

**PARTICIPATING ADDENDUM
NASPO ValuePoint
Public Safety Communication Equipment 06913
Lead by the State of Washington (hereinafter "Lead State")**

**MASTER AGREEMENT
Amendment 3**

Icom America, Inc.
(hereinafter "Contractor")
And
State of Nebraska 14307 OC
(hereinafter "Participating State")

THIS AMENDMENT is by and between the State of Nebraska (Participating State), and Icom America, Inc. (Contractor).

WHEREAS, the Lead State (Washington) has a Contract with the Contractor identified as Public Safety Communication Equipment #06913 to provide public Safety Communication Equipment for use by state agencies and other entities. The State has entered into a Participating Addendum with the Contract identified as 14307 OC.

WHEREAS, the terms of the Contract specifically state that the contract may be extension per agreement by both parties. The State of Nebraska wishes to continue to take advantage of the existing contract.

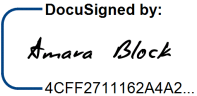

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

Effective July 1, 2021:

1. **CHANGES:** The purpose of this Amendment 3 is as follows:
 - a. Contract term is extended from July 1, 2021 to December 31, 2021

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum.

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

Participating State: STATE OF NEBRASKA	Contractor: ICOM AMERICA, INC.
By:  DocuSigned by: Amara Block 4CFF2711162A4A2...	By:  DocuSigned by: Jim Backeland 978537F4219049B...
Name: Amara Block	Name: Jim Backeland
Title: Acting Materiel Administrator	Title: President
Date: 6/16/2021	Date:

STATE OF NEBRASKA CONTRACT AWARD

State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508

Telephone: (402) 471-6500
Fax: (402) 471-2089

CONTRACT NUMBER
14307 OC

PAGE 1 of 1	ORDER DATE 06/13/18
BUSINESS UNIT 9000	BUYER RENE BOTTS (AS)
VENDOR NUMBER: 527866	
VENDOR ADDRESS: ICOM AMERICA INC PO BOX 51406 LOS ANGELES CA 90051-5406	

AN AWARD HAS BEEN MADE TO THE CONTRACTOR NAMED ABOVE FOR THE FURNISHING OF MATERIALS AND/OR SERVICES AS LISTED BELOW FOR THE PERIOD:

JULY 01, 2018 THROUGH JUNE 30, 2021

NO ACTION ON THE PART OF THE CONTRACTOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE MATERIALS AND/OR SERVICES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE MATERIALS AND/OR SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR MATERIALS AND/OR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE CONTRACTOR AND THE STATE OF NEBRASKA.

Originally awarded from NASPO/ValuePoint Contract 06913

Contract to supply and deliver Public Safety Communications Equipment through a prime vendor program to State of Nebraska agencies for the period July 01, 2018 through June 30, 2021.

Payment: 45 days

Purchase Orders for State Agencies, Boards and Commissions for Public Safety Communications Equipment must be processed by the Office of the CIO.

Political Subdivisions are responsible for processing Purchase Orders directly with the contracted vendor.

(For the File - This RFP and Contract are bid and awarded by the State of Washington. All backup bids, etc. are retained by the Washington State, Department of Enterprise Services.)

(For the File: The NASPO/ValuePoint/ICOM America Master Price Agreement contract period was effective April 1, 2015. The NASPO/ValuePoint/ICOM America Participating Addendum for Nebraska became effective on September 02, 2015.)

Vendor Contact: Kristina Pickering
Phone: 425-450-6092
Fax: 425-450-6063
Email: salescontracts@icomamerica.com

This is the Second Renewal of the contract as amended. (vc 6/13/18)

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
1	PUBLIC SAFETY COMMUNICATIONS EQUIPMENT	5,000.0000	\$	1.0000

6-25-18
RENE A. BOTTS 6/26/2018
BUYER
MATERIEL ADMINISTRATOR
28 June 2018
R43500|NISC0001|NISC0001 20150901

PARTICIPATING ADDENDUM
NASPO ValuePoint
Public Safety Communication Equipment 06913
Lead by the State of Washington (hereinafter "Lead State")

MASTER AGREEMENT
Amendment Two

Icom America, Inc.
(hereinafter "Contractor")

And

State of Nebraska 14307 OC
(hereinafter "Participating State")

Page 1 of 2

THIS AMENDMENT is by and between the State of Nebraska (Participating State), and Icom America, Inc.(Contractor).

WHEREAS, the Lead State (Washington) has a Contract with the Contractor identified as Public Safety Communication Equipment #06913 to provide public Safety Communication Equipment for use by state agencies and other entities. The State has entered into a Participating Addendum with the Contract identified as 14307 OC.

WHEREAS, the terms of the Contract specifically state that the contract may be extension per agreement by both parties. The State of Nebraska wishes to continue to take advantage of the existing contract.

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



Effective July 1, 2018:

1. **CHANGES:** The purpose of this Amendment Two is as follows:

a. Contract term is extended from July 1, 2018 through June 30, 2021.

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum.

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

Participating State: STATE OF NEBRASKA	Contractor: ICOM AMERICA, INC.
By: 	By: 
Name: David Zwart	Name: Hiroshi Nakaoka
Title: Materiel Administrator	Title: President
Date: 28 June 2018	Date: 6/8/2018

STATE OF NEBRASKA CONTRACT AWARD

State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508

Telephone: (402) 471-6500
Fax: (402) 471-2089

CONTRACT NUMBER
14307 OC

COPY

PAGE 1 of 2	ORDER DATE 06/08/16
BUSINESS UNIT 9000	BUYER RENE BOTTS (AS)
VENDOR NUMBER: 527866	
VENDOR ADDRESS: ICOM AMERICA INC PO BOX 51406 LOS ANGELES CA 90051-5406	

AN AWARD HAS BEEN MADE TO THE CONTRACTOR NAMED ABOVE FOR THE FURNISHING OF MATERIALS AND/OR SERVICES AS LISTED BELOW FOR THE PERIOD:

JULY 01, 2016 THROUGH JUNE 30, 2018

NO ACTION ON THE PART OF THE CONTRACTOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE MATERIALS AND/OR SERVICES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE MATERIALS AND/OR SERVICES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR MATERIALS AND/OR SERVICES FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE CONTRACTOR AND THE STATE OF NEBRASKA.

Originally awarded from NASPO/ValuePoint Contract 06913

Contract to supply and deliver Public Safety Communications Equipment through a prime vendor program to State of Nebraska agencies for the period July 01, 2016 through June 30, 2018 with the option to renew for two (2) additional two (2) year periods, per the terms, conditions and specifications.

Payment: 45 days

Purchase Orders for State Agencies, Boards and Commissions for Public Safety Communications Equipment must be processed by the Office of the CIO.

Political Subdivisions are responsible for processing Purchase Orders directly with the contracted vendor.

(For the File - This RFP and Contract are bid and awarded by the State of Washington. All backup bids, etc. are retained by the Washington State, Department of Enterprise Services.)

(For the File: The NASPO/ValuePoint/ICOM America Master Price Agreement contract period was effective April 1, 2015. The NASPO/ValuePoint/ICOM America Participating Addendum for Nebraska became effective on September 02, 2015.)

Vendor Contact: Kristina Pickering
Phone: 425-450-6092
Fax: 425-450-6063
Email: salescontracts@icomamerica.com

This is the First Renewal of the contract as amended. (cp 6-8-16)

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
1	PUBLIC SAFETY COMMUNICATIONS	5,000.0000	\$	1.0000

Rene A. Botts 6/8/2016
BUYER
6-10-16
MATERIEL ADMINISTRATOR

PARTICIPATING ADDENDUM
NASPO ValuePoint
Public Safety Communication Equipment 06913
Lead by the State of Washington (hereinafter "Lead State")

MASTER AGREEMENT
Amendment 1

Icom America, Inc.
(hereinafter "Contractor")

And

State of Nebraska 14307 OC
(hereinafter "Participating State")

Page 1 of 2

THIS AMENDMENT is by and between the State of Nebraska (Participating State), and Icom America, Inc.(Contractor).

WHEREAS, the Lead State (Washington) has a Contract with the Contractor identified as Public Safety Communication Equipment #06913 to provide public Safety Communication Equipment for use by state agencies and other entities. The State has entered into a Participating Addendum with the Contract identified as 14307 OC.

WHEREAS, the terms of the Contract specifically state that the contract may be extension per agreement by both parties. The State of Nebraska wishes to continue to take advantage of the existing contract.

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

Effective July 1, 2016:

1. **CHANGES:** The purpose of this Amendment 1 is as follows:

a. Contract term is extended from July 1, 2016 through June 30, 2018.

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum.

STATE OF NEBRASKA CONTRACT AWARD

State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508

PAGE 1 of 2	ORDER DATE 09/02/15
BUSINESS UNIT 9000	BUYER RENE BOTTS (AS)
VENDOR NUMBER: 527866	
VENDOR ADDRESS: ICOM AMERICA INC PO BOX 31001-1310 PASADENA CA 91110-1310	

CONTRACT NUMBER
14307 OC

AN AWARD HAS BEEN MADE TO THE VENDOR NAMED ABOVE FOR THE FURNISHING OF EQUIPMENT, MATERIAL, OR SUPPLIES AS LISTED BELOW FOR THE PERIOD:

SEPTEMBER 02, 2015 THROUGH JUNE 30, 2016

NO ACTION ON THE PART OF THE VENDOR NEEDS TO BE TAKEN AT THIS TIME. ORDERS FOR THE EQUIPMENT OR SUPPLIES WILL BE MADE AS NEEDED BY THE VARIOUS AGENCIES OF THE STATE.

THIS CONTRACT IS NOT AN EXCLUSIVE CONTRACT TO FURNISH THE EQUIPMENT OR SUPPLIES SHOWN BELOW, AND DOES NOT PRECLUDE THE PURCHASE OF SIMILAR ITEMS FROM OTHER SOURCES.

THE STATE RESERVES THE RIGHT TO EXTEND THE PERIOD OF THIS CONTRACT BEYOND THE TERMINATION DATE WHEN MUTUALLY AGREEABLE TO THE VENDOR AND THE STATE OF NEBRASKA.

Originally awarded from NASPO/ValuePoint Contract 06913

Contract to supply and deliver Public Safety Communications Equipment through a prime vendor program to State of Nebraska agencies for the period September 02, 2015 through June 30, 2016 with the option to renew for six (6) additional one (1) year periods, per the terms, conditions and specifications.

Payment: 45 days

Purchase Orders for State Agencies, Boards and Commissions for Public Safety Communications Equipment must be processed by the Office of the CIO.

Political Subdivisions are responsible for processing Purchase Orders directly with the contracted vendor.

(For the File - This RFP and Contract are bid and awarded by the State of Washington. All backup bids, etc. are retained by the Washington State, Department of Enterprise Services.)

(For the File: The NASPO/ValuePoint/ICOM America Master Price Agreement contract period was effective April 1, 2015. The NASPO/ValuePoint/ICOM America Participating Addendum for Nebraska became effective on September 02, 2015.)

Vendor Contact: Kristina Pickering
Phone: 425-450-6092
Fax: 425-450-6063
Email: salescontracts@icomamerica.com

(bl 09/02/15)

Rene Botts 9/3/15 439/3/15
BUYER
Rene Botts 9/9/15
MATERIAL ADMINISTRATOR

R43500[NISC0901 100423

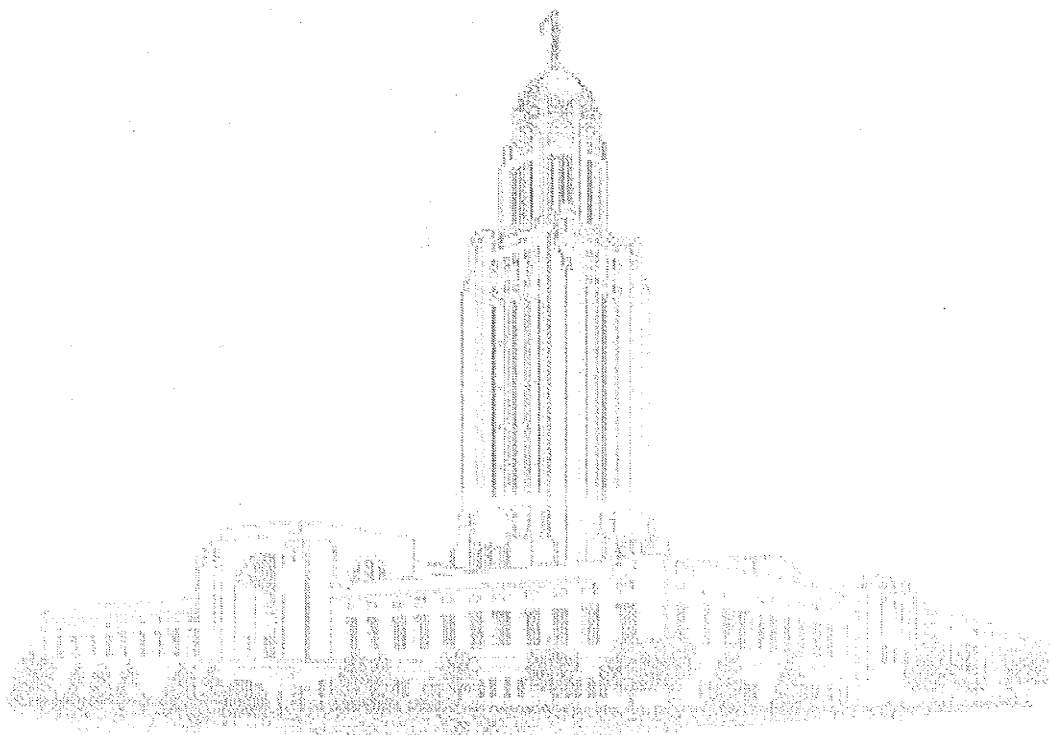
STATE OF NEBRASKA CONTRACT AWARD

State Purchasing Bureau
1526 K Street, Suite 130
Lincoln, Nebraska 68508

PAGE 2 of 2	ORDER DATE 09/02/15
BUSINESS UNIT 9000	BUYER RENE BOTTS (AS)
VENDOR NUMBER: 527866	

CONTRACT NUMBER
14307 OC

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
1	PUBLIC SAFETY COMMUNICATIONS EQUIPMENT	5,000.0000	\$	1.0000



RAB
BUYER INITIALS

PARTICIPATING ADDENDUM
NASPO ValuePoint
Public Safety Communication Equipment 06913
Lead by the State of Washington (hereinafter "Lead State")

MASTER AGREEMENT

Icom America, Inc.
(hereinafter "Contractor")

And

State of Nebraska 14307 OC
(hereinafter "Participating State")

Page 1 of 13

1. **Scope:** This addendum covers the purchase of public safety communication equipment and is for use by state agencies and other entities located in the Participating **State of Nebraska** authorized by that state's statutes to utilize **State of Nebraska** contracts with the prior approval of the state's chief procurement official.

Contractor has been awarded the following categories:

Radios

Subcategory: Portable, Single-Band Tier II

Subcategory: Portable, Single-Band Tier III

Subcategory: Mobile, Single-Band Tier II

Subcategory: Mobile, Single-Band Tier III

Subcategory: Desktop, Single-Band Tier II

2. **Participation:** Use of specific NASPO ValuePoint cooperative contracts by agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use **state/entity** contracts are subject to the prior approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. **Primary Contacts:** The primary contact individuals for this participating addendum are as follows (or their named successors):

Contractor

Name	Kristina Pickering
Address	12421 Willows Road NE Kirkland, WA 98034
Telephone	(425) 450-6092
Fax	(425) 450-6063
E-mail	salescontracts@icomamerica.com

Participating Entity

Name	René A. Botts
Address	1526 K Street, Suite 130
Telephone	(402) 471- 971
Fax	(402) 471-2089
E-mail	Rene.botts@nebraska.gov

4. Subcontractors:

All [contactor] dealers/resellers/distributors authorized in the State of Nebraska, as shown on the NASPO ValuePoint website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The [contractors] dealer's/resellers/distributors participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

5. Purchase Order Instructions:

All orders should contain the following (1) Mandatory Language "PO is subject to NASPO ValuePoint Contract # 06913 (2) Your Name, Address, Contact, & Phone-Number (3) Purchase order amount. Please channel your PO through one of our authorized dealers/resellers/distributors so they can arrange for proper ordering and installation of your equipment. During Contract performance, Contractor shall identify and make available to Purchasers upon request a list of subcontractors, dealers, and distributors who will supply products or perform services in fulfillment of Contract requirements. Information shall include their name, the nature of services to be performed or products to be sold by product category/subcategory, address, telephone, facsimile, email, and federal tax identification number (TIN) (if the company is authorized to sell and invoice for products and services).

6. Price Agreement Number:

All purchase orders issued by purchasing entities within the jurisdiction of this participating addendum shall include the Participating State contract number: **14307 OC** and the Lead State master price agreement number: 06913.

7. Individual Customer:

Each State agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each agency and political subdivision will be responsible to follow the terms and conditions of the Master Agreement; and they will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision will be responsible for their own charges, fees, and liabilities. Each agency and political subdivision will have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor will apply the charges to each Participating Entity individually.

8. Changes: the following terms and conditions will be added to the Participating Addendum for the Participating State:

State of Nebraska Standard Terms and Conditions

a. **CONTRACT PERIOD:** August 31, 2015 through June 30, 2016

b. **COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION**

The contractor shall comply with all applicable local, State and Federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The

State of Nebraska 14307 OC

contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this contract.

c. **PERMITS, REGULATIONS, LAWS**

The contractor shall procure and pay for all permits, licenses and approvals necessary for the execution of the contract. The contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders and regulations.

d. **OWNERSHIP OF INFORMATION AND DATA**

The State of Nebraska shall have the unlimited right to publish, duplicate, use and disclose all information and data developed or derived by the contractor pursuant to this contract.

The contractor must guarantee that it has the full legal right to the materials, supplies, equipment, and other rights or titles (e.g. rights to licenses transfer or assign deliverables) necessary to execute this contract. The contract price shall, without exception, include compensation for all royalties and costs arising from patents, trademarks and copyrights that are in any way involved in the contract. It shall be the responsibility of the contractor to pay for all royalties and costs, and the State must be held harmless from any such claims.

e. **INDEPENDENT CONTRACTOR**

It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing the relationship of partners between the parties hereto. The contractor represents that it has, or will secure at its own expense, all personnel required to perform the services under the contract. The contractor's employees and other persons engaged in work or services required by the contractor under the contract shall have no contractual relationship with the State; they shall not be considered employees of the State.

All claims on behalf of any person arising out of employment or alleged employment (including without limit claims of discrimination against the contractor, its officers or its agents) shall in no way be the responsibility of the State. The contractor will hold the State harmless from any and all such claims. Such personnel or other persons shall not require nor be entitled to any compensation, rights or benefits from the State including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay or retirement benefits.

f. **CONTRACTOR RESPONSIBILITY**

The contractor is solely responsible for fulfilling the contract, with responsibility for all services offered and products to be delivered as stated in the contract. The contractor shall be the sole point of contact regarding all contractual matters.

If the contractor intends to utilize any subcontractors' services, the subcontractors' level of effort, tasks and time allocation must be clearly defined in the contract. The contractor shall agree that it will not utilize any subcontractors not specifically included in this contract, in the performance of the contract, without the prior written authorization of the State. Following execution of the contract, the contractor shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the contract.

g. **CONTRACTOR PERSONNEL**

The contractor warrants that all persons assigned to the project shall be employees of the contractor or specified subcontractors, and shall be fully qualified to perform the work required herein. Personnel employed by the contractor to fulfill the terms of the contract

shall remain under the sole direction and control of the contractor. The contractor shall include a similar provision in any contract with any subcontractor selected to perform work on the project.

Personnel commitments made in the contract shall not be changed without the prior written approval of the State. Replacement of key personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

The State reserves the right to require the contractor to reassign or remove from the project any contractor or subcontractor employee.

In respect to its employees, the contractor agrees to be responsible for the following:

- 1) any and all employment taxes and/or other payroll withholding;
- 2) any and all vehicles used by the contractor's employees, including all insurance required by state law;
- 3) damages incurred by contractor's employees within the scope of their duties under the contract;
- 4) maintaining workers' compensation and health insurance and submitting any reports on such insurance to the extent required by governing State law; and
- 5) determining the hours to be worked and the duties to be performed by the contractor's employees.

Notice of cancellation of any required insurance policy must be submitted to the State when issued and a new coverage binder shall be submitted immediately to ensure no break in coverage.

h. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION

The contractor shall not, at any time, recruit or employ any State employee or agent who is working with the contract or in relation to this contract.

i. CONFLICT OF INTEREST

The contractor certifies that there does not now exist any relationship between the contractor and any person or entity which is or gives the appearance of a conflict of interest related to this contract or project.

The contractor certifies that it shall not take any action or acquire any interest, either directly or indirectly, which will conflict in any manner or degree with the performance of its services hereunder or which creates an actual or appearance of conflict of interest.

The contractor certifies that it will not employ any individual known by contractor to have a conflict of interest.

j. ERRORS AND OMISSIONS

The contractor shall not take advantage of any errors and/or omissions in this contract. The contractor must promptly notify the State of any errors and/or omissions that are discovered.

k. ASSIGNMENT BY THE STATE

The State shall have the right to assign or transfer the contract or any of its interests herein to any agency, board, commission, or political subdivision of the State of Nebraska. There shall be no charge to the State for any assignment hereunder.

l. ASSIGNMENT BY THE CONTRACTOR

The contractor may not assign, voluntarily or involuntarily, the contract or any of its rights or obligations hereunder (including without limitation rights and duties of performance) to any third party, without the prior written consent of the State, which will not be unreasonably withheld.

m. GOVERNING LAW

The contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the State of Nebraska regarding this contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law. The contractor must be in compliance with all Nebraska statutory and regulatory law.

n. ATTORNEY'S FEES

In the event of any litigation, appeal or other legal action to enforce any provision of the contract, the contractor agrees to pay all expenses of such action, as permitted by law, including attorney's fees and costs, if the State is the prevailing party.

o. ADVERTISING

The contractor agrees not to refer to the contract in advertising in such a manner as to state or imply that the company or its services are endorsed or preferred by the State. News releases pertaining to the project shall not be issued without prior written approval from the State.

p. STATE PROPERTY

The contractor shall be responsible for the proper care and custody of any State-owned property which is furnished for the contractor's use during the performance of the contract. The contractor shall reimburse the State for any loss or damage of such property, normal wear and tear is expected.

q. SITE RULES AND REGULATIONS

The contractor shall use its best efforts to ensure that its employees, agents and subcontractors comply with site rules and regulations while on State premises. If the contractor must perform on-site work outside of the daily operational hours set forth by the State, it must make arrangements with the State to ensure access to the facility and the equipment has been arranged. No additional payment will be made by the State on the basis of lack of access, unless the State fails to provide access as agreed to between the State and the contractor.

r. EARLY TERMINATION

The contract may be terminated as follows:

- 1) The State and the contractor, by mutual written agreement, may terminate the contract at any time.
- 2) The State, in its sole discretion, may terminate the contract for any reason upon 30 days written notice to the contractor. Such termination shall not relieve the contractor of warranty or other service obligations incurred under the terms of the

contract. In the event of cancellation the contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.

3) The State may terminate the contract immediately for any of the following reasons:

- a) if directed to do so by statute;
- b) contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
- c) a trustee or receiver of the contractor or of any substantial part of the contractor's assets has been appointed by a court;
- d) fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its contractor, its employees, officers, directors or shareholders;
- e) an involuntary proceeding has been commenced by any party against the contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) days; or (ii) the contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the contractor has been decreed or adjudged a debtor;
- f) a voluntary petition has been filed by the contractor under any of the chapters of Title 11 of the United States Code;
- g) contractor intentionally discloses confidential information;
- h) contractor has or announces it will discontinue support of the deliverable;
- i) second or subsequent documented "vendor performance report" form deemed acceptable by the State Purchasing Bureau.

s. **FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS**

The State may terminate the contract, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the contract. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give the contractor written notice thirty (30) days prior to the effective date of any termination, and advise the contractor of the location (address and room number) of any related equipment. All obligations of the State to make payments after the termination date will cease and all interest of the State in any related equipment will terminate. The contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily completed as of the termination date. In no event shall the contractor be paid for a loss of anticipated profit.

t. **BREACH BY CONTRACTOR**

The State may terminate the contract, in whole or in part, if the contractor fails to perform its obligations under the contract in a timely and proper manner. The State may, by providing a written notice of default to the contractor, allow the contractor to cure a failure or breach of contract within a period of thirty (30) days (or longer at State's discretion considering the gravity and nature of the default). Said notice shall be delivered by Certified Mail, Return Receipt Requested or in person with proof of delivery. Allowing the contractor time to cure a failure or breach of contract does not waive the State's right to immediately terminate the contract for the same or different contract breach which may occur at a different time. In case of default of the contractor, the State may contract the

service/goods from other sources and hold the contractor responsible for any excess cost occasioned thereby.

u. ASSURANCES BEFORE BREACH

If any document or deliverable required pursuant to the contract does not fulfill the requirements of the contract, upon written notice from the State, the contractor shall deliver assurances in the form of additional contractor resources at no additional cost to the project in order to complete the deliverable, and to ensure that other project schedules will not be adversely affected.

v. FORCE MAJEURE

Neither party shall be liable for any costs or damages resulting from its inability to perform any of its obligations under the contract due to a natural disaster, or other similar event outside the control and not the fault of the affected party ("Force Majeure Event"). A Force Majeure Event shall not constitute a breach of the contract. The party so affected shall immediately give notice to the other party of the Force Majeure Event. The State may grant relief from performance of the contract if the contractor is prevented from performance by a Force Majeure Event. The burden of proof for the need for such relief shall rest upon the contractor. To obtain release based on a Force Majeure Event, the contractor shall file a written request for such relief with the State Purchasing Bureau. Labor disputes with the impacted party's own employees will not be considered a Force Majeure Event and will not suspend performance requirements under the contract.

w. PROHIBITION AGAINST ADVANCE PAYMENT

Payments shall not be made until contractual deliverable(s) are received and accepted by the State.

x. PAYMENT

State will render payment to contractor when the terms and conditions of the contract and specifications have been satisfactorily completed on the part of the contractor as solely determined by the State. Payment will be made by the responsible agency in compliance with the State of Nebraska Prompt Payment Act (See Neb. Rev. Stat. §81-2401 through 81-2408). The State may require the contractor to accept payment by electronic means such as ACH deposit. In no event shall the State be responsible or liable to pay for any services/goods provided by the contractor prior to receipt, and the contractor hereby waives any claim or cause of action for any such services/goods.

y. INVOICES

Invoices for payments must be submitted by the contractor to the agency requesting the services/goods with sufficient detail to support payment. The terms and conditions included in the contractor's invoice shall be deemed to be solely for the convenience of the parties. No terms or conditions of any such invoice shall be binding upon the State, and no action by the State, including without limitation the payment of any such invoice in whole or in part, shall be construed as binding or estopping the State with respect to any such term or condition, unless the invoice term or condition has been previously agreed to by the State as an amendment to the contract.

- z. AUDIT REQUIREMENTS** All contractor books, records and documents relating to work performed or monies received under the contract shall be subject to audit at any reasonable time upon the provision of reasonable notice by the State. These records shall be maintained for a period of five (5) full years from the date of final payment, or until all issues related to an audit, litigation or other action are resolved, whichever is longer. All records shall be maintained in accordance with generally accepted accounting principles.

In addition to, and in no way in limitation of any obligation in the contract, the contractor shall agree that it will be held liable for any State audit exceptions, and shall return to the State all payments made under the contract for which an exception has been taken or which has been disallowed because of such an exception. The contractor agrees to correct immediately any material weakness or condition reported to the State in the course of an audit.

aa. TAXES

Purchases of goods or services made by the State of Nebraska are exempt from the payment of Federal Excise Taxes, and exemption certificates will be furnished on request. State and local taxes are exempt by State Statute Section 77-2704 (1) (m). Exemption by statute precludes the furnishing of State exemption certificates.

bb. INSPECTION AND APPROVAL

Final inspection and approval of all work required and/or goods received under the contract shall be performed by the designated State officials. The State and/or its authorized representatives shall have the right to enter any premises where the contractor or subcontractor duties under the contract are being performed, and to inspect, monitor or otherwise evaluate the work being performed. All inspections and evaluations shall be at reasonable times and in a manner that will not unreasonably delay work.

cc. CHANGES IN SCOPE/CHANGE ORDERS

The State may, at any time with written notice to the contractor, make changes within the general scope of the contract. Changes in scope shall only be conducted with the written approval of the State's designee as so defined by the State from time to time. .

The State may, at any time work is in progress, by written order, make alterations in the terms of work as shown in the specifications, require the performance of extra work, decrease the quantity of work, or make such other changes as the State may find necessary or desirable. The contractor shall not claim forfeiture of contract by reasons of such changes by the State. Changes in work and the amount of compensation to be paid to the contractor for any extra work so ordered shall be determined in accordance with the applicable unit prices of the contract.

Corrections of any deliverable services/goods or performance of work required pursuant to the contract shall not be deemed a modification requiring a change order.

dd. SEVERABILITY

If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

ee. CONFIDENTIALITY

All materials and information provided by the State or acquired by the contractor on behalf of the State shall be regarded as confidential information. All materials and information

provided by the State or acquired by the contractor on behalf of the State shall be handled in accordance with Federal and State Law, and ethical standards. The contractor must ensure the confidentiality of such materials or information. Should said confidentiality be breached by a contractor; contractor shall notify the State immediately of said breach and take immediate corrective action.

It is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a (i)(1), which is made applicable to contractors by 5 U.S.C. 552a (m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

ff. **LIMITATION OF LIABILITY**

It is understood by the parties that in the State of Nebraska's opinion, any limitation on the contractor's liability is unconstitutional under the Nebraska State Constitution, Article XIII, Section 3, and that any limitation of liability shall not be binding on the State of Nebraska despite inclusion of such language in documents supplied with the contractor's bid or in the final contract.

gg. **INDEMNIFICATION**

1) **GENERAL**

The contractor agrees to defend, indemnify, hold, and save harmless the State and its employees, volunteers, agents, and its elected and appointed officials ("the indemnified parties") from and against any and all claims, liens, demands, damages, liability, actions, causes of action, losses, judgments, costs, and expenses of every nature, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("the claims"), sustained or asserted against the State, arising out of, resulting from, or attributable to the willful misconduct, negligence, error, or omission of the contractor, its employees, subcontractors, consultants, representatives, and agents, except to the extent such contractor liability is attenuated by any action of the State which directly and proximately contributed to the claims.

2) **INTELLECTUAL PROPERTY**

The contractor agrees it will at its sole cost and expense, defend, indemnify, and hold harmless the indemnified parties from and against any and all claims, to the extent such claims arise out of, result from, or are attributable to the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by the contractor or its employees, subcontractors, consultants, representatives, and agents; provided, however, the State gives the contractor prompt notice in writing of the claim. The contractor may not settle any infringement claim that will affect the State's use of the Licensed Software without the State's prior written consent, which consent may be withheld for any reason.

If a judgment or settlement is obtained or reasonably anticipated against the State's use of any intellectual property for which the contractor has indemnified the State,

the contractor shall at the contractor's sole cost and expense promptly modify the item or items which were determined to be infringing, acquire a license or licenses on the State's behalf to provide the necessary rights to the State to eliminate the infringement, or provide the State with a non-infringing substitute that provides the State the same functionality. At the State's election, the actual or anticipated judgment may be treated as a breach of warranty by the contractor, and the State may receive the remedies provided under this contract.

3) **PERSONNEL**

The contractor shall, at its expense, indemnify and hold harmless the indemnified parties from and against any claim with respect to withholding taxes, worker's compensation, employee benefits, or any other claim, demand, liability, damage, or loss of any nature relating to any of the personnel provided by the contractor.

hh. **NEBRASKA TECHNOLOGY ACCESS STANDARDS**

Contractor shall review the Nebraska Technology Access Standards, found at <http://nitc.nebraska.gov/standards/2-201.html> and ensure that products and/or services provided under the contract comply with the applicable standards. In the event such standards change during the contractor's performance, the State may create an amendment to the contract to request that contract comply with the changed standard at a cost mutually acceptable to the parties.

ii. **ANTITRUST**

The contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

jj. **DRUG POLICY**

Contractor certifies it maintains a drug free work place environment to ensure worker safety and workplace integrity. Contractor agrees to provide a copy of its drug free workplace policy at any time upon request by the State.

kk. **EMPLOYEE WORK ELIGIBILITY STATUS**

The Contractor is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

If the Contractor is an individual or sole proprietorship, the following applies:

- 1) The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.
- 2) If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

- 3) The Contractor understands and agrees that lawful presence in the United States is required and the Contractor may be disqualified or the contract terminated if such lawful presence cannot be verified as required by Neb. Rev. Stat. §4-108.

II. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND INELIGIBILITY

The contractor certifies that the contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency from participating in transactions (debarred). The contractor also agrees to include the above requirements in any and all subcontracts into which it enters. The contractor shall immediately notify the Department if, during the term of this contract, contractor becomes debarred. The Department may immediately terminate this contract by providing contractor written notice if contractor becomes debarred during the term of this contract.

mm. POLITICAL SUB-DIVISIONS

Contractor may extend the Contract to political subdivisions conditioned upon the honoring of the prices charged to the State. Terms and conditions of the Contract must be met by political subdivisions. Under no circumstances shall the State be contractually obligated or liable for any purchases by political subdivisions or other public entities not authorized by Neb. Rev. Stat. § 81-145, listed as "all officers of the state, departments, bureaus, boards, commissions, councils, and institutions receiving legislative appropriations." A listing of Nebraska political subdivisions may be found at the website of the Nebraska Auditor of Public Accounts.

nn. REPORTS

The Contractor shall also provide to the State of Nebraska primary contact person quarterly utilization reports containing at a minimum the following information pertaining to State of Nebraska Utilization:

- 1) Purchase order number;
- 2) Description;
- 3) Quantity; and
- 4) Price.

These reports will be provided in Excel format and sent via email on a quarterly basis as follows:

Period End	Report Due
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

oo. ADMINISTRATIVE FEE /REBATE

The Contractor agrees to provide a quarterly administrative fee in the form of a check. The fee will be payable to the State for an amount equal to one half of one percent (0.05%) of the net sales (net of any returns, credits, or adjustments under this Addendum for the period. The Contractor's WSCA-NASPO pricing to the State shall not be adjusted to offset for the equivalent fee amount. Payments shall be made in accordance with following schedule:

Period End	Fee Due
December 31	January 31

March 31
June 30
September 30

April 30
July 31
October 31

The Contractor agrees to provide a quarterly utilization report, reflecting new sales to the State during the associated fee period. The report shall be in the format developed by the Lead State and as agreed to by the Contractor. The report will be provided in secure electronic format and/or submitted electronically to the State contact listed in the Addendum

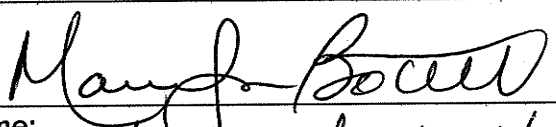
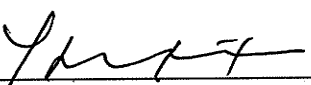
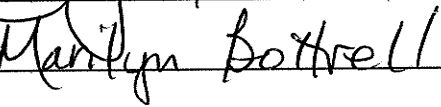
- pp. **ADMINISTRATIVE FEE/REBATE REMITTANCE LOCATION**
All Administrative Fees/Rebates will be sent to the following address:

State Purchasing Bureau
c/o Central Finance, Administrative Services
1526 K Street, Suite 150
Lincoln, NE 68508

- qq. **WARRANTY**
The Contractor will provide a copy of the manufacturer's warranty to the State of Nebraska upon signature of the participating addendum.

This Participating Addendum and the Master Agreement number 06913 (administered by the State of Washington) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

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

Participating State: STATE OF NEBRASKA	Contractor: ICOM AMERICA, INC.
By: 	By: 
Name: Be Botelho 	Name: Miroshi Nakaoka
Title: Materiel Administrator	Title: President
Date: 9/9/2015	Date: August 21, 2015

If you have questions about this Participating Addendum or the participation process, please contact:

NASPO ValuePoint

Name	Tim Hay, Cooperative Development Coordinator
Telephone	503-428-5705
E-mail	<u>thay@naspovaluepoint.org</u>