

CONTRACT FOR MICROCOMPUTER SOFTWARE
BETWEEN THE
STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION
AND
Software House International
aka SHI International Corp.

This Contract is between the **Department of Administration**, located at 101 E Wilson Street, Madison, WI 53702, acting on behalf of the State of Wisconsin ("**State**"), which includes all State of Wisconsin Agencies ("State Agencies") and the University of Wisconsin System and Campuses ("Universities"), and **Software House International (SHI)** ("**Contractor**") located at 2 Riverview Drive, Somerset, NJ 08873.

Contract Period

The Contract Period for the Non-Microsoft (or named Publishers) and the "Other Publishers" portions of the Contract shall run from September 1, 2005-August 31, 2008 with two (2) optional, one (1) year extensions if mutually agreed upon by the Parties.

The Contract Period includes an Implementation Period of not more than thirty (30)-days beginning on the first workday after signature by the Parties.

Contract Scope

Contractor has been awarded a Contract to supply Microcomputer Software as one of five (5) suppliers of Microcomputer Software. Microcomputer Software is defined as:

- Shrink Wrapped Software
- Licensed Software
- Software Media
- Upgrades to Software
- Maintenance

The Contract does not include software that is specialized and highly-customizable or software that requires significant implementation costs.

Contractor shall provide statewide delivery of all Publishers of software listed on the Contract web site on VendorNet **excluding** the following Publishers:

- Microsoft (Govt. and Acad.)
- Adobe (Acad.)
- Business Objects (Govt. and Acad.)
- Hummingbird (Acad.)
- IBM/Lotus (Govt. and Acad.)
- Quest Software (Govt. and Acad.)
- Symantec (Govt. and Acad.)

Definitions

- Authorized User means any State Agency, University of Wisconsin campus, municipal government, local agency or other public body authorized to use statewide contracts, as established in §§ 16.70 (1b), (2), (4) and (8), 16.73 and 66.0301 of the Wisconsin

Statutes and § PRO-D-30 of the State Procurement Manual. The terms “Authorized User” and “State” are used interchangeably in this Contract.

- Fill Rate – The total number of requisition lines filled, divided by the number of lines requested over a given period. The difference, therefore, would be items on back-order.
- Municipality – A “municipality” is defined as any county, city, village, town, school district, board of school directors, sewer district, drainage district, vocational, technical and adult education district, or any other public body having the authority to award public contracts (s. 16.70(8), Wis. Stats.). Federally recognized Indian tribes and bands in this state may participate in this agreement per ss. 66.0301(1) and (2), Wis.Stats.

Entire Contract

The Parties agree that this Contract embodies the entire Contract between the State and Contractor on the matters specified herein, whether expressed or implied, written or oral. No changes, amendments or modifications of any of the terms or conditions of this Contract are valid unless reduced to writing and signed by both Parties.

The attached Price Appendix #1, the State’s RFP #27759-KA and the Contractor’s Proposal dated April 28, 2005 are incorporated into this Contract as if they had been set forth in their entirety. In the event conflicts or disputes arise over issues not specifically addressed in this Contract, the document used to resolve such conflicts or disputes in the following order of precedence is:

- 1) The Contract
- 2) RFP #27759-KA document and addenda
- 3) Contractor's Proposal dated April 28, 2005 and all addenda such as email responses to target pricing and clarifications.

IN WITNESS WHEREOF, the Parties hereto by their duly authorized representatives have executed this Contract with full knowledge of and agreement with the terms and conditions of this Contract.

STATE OF WISCONSIN
DEPARTMENT OF ADMINISTRATION

SOFTWARE HOUSE INTERNATIONAL

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

1.0 General Terms and Conditions

Contractor shall provide the service set forth herein in accordance with applicable professional standards.

1.1 Payment Terms and Invoicing. The State normally will pay properly submitted vendor invoices within thirty (30) days of receipt providing goods and/or services have been delivered and accepted as specified.

Invoices presented for payment shall be submitted in accordance with instructions contained on the purchase order including reference to purchase order number and submittal to the correct address for processing.

A good faith dispute pursuant to s. 16.528, Wis. Stats., creates an exception to prompt payment requirements.

The invoice price for any SKU shall be invoiced no more than the price shown on the web site on the day of the order placement.

1.2 Taxes. For this Contract, the State is exempt from payment of all federal tax and Wisconsin State and local taxes on its purchases.

1.3 Guaranteed Delivery. Failure of the Contractor to adhere to delivery schedules as specified or to promptly replace rejected materials shall render the Contractor liable for all costs in excess of the Contract price when alternate procurement is necessary. Excess costs shall include the administrative costs.

1.4 Applicable Law And Compliance. This Contract shall be governed under the laws of the State of Wisconsin. The Contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this contract and which in any manner affect the work or its conduct. The State of Wisconsin reserves the right to cancel this Contract if the Contractor fails to follow the requirements of s. 77.66, Wis. Stats. and related statutes regarding certification for collection of sales and use tax. The State of Wisconsin also reserves the right to cancel this Contract with any federally debarred contractor or a contractor that is presently identified on the list of Parties excluded from federal procurement and non-procurement contracts.

1.5 Antitrust Assignment. The Contractor and the State recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the State as a purchaser. Therefore, the Contractor hereby assigns to the State any and all claims for such overcharges as to goods, materials or services purchased in connection with this Contract with the State of Wisconsin.

1.6 Assignment. No right or duty in whole or in part of the Contractor under a State contract may be assigned or delegated without the prior written consent of the State's Contract Manager.

1.7 Nondiscrimination and Affirmative Action. The Contractor shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, developmental disability as defined in s. 51.01(5), Wis. Stats., sexual orientation as defined in s. 111.32(13m), Wis. Stats., or national origin. This provision shall include, but not be limited to employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor shall take affirmative action to ensure equal employment opportunities.

1.7.1 Within fifteen (15) working days after a State contract is awarded, the Contractor shall submit a written Affirmative Action Plan to the Department of Administration for approval. Instructions on preparing the plan and technical assistance regarding this clause are available from the Department. An exemption occurs from this requirement if the Contractor has a workforce of less than twenty-five (25) employees.

1.7.2 The Contractor shall post in conspicuous places, available for employees and applicants for employment, a notice to be provided by the Department of Administration that sets forth the provisions of the State of Wisconsin's nondiscrimination law.

1.7.3 Failure to comply with the conditions of this clause may result in the Contractor's becoming declared "ineligible," termination of the Contract, or withholding of payment.

1.8 Patent Infringement. The Contractor shall inform the Contract Manager of any notice of Patent Infringement by any of the Publishers or shall provide notice to the Publisher if a suit is brought against the State. The Contractor shall help to provide adequate and proper notice to the Publisher so that the Publisher, at its own expense, may defend every suit that is brought against the State (provided that such Publisher is promptly notified of such suit, and all papers therein are delivered to it) for any alleged infringement of any patent by reason of the sale or use of such articles

1.9 Warranty. The Publisher's standard warranty shall apply as a minimum and shall be honored by the Contractor.

1.10 Contractor Tax Delinquency. Vendors who have a delinquent Wisconsin tax liability may have their payments offset by the State.

1.11 State Public Official Disclosure Requirements. This Contract may be voided if the following conditions apply:

- 1) a State public official (as defined in s. 19.42, Wis. Stats.), or a member of a State public official's immediate family, or any organization in which a State public official or a member of the official's immediate family owns or controls a ten percent (10%) interest is a Party, and
- 2) it involves the payment of more than three thousand dollars (\$3,000) within a twelve (12) month period.

The State may void such a contract unless appropriate disclosure is made according to s. 19.45(6), Wis. Stats., before the State contract is executed. Disclosure shall be made to the State of Wisconsin Ethics Board, 44 East Mifflin Street, Suite 601, Madison, Wisconsin 53703 (Telephone 608-266-8123).

State classified and former employees and certain University of Wisconsin faculty or staff are subject to separate disclosure requirements under s. 16.417 of the Wisconsin Statutes.

1.12 Promotional Advertising and News Releases. Reference to or use of the State of Wisconsin, the Great Seal of the State of Wisconsin, the Wisconsin Coat of Arms, any of its departments, agencies or other subunits, or any State official or employee for commercial promotion is strictly prohibited. News releases pertaining to the Contract shall not be made without prior approval of the Contract Manager. Release of broadcast e-mails pertaining to this Contract shall not be made without prior written authorization of the Contract Manager.

1.13 Foreign Corporation. The Contractor shall conform to all the requirements of Chapter 180, Wis. Stats., relating to a foreign corporation (any corporation other than a Wisconsin corporation), and shall possess a certificate of authority from the Wisconsin Department of Financial Institutions, unless the corporation is transacting business in interstate commerce or is otherwise exempt from the requirement of obtaining a certificate of authority. Any foreign corporation required to apply for a certificate of authority shall contact the Department of Financial Institutions, Division of Corporation, P. O. Box 7846, Madison, WI 53707-7846; telephone (608) 266-3590.

1.14 Employment. Contractor shall not engage the services of any person or persons now employed by the State, including any State, commission or board thereof, to provide services relating to this Contract without the written consent of the employer of such person or persons and of the Contract Manager.

1.15 Severability. If any provision of this Contract is found by a proper authority to be invalid or unenforceable, the remainder of the Contract shall remain valid and the invalid provision shall be replaced by a valid provision, which comes closest in intent to the invalid provision. The rest of the provisions shall remain in full force and effect.

1.16 Contract Manager. The Contract Manager for this Contract is Karen Aasen, or her successor. All reports are to be submitted via email to karen.aasen@doa.state.wi.us or successor.

1.17 Notification. Either Party may give written notice to the other Party in accordance with the terms of this section. Any notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery by personal service or hand delivery or three (3) business days after being mailed.

<p>To the State:</p> <p>Microcomputer Software Contract Manager Karen Aasen Department of Administration Bureau of Procurement 101 E. Wilson Street, 6th Floor P.O. Box 7867 Madison, WI 53707-7867</p> <p>Telephone: (608) 267-4506 FAX: (608)-267-0600 Email: karen.aasen@doa.state.wi.us</p>	<p>To Contractor:</p> <p>SLG Manager Katie O'Kane Software House International 2 Riverview Drive Somerset, NJ 08873</p> <p>Telephone: (800) 527-6389 x5904 FAX: (732) 868-5905 Email: katie_okane@shi.com</p>
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1.18 Change of Notification Contact, Address or Toll-Free Telephone Number. In the event the Contractor moves or updates contact information, the Contractor shall inform the Contract Manager of such changes in writing within ten (10) business days. No governmental entity shall be held responsible for payments or purchase orders delayed due to Contractor's failure to provide such notice. Changes to the State's Contract Manager shall be posted by the State on VendorNet on the appropriate contracts. The current toll free telephone number shall be posted on the web site at all times.

1.19 Examination of Records. The State shall, at any time upon notice, have access to and the right to examine, audit, excerpt, transcribe, and copy, on Contractor's premises, any directly pertinent records and computer data storage media of Contractor involving transactions relating to this Contract. If the material is on computer data storage media, Contractor shall provide copies of the data storage media or such computer printout as may be requested by the State. Contractor, following final payment, shall retain such material for three (3) years. This provision shall also apply in the event of termination pursuant to Termination section of this Contract. Any charges for copies provided by Contractor of books, documents, papers, records, computer data storage media or computer printouts shall not exceed the actual cost to Contractor.

1.20 Independent Contractor. Contractor shall act as an Independent Contractor in performing all services under this Contract and, except as otherwise outlined in this Contract, agrees to maintain complete control over its employees and subcontractors, if any.

1.21 Targeted Business Enterprise Affidavit. The Contractor shall include with its signed copy of the Contract, an affidavit to the State as required in RFP #27759-KA, certifying that

all entities listed in its Targeted Business Enterprise (TBE) Diversity Plan do in fact meet the criteria of a TBE, and specifying each entity's TBE classification.

1.22 Recordkeeping and Record Retention. The Contractor shall establish and maintain adequate records of all expenditures incurred under the Contract. All records shall be kept in accordance with generally accepted accounting procedures. All procedures shall be in accordance with federal, State and Local ordinances.

The Authorized User and the State shall have the right to audit, review, examine, copy and transcribe any pertinent records or documents relating to this Contract. This right includes any subcontractor records or documents relating to the Contract. The Contractor shall retain all documents applicable to the Contract for a period of not less than three (3) years after the Contract has expired.

2.0 Additional Terms and Conditions

2.1 Audit/Verification of Pricing. The Contractor shall provide, at least on an annual (each year of the Contract Period) basis, verification reports that certify compliance with the RFP pricing. The Contractor shall obtain the services of a certified independent third Party (e.g., CPA firm) to complete verification reports.

- Within ninety (90) days of Contract signing, the Contractor shall recommend three (3) independent third Party auditors from which the State will select one (1) independent third Party to conduct the audit.
- The Contractor may not propose companies with which they have done business in the past two (2) years, with the exception of a company which has done previous audits under the Contract.
- Within six (6) months of Contract signing, the Contractor shall provide the methodology for the audit and shall present such methodology to the State for consideration. The final methodology shall be approved in writing by the Contract Manager prior to conducting the audit.
- Within six (6) months of Contract signing, the Contractor shall suggest a report format, subject to the approval of the Contract Manager.
- The Contractor shall compensate the independent third Party auditor for their work.

2.2 Product Availability. There shall be no cancellation of awarded Publishers without prior approval by the Contract Manager during the term of the Contract.

The Contractor shall post Publisher's discontinuation of any SKUs on the State of Wisconsin specific web page (i.e. a link on the general announcements webpage) within forty-eight (48) hours of notice from the Publisher. When possible, the Contractor shall provide the replacement SKU# for the item being discontinued. For products that have been purchased by an Authorized User, the Contractor shall ensure that the replacement SKU#, description and final price or the disposition of the product are listed on the web site, at least thirty (30) days prior to the substitution. For products that have not previously been purchased by an Authorized User and where a replacement for a product is not provided by the Publisher, when requested the Contractor shall work with the Authorized Users to identify and

implement alternative options/upgraded versions of the software that shall maintain or reduce costs associated with the discontinued item.

The Contractor may be required to offer detailed quarterly reports if requested by the State, displaying no longer provided SKUs and suggested replacements.

The Contractor shall post Publisher's notices of products they intend to desupport (i.e., no longer maintain as of a certain date) on the State of Wisconsin specific web page (i.e. a link on the general announcements webpage) within five (5) business days of notice from the Publisher.

These notices shall be available for viewing from time of notice no less than ninety (90) days after the product has been discontinued or no longer maintained by the Publisher.

