

PARTICIPATING ADDENDUM
WSCA-NASPO COOPERATIVE PURCHASING ORGANIZATION, LLC
MN 2014-2019 Computer Equipment
(Desktops, Laptops, Tablets, Servers, Storage including Related
Peripherals & Services)
Administered by the State of Minnesota (hereinafter "Lead State")

MASTER AGREEMENT
Master Agreement No: MNWNC-116
IBM Corporation.
(hereinafter "Contractor")

And

State of Washington, Department of Enterprise Services
(hereinafter "Participating State")
Participating State Contract #05815-006

Page 1 of 24

This Addendum adds the State of Washington as a Participating State authorized to purchase from the NASPO ValuePoint Master Agreement number MNWNC-116 with IBM Corporation.

1. Scope: This addendum covers the NASPO Computer Equipment Contract categories identified below, led by the State of Minnesota for use by state agencies and other entities authorized by Washington State's statutes and located in the Participating State to utilize state contracts with the prior approval of the state's chief procurement official. Language contained here supersedes and is in addition to the language of the Master Pricing Agreement

a. IBM Corporation Computer Equipment: Category Awards:

Scope of Service

1. Band 4: Server. A server is a physical computer dedicated to run one or more services or applications (as a host) to serve the needs of the users of other computers on the network. This band also includes server appliances. Server appliances have their hardware and software preconfigured by the manufacturer. It also includes embedded networking components such as those found in blade chassis systems.

2. Band 5: Storage to include related Peripherals & Services.

Storage is hardware with the ability to store large amounts of data. This band includes SAN switching necessary for the proper functioning of the storage environment. Ruggedized equipment is **not** included in the Product and Service Schedule for this band.

3. Examples of peripherals/accessories/options: Include but are not limited to: monitors, audiovisual equipment, instructional equipment, cabling, modems, network to support servers, storage and client applications such as routers, switches. Software is an option which must be related to the purchase of equipment and subject to configuration limits. **Third party products are allowed to be offered as peripherals/accessories/options and may be offered in any related band**

b. Products and Services **NOT** allowed or provided by this Participating Addendum:

- **Ruggedized Devices, Printers, Multifunction Printers, Cell Phones**
- **Lease Agreements, Managed Print, Cloud Service**

c. Use of Purchase Card is allowable at time of order placement.

2. Participation: Use of specific WSCA-NASPO cooperative contracts by all state agencies, political subdivisions and other entities (including cooperatives) located within the state of Washington authorized by state statutes to use state 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.

- 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 (a "purchaser" or "authorized purchaser" under this Contract). Except to the extent modified by this Participating Addendum, each agency and political subdivision shall be responsible to follow the terms and conditions of the Master Agreement; and they shall have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision shall have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor shall apply the charges to each Participating Entity individually.

Political and non-profit entities within the State of Washington may use this contract without further process provided they have completed, filed and accepted in the Washington State's Master Contract Agreement (MCUA) process. Use by others than those stated above is not a valid use. Use of the contract in conflict with its language is not binding on any party and does not satisfy requirements.

A list of all members is available at:

<http://des.wa.gov/services/ContractingPurchasing/Purchasing/Pages/MasterContractsUsageAgreement.aspx>

THIS AGREEMENT IS NOT FOR PERSONAL USE.

3. Effective Date: This PA's initial term will begin upon final executed signatures and shall be coterminous with the Lead State's (Minnesota) Master Agreement and any extensions of the Master Agreement.

4. Participating State Modifications or Additions to Master Agreement:

Contractor and DES agree to the following modifications and additions to the Master Agreement for Computer Equipment and apply only to actions and relationships within the Participating Entity.

Department of Enterprise Services (DES) State Master Contract Standard Terms and Conditions.

The following standard terms and conditions are added to the Participating Addendum for the State of Washington. This section consists of general provisions and terms for contracts issued by

the Washington State Department of Enterprise Services (DES), acting under the authority of RCW 39.26 which regulates the manner in which state agencies may acquire services.

4.1 Contract Modifications or Additional Terms and Conditions to the Master Agreement:

DES reserves the right to modify the resulting contract (including but not limited to adding or deleting products, services, or delivery locations) by mutual agreement between DES and the contractor, as long as such modification is substantially within the scope of the original contract. Such modification(s) shall be memorialized in a signed, written document, (Amendment) describing the agreed upon change, including any terms and conditions required to support such change. Changes to point of contact information may be updated without the issuance of a mutually agreed contract amendment.

4.2 Restrictions: In accordance with the Master Pricing Agreement the Participating Addendum identifies the following restrictions of product;

a. Software

1. Software is restricted to operating systems and commercial off-the-shelf (COTS) software and is subject to equipment configuration limits.
2. Software is an option which must be related to the procurement of equipment.
3. Software must be pre-loaded or provided as an electronic link with the initial purchase of equipment.
4. Software such as middleware which is not always installed on the equipment, but is related to storage and server equipment (band 4&5) purchased, is allowed and may be procured after the initial purchase of equipment.

b. Services

1. Services must be related to the procurement of equipment.
2. Service shall be unlimited.
3. Wireless phone and internet service is **not** allowed.
4. Cloud Services including acquisitions structured as managed on-site services are **not** allowed.
5. Managed Print Services are **not** allowed.

c. Third Party Products.

1. Contract Vendors shall only offer Third Party Products in the bands they have been awarded.
2. Contract Vendor is restricted to purchases of computer hardware manufactured by Contractor.

d. Additional Product/Services

1. Hardware and software required to **solely support** wide area network (WAN) operation and management are **not** allowed.
2. Lease/Rentals of equipment shall **not** be allowed.
3. Cellular Phone Equipment shall **not** be allowed.
4. EPEAT Bronze requirement may be waived, on a State case by case basis, if approved by the State's Chief Procurement Officer.

4.3 Contract Administration

- **State Contract Administrator**

DES will appoint a single point of contact that shall be the Contract Administrator for this contract and shall provide contract oversight. The Contract Administrator shall be the principal contact for the contractor for business activities under this contract. DES shall notify the contractor in writing, when there is a new Contract Administrator assