed in counterpart, each original signed page to become part of the original document.

IN WITNESS WHEREOF, authorized representatives of Enterasys and the State have executed this Participating Addendum to be effective on the Effective Date.

<p>State of New Jersey, Department of the Treasury, Division of Purchase and Property</p> <p>By: <u></u></p> <p>Name: Alice K. Small</p> <p>Title: Acting Director, Division</p> <p>Date: <u>2/19/09</u></p>	<p>Enterasys Networks, Inc.</p> <p>By: <u></u></p> <p>Name: Dave Barry</p> <p>Title: Director, Sales Operations</p> <p>Date: <u>12-30-08</u></p>
<p>Approved as to Form: Anne Milgram Attorney General of the State of New Jersey</p> <p>By: <u></u></p> <p>Name: <u>Beth Leigh Mitchell</u></p> <p>Title: <del>Deputy</del> - Attorney General</p> <p>Date: <u>2/24/2009</u></p>	