2.3 Ordering Methods. The Contractor shall have a local Wisconsin telephone number, or a toll free (800) number, or accept collect calls for any type of Customer Service needed by the State.

Each Authorized User shall be responsible for placing its own orders, which may be accomplished by written purchase order, telephone, fax or computer online systems. Payment may be made by the State's Purchasing Card (PCard) or by invoices submitted in accordance with Section 1.1 above.

2.4 Online Commerce. The Contractor shall provide online, real time, web-based electronic commerce. All web-based ordering systems shall feature at a minimum, the following requirements:

- The ability to have tiered multiple account organization. More specifically, to have multiple Master accounts with the ability for multiple account enrollments beneath the Master account by Authorized User. An ultimate Contract Manager's account shall also be created with access to all enrolled accounts under the Contract. Each Authorized User's Agency Account Manager shall also have the ability to access all the enrolled multiple accounts in its Authorized User's Master account.
- The ability for the Contract Manager to easily access and track previous and current orders across the entire State and have the ability to view the orders within a specified criteria (by date, by Authorized User, by Publisher) per the ultimate Contract Manager's account.
- The ability for the Agency Account Manager to easily access and track previous and current orders across its Master Account and have the ability to view the orders within specified criteria (by date, by ordering subunit, by Publisher).
- The ability for online information by Publisher to designate product description, Contractor's product number, Publisher's product number, the current cost to the Contractor, the appropriate Contract mark-up percentage and the ultimate end user price.
- The ability for a general announcements page. This page shall have a prominent link from all pages after the log-in page. This page shall contain at a minimum, all applicable links such as the State's volume license agreements, the list less discounts and specific pricing if appropriate, a matrix of the cost-plus mark-up percentages (%) by Publisher, an updated area for the latest price changes, as well as contact

information for the Contractor's team of representatives. This page shall also contain the list of discontinued SKU's, the product description, the replacements, if applicable and any dates announced by Publisher to no longer maintain products identified by SKU # and product description. If the Contract price for use of the PCard is higher than the price paid using other payment methods, the Contractor shall clearly post that information on the web site.

- The ability to allow an Authorized User to differentiate various delivery locations within its Agency.
- The ability to track current and previous orders in real time.

Within thirty (30) days of executing this Contract, a Wisconsin-specific web site shall be available for testing by the State. This site shall at a minimum, include all instructions on how to use the site, how to obtain passwords, sign-ons, recover forgotten passwords, how to place orders, a secure site for use of the State's PCard, and the ability to provide order history.

The Contractor's web ordering system should not have the ability to assign roles with different capabilities to different accounts under the Master accounts.

2.5 License and Maintenance Period Tracking: Contractor shall obtain a signed Enrollment Agreement (if required by the Publisher's Volume License Agreement) from each enrolling Authorized User prior to any sale of software. All Enrollment Agreements shall be safeguarded and shall not be destroyed. At the expiration of the Contract, or termination, the Contractor shall forward those agreements to the State or to the contractor who receives the subsequent contract, unless the Publisher does not allow the enrollment to be reassigned.

The Contractor shall provide online, real-time, product license inventory tracking through the Internet for each Authorized User. The tracking capabilities shall include the ability to set up each Authorized User as separate user accounts, so only that account information is visible to that specific user.

Within sixty (60) days of Contract Signing, the Contractor shall provide the Contract Manager an online tour of its completed License Tracking System identifying all the above requirements as well as other features.

An Authorized User account shall be set up for the Agency Account Manager to view all the licenses of the Authorized User.

The tracking system shall be set up at a Contract Manager level whereby the Contract Manager can view all license tracking for all participating entities. License reports shall be able to be shown online as well as emailed to the requesting Contract Manager, if requested.

In addition to tracking the licenses, the Contractor shall notify the Authorized User's Agency Account Manager and the Authorized User's back-up person ninety (90) days and thirty (30) days in advance of each license expiration date. The Contractor and the Authorized Users are responsible for keeping the names of the people who receive notifications for license tracking current.

The Contractor shall provide the State and any successor contractor a file of all information regarding the license tracking and maintenance coordination information at the State's request.

2.6 Maintenance Coordination. The Contractor shall be responsible for coordination and communication of maintenance / support contract implementation between the Publisher and the Authorized User. This includes at a minimum:

- Providing the Authorized User with all Publisher registration numbers, contract numbers, maintenance contract period dates. This activity shall occur when the license is purchased.
- Providing the Authorized User with maintenance and support plan features, publisher contact telephone numbers and web sites for obtaining maintenance / support.
- Providing the Authorized User with software certificates that include the reseller Purchase Order Number sent to the Publisher. This activity shall occur when the license is purchased.
- Coordinating co-termination of the second (2nd) year of a maintenance/support contract with the State's fiscal year if requested by the Authorized User.
- Notifying the Authorized User and the Authorized User's back-up person, ninety (90) days and thirty (30) days prior to the expiration of any Authorized User's maintenance/support contracts.
- Maintaining the contact names for the Authorized User's Agency Account Manager, or other designee who shall receive the notifications and the Authorized User's back-up person. Contractor is responsible for maintaining current and accurate contact names in its system.
- Maintaining the license expiration dates in the License Tracking database and providing the Authorized User and the Contract Manager the ability to obtain reports of expiration dates for all their licenses.

2.7 Post-Order Customer Service. The Contractor(s) shall provide all of the designated Authorized Users a single, local point of contact (and a backup) to handle questions and resolve problems that arise. At least one (1) Customer Service Representative shall be available Monday through Friday (excluding State-designated legal holidays) from 8:00 AM to 5:00 PM Central Time. All service representatives shall have online access to information to provide immediate response to inquiries concerning the status of orders (shipped or pending), delivery information, back-order information, State-wide contract pricing, contracted product offerings/exclusions, , and general product information. Representatives shall be available by phone (800# or local #). In addition, the Representatives shall be available by fax and email.

3.0 Reporting

Contractor shall provide detailed electronic reports in Excel (and in a format that can be easily sorted and saved) to the Contract Manager on a monthly, quarterly and annual (due July 20th for the previous 12 months) basis. The reports for the previous period are to be submitted to the Contract Manager no later than fifteen (15) calendar days after the end of each month (or appropriate quarter).

The State's fiscal quarters are:

- July 1st through September 30th,
- October 1st through December 31st,

- January 1st through March 31st, and
- April 1st through June 30th.

Liquidated Damages may be assessed under Section 4.3 for any delays in providing said reports. The Reporting Period starts on the date of implementation of the Contract. Late report delivery, non-delivery of required reports and failure to provide accurate and complete information in the reports shall also be considered a breach of this Contract and may result in cancellation of the Contract at the State's discretion, and rejection of Contractor's bids or proposals in future procurements.

3.1 Usage Reports. Usage reports shall be provided on a monthly basis and capture the following details for each order placed: (Note, in addition to monthly reports, a quarterly report for the previous quarter and an annual report (due in July 20th of each year) are required and shall capture the following details for each order placed: (columns in the report are to be in the same order as the following list)

- Vendor Name and Address
- Date of Invoice
- Invoice Number
- Authorized User Purchase Order Number and Date
- Authorized User/Agency/UW Campus
- Name of Purchaser
- Publisher
- Product Type (License, Shrink Wrap, Maintenance, etc.)
- Volume License Agreement name (if applicable)
- Volume License Agreement level (if applicable)
- Publisher SKU Number
- Contractor SKU Number (if different than the Publisher SKU #)
- SKU / Product Description
- Quantity
- Reseller Unit Cost Price
- Contractor's Publisher Cost-Plus mark-up percentage (%) or Discount-off List percentage (%)
- End-user unit price
- Extended Price
- Expedited shipping cost (if any)
- Total Invoice Price

3.2 Service Reports. Service reports shall be provided on a quarterly basis and capture the following details:

- Fill-rate accuracy
- Invoice accuracy
- Average order time
- Average backorder time
- Average backorder size
- Customer service calls return time

3.3 TBE Reports. Targeted business enterprise program fulfillment reports shall be provided on a quarterly basis and capture the following details:

- Name of the Authorized User, if applicable
- TBE Vendor name
- FEIN
- TBE status
- Amount Paid to TBE from account with Contractor

3.4 Minority Business Report. The Contractor shall file a quarterly report of supplies and services purchased from Certified MBE sub-contractors in the performance of the Contract. A list of certified minority businesses, and the services and commodities they provide is available from the Department of Administration, Office of Minority Business Programs, 608-267-7806. The list is published on the Internet on the DOA web site: <http://www.doa.state.wi.us/section.asp?linkid=1>. Scroll down to Minority Business Program, then view Report-Certified Vendors. The [form for submitting this information](#) is linked here. The report shall be submitted even if there is no activity.

3.5 Cost Sheets by Publisher. Contractor shall provide the Contractor's cost for each SKU to the Contract Manager and/or the auditor either on paper or electronically in a format whereby all the SKUs and the costs for each SKU can be easily seen. These reports are required within ten (10) days each time the "Named Publisher's" cost to the Contractor changes. Reports shall be labeled with the appropriate time period the cost to the Contractor is in effect. This report applies only to the "Named Publisher's" awarded to the Contractor.

The Contact Manager reserves the right to request additional reports from Contractor at no additional cost. Contractor shall use every effort to provide such reports in a reasonable timeframe, but no later than fifteen (15) days from the time the request was submitted. These reports shall be in a form approved in advance in writing by the Contract Manager.

4.0 Indemnification and Liquidated Damages

4.1 Indemnification. Contractor shall hold the State harmless and shall indemnify the State 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, officer, employees or subcontractors. Contractor shall not be liable for any injury or damage as a result of any negligent act or omission committed by the State.

4.2 Liquidated Damages. The State declares, and the Contractor agrees, that the State may suffer damages due to lack of performance of the terms and conditions of this Contract by the Contractor. Since it is impractical and extremely difficult to fix the actual damage sustained in the event of any such nonperformance, the State and the Contractor agree that in the event of any such nonperformance of obligations or goals, the amount of damage to the State from such nonperformance shall be the amounts set forth below. The Contractor shall pay said amounts as liquidated damages and not as a penalty.

4.2.1 Invoice Deadlines and Errors. The Contractor shall submit all invoices to the State no later than one hundred and twenty (120) days after the State's receipt of the purchased goods or services. At the State's discretion, the State's obligation to pay invoices received after said one hundred and twenty (120) day period may be voided.

The Contractor shall be responsible for submitting error-free invoices to the State. At the State's discretion, a pattern of invoices containing substantial or material errors submitted by the Contractor may be grounds for termination of this Contract or the assessment of liquidated damages or both.

If the Contract Manager identifies pricing problems on any of the required usage reports, the Contractor has sixty (60) calendar days to credit overcharges back to the appropriate Authorized User.

If the audit report identifies pricing problems (i.e., the Contractor's cost and/or appropriate cost-plus percentage has been inaccurate), the Contractor shall issue checks or credits as determined by the Contract Manager in the amount of the overcharge for each overcharged order during the period of the audit. In addition, the Contractor shall issue a check in the amount of 10% of the total overcharged amount to the Department of Administration as payment for the administrative costs to the Department. Any instance of overcharging based on the audit may be grounds for termination of the Contract.

4.2.2 Reporting.

The Contractor shall be liable for liquidated damages in the amount of five hundred dollars (\$500) for each week after the 15th of the month (or for each week after the date specified in Section 3 above) that the accurate and complete reports specified in Section 3 have not been provided as specified to the Contract Manager. The State may elect to waive the imposition of liquidated damages on an individual basis, but such waiver of this type of contract breach shall not act as a waiver for any subsequent breach.

Upon the imposition of liquidated damages for a third (3rd) breach under this section 4.3 or upon the third (3rd) waiver thereof such breach, or any combination thereof, the State may serve notice of termination of this Contract for cause.

4.2.3 Targeted Business Enterprises (TBE). The State shall meet with the Contractor annually on the anniversary of the Effective Date of this Contract to review the Contractor's TBE participation in comparison for the year. The State shall review the actual TBE participation achieved against the Contractor's stated participation goal set forth in the Supplier Diversity Plan accepted by the State. The State shall assess liquidated damages from the Contractor for failure to meet the stated goal.

Liquidated damages shall be assessed based upon the difference between the proposed percentage (or dollar amount) of TBE participation and the actual percentage (or dollar amount) of TBE participation achieved in that year. Any negative difference between the two percentages shall be applied as a percentage of the total amount purchased by the State for that year as liquidated damages. If the goal is based on a dollar amount, the negative difference not achieved shall be assessed as liquidated damages.

Examples of damages to be assessed for failure of Contractor to achieve its TBE stated goal.

Contractor states that it will provide TBE's with subcontracts or business worth seven (7%) percent of the State's purchases on an annual basis.

The State purchases \$500,000 worth of goods or services from the Contractor during the year. The 7% TBE goal equals \$35,000.

At the annual meeting, the Contractor demonstrates to the State's satisfaction that it spent \$25,000 with the TBE vendors. (This equates to 5% of the total purchases of the State.) Documentation of the payments to the TBE vendors shall be required at the annual meeting.

The Contractor will be assessed \$10,000 in liquidated damages for not meeting its agreed to TBE goal of \$35,000.

If the TBE goal is a specific dollar amount (i.e., \$50,000) the Contractor shall demonstrate to the State, by providing documentation, the amounts paid to TBE vendors. If the amount paid is less than the goal, the Contractor shall be assessed liquidated damages in the amount of the difference paid and the goal. If the amount paid is \$40,000, the assessment will be \$10,000.

4.2.4 Audit Report by Third Party. The Contractor shall be liable for liquidated damages in the amount of thirty thousand dollars (\$30,000) for failure to have the annual audit conducted and the results submitted to the State as required in Section 2.1.

4.2.5 Assessment. Liquidated Damages shall be assessed upon the Contract Manager's notice to the Contractor. The Contractor shall have ten (10) business days, after the notice is received, to show cause to the Contract Manager why the assessment is in error or that extenuating circumstances constituting Force Majeure should apply. If the assessment is accurate or the appeal is denied, the Contractor shall issue a check to the Department of Administration in the amount of the assessment. The check shall be forwarded within thirty (30) days of the assessment or the denial of the appeal.

5.0 Termination

5.1 Termination for Convenience. The State may terminate this Contract at any time, without cause, by providing a written notice to Contractor at least thirty (30) days in advance of the intended date of termination. Notice of termination of this Contract shall not affect any outstanding orders. The Contractor may not terminate this contract for convenience.

5.2 Termination for Cause. Either Party may terminate this Contract for failure by the other Party to perform its material obligations provided 1) the terminating Party has given the other Parties' contact person written notice with proof of delivery from an overnight delivery service or certified mail return receipt requested and a ten (10) business day opportunity to cure, and 2) the Party receiving the notice has not cured its failure to perform its material obligations.

If either Party breaches this Contract in any respect, the non-breaching Party shall provide written notice of such breach to the Contact person of the breaching Party and afford the breaching Party an opportunity to cure the breach within ten (10) days from the date that the breaching Party receives such notice. The notice may include an effective termination date if the breach is not cured by that date and, unless otherwise modified by the non-breaching Party in writing prior to the termination date, no further action shall be required of any Party to effect the termination as of the stated date. If the notice does not set forth an effective termination date, then the non-breaching Party may terminate this Contract by giving the breaching Party no less than twenty four (24) hours' written notice.

5.3 Non-Appropriation of Funds. This Contract shall be terminated without penalty upon failure of the Legislature to appropriate funds necessary to carry out its terms.

Upon termination of this Contract, all rights, duties and obligations hereunder shall be null and void, so that no Party shall have any further rights, duties or obligations to any other, except with respect to Sections 1 and 6, which shall survive termination of this Contract.

6.0 Pricing

6.1 Non-Microsoft Software. All Non-Microsoft Pricing is provided in Appendix 1 of this Contract. The established cost-plus mark-up percentage (%) for the “Top Publishers” shall be honored for all products within that Publisher’s full-line catalog. The Contractor’s cost price shall be the base price for all Publishers with the stated percentage being added to the cost price to determine a final price, with the exception of Novell, which is a list price (as noted on the appendix, less discount). For any Publisher not listed on the designated list, the “Other Publishers” mark-up percentage (%) shall be applied to the Contractor’s cost price.

All cost-plus mark-up percentages (%) offered shall not increase during the term of this Contract. The cost-plus mark-up percentage (%) can be reduced at any time.

6.2 Increased Publisher Spend. Based on future needs and spend, there may be a need to promote an individual Publisher from the “Other Publishers” section to the “Top Publishers” list. The Contractor shall work proactively with the Contract Manager to monitor spending habits and market demands in order to perform a recalibration of Publishers included in the “Top Publishers” section of the non-Microsoft component. This recalibration shall occur every six (6) months or more often if deemed necessary by either Party.

The State shall have the ability to renegotiate with the Contractor, the Cost-Plus percentage (%) for any Publisher to a lower percentage (%) if volumes increase for a particular Publisher.

6.3 Price Decreases. The Contractor is required to pass along any price decreases to the State. Any price decrease from the Publisher of the product passed along to the Contractor shall be passed through to the State immediately. Failure to update the Contractor’s “Wisconsin” web site with the appropriate decreased pricing, may result in cancellation of this Contract. Price decreases notices by Publisher shall also be maintained on the general announcements page of the State’s specific website.

7.0 Service Level Requirements

Service	Services Required at NO Additional Charge	Required Level of Performance
Metrics	Response Time – Contractor shall respond, via e-mail or phone, with answers to any comments or questions within one (1) business day. Specific data requests and special reports shall be fulfilled on a mutually agreeable timeframe with the Contract Manager.	98%
	Delivery Date - The Contractor shall deliver the products by the delivery date specified in any executed Order, or within seven (7) days After Receipt of the Order (ARO) if no date is specified. The Contract Manager may at any time request this report.	95%
	Invoice Accuracy (%)	98%
	Pricing Accuracy - The Contractor shall display all current State of Wisconsin pricing information (cost price or list if appropriate, cost plus percentage or list less as appropriate and the total price for all SKU's for each Publisher's with the exception of the "Other" Publishers. This pricing shall be kept current at all times.	100%
	Overall Customer Satisfaction - The Contract Manager shall conduct a survey of end-users, to be conducted no more than semi-annual by the Contractor, to determine the level of customer service satisfaction experienced with the supplier. Both the raw and analyzed survey results and improvement recommendations shall be provided to Contract Manager. The following includes some of the areas to be measured on the survey: Responsiveness, Communication, Courtesy, Competence, Effectiveness, Overall Satisfaction. Surveys shall be sent to approximately 10% of the users. Different users shall be contacted for each survey. Users who have indicated dissatisfaction in the services shall be contacted at sometime in the future for feedback on results for improved service. The Contract Manager will work with the Contractor to consider the need for improvements in identified service problems.	95%

7.1 Payment Options. Authorized Users shall pay Contractor by check, electronic funds transfer, or with the State's authorized procurement (charge) card. Contractor shall accept the State's procurement card for single purchases under the per-transaction limit for the respective Authorized User. If a Contractor has a separate mark-up or charges a different mark-up for use of the purchasing card, the Contractor shall clearly state the additional cost on the general announcements page as well as during check-out.

Appendix 1 provides the percentage and the name of the Publisher that the additional PCard percentage can be applied to for this Contract. No other Publisher or percentage is allowed.

7.2 Freight Policy. All shipments shall be F.O.B. destination. Contractor shall file and expedite all freight claims with the carrier. Contractor shall hold title to the software and assume the risk of loss or damage charges. Emergency/rush delivery requiring special shipping and handling shall be at Authorized User's expense (with prior written approval only). Rush delivery that occurs as a result of Contractor's error shall be free of charge.

7.3 Shipping Labeling. A packing label shall be on each box and include the following items, where applicable, visible on the outside of the box:

- Contractor Purchase Order Number, if applicable
- Authorized User Purchase Order Number
- Authorized User's Name
- Address
- Division Name and floor (if applicable)
- Contact Name (Name of Purchaser)
- Telephone number of Purchaser
- Number of parcels

A packing slip shall also be included with each shipment, which shall include at least the following information in no particular order:

- Line item description
- Quantity ordered
- Quantity included in shipment
- Any back order items
- Unit Price
- Purchase Order Number
- Authorized User name
- F.O.B. (destination)
- All information contained on the packing label

7.4 Return of Product. Any materials delivered in poor condition, in excess of the amount authorized by the purchase order may, at the discretion of the Authorized Users, be returned to the Contractor's warehouse at the Contractor's expense within 30 days. Payment for these orders shall not be made, except for the materials that were ordered and were not damaged. If payment is made in error, the Contractor shall issue a credit within thirty (30) days to the appropriate State Agency.

If any product is returned to a Contractor for failure of performance, the Contractor shall, at the State's discretion, refund all amounts paid to the Contractor for such product or replace the product, and the following shall apply:

- Within twenty (20) days of written notification by the Authorized User, the Contractor shall make arrangements for the return of the product.
- The Contractor shall bear all shipping and insurance costs.
- Contractor shall be liable for damages to the product, unless caused by fault or negligence of the Authorized User that occur during the return process.
- The Authorized User shall be responsible for all costs associated with the preparation of the product for shipping, and all shipping costs to the Contractor's nearest service location, if the product is returned to the Contractor for any other reason.

7.5 Quality Assurance and Warranty Guarantee. The Contractor shall honor the Publisher's warranty and facilitate the necessary notices and responsibilities for any product deemed to be defective by the State to be returned.

7.6 Certification. All Contractor(s) shall provide certification/documentation for any Publisher in which they have a designated relationship (e.g. Platinum Partner, Alliance Partner, Designated Reseller) at the request of the Contract Manager.

7.7 Cooperative Purchasing. Contractor shall offer this Contract's conditions and pricing to municipalities **without exception**.

8.0 Additional Services for the Contract at no additional cost

8.1 Retirement of Licenses. The Contractor shall facilitate with the Publisher the process for the retirement of any licenses for the Authorized User as needed. This requires that the Contractor determine the policies of the Publisher and provide the State with the proper procedures and paperwork in order that the retirement of the license becomes effective before the next maintenance period is invoiced or becomes effective.

8.2 Negotiation assistance, volume license agreement facilitation. When requested, the Contractor shall provide negotiation assistance to the State in order to obtain better discounts from the Publishers. The Contractor at any time can be proactive in this service by providing the Contract Manger the appropriate Publisher's various levels and their requirements, as well as recommendations on obtaining better pricing. In addition, it is expected that any individual order or group of orders that allows for better cost prices from the Publisher shall be actively perused by the Contractor.

The Contractor shall report to the appropriate Publisher, all software purchases for all the "named publishers" in order to ensure the proper level of pricing for the State.

8.3 License Deployment Management. The Contractor shall assist the Authorized Users with software deployment and migration strategies for purposes of upgrades from/to and to suggest competitive upgrades paths.

The Contractor shall advise the Authorized User of the various software versions and plans available, especially when there are various choices.

8.4 License Allocation System. The Contractor shall provide a tool for managing the allocation of licenses purchased under “Enterprise-type” Agreements. This software asset management tool shall break down license allocations by organizational levels as well as geographic regions providing the State with a comprehensive view of where the licenses reside, as well as what licenses are available for allocation.

8.5 License Redeployment Management. The Contractor shall recommend solutions to reduce the total cost of ownership of software whenever possible. The Contractor shall have a program that shall manage the redeployment of unused software licenses. This Service/Tool shall allow an end-user to “turn-in” a software license that he or she no longer uses. The Contractor shall then warehouse this license under a State specific SKU# and shall advertise its availability to other buyers within the State. If another State employee decides to take the unused license, the Contractor shall “re-deploy” that software License. The Authorized User may also choose to purchase any necessary media and documentation available to supplement the license. In addition, if an older version of the license is re-deployed, the Authorized User may purchase the upgrade and/or maintenance (if available) and the State shall still realize significant cost savings over the purchase of a new license.

8.6 Electronic Media Fulfillment. The Contractor shall have a tool that allows the Authorized User to receive the data required to feed into their internal electronic software distribution servers or to create their own CD’s for major licensing programs.

The Contractor shall be able to make files available on the server as CD Images, or as Compressed File archives. These could be used to burn a CD at the Authorized User’s site, or load an Authorized User’s internal servers or software distribution systems.

8.7 Evaluation Software. The Contractor shall provide assistance obtaining evaluation software when requested by the Authorized User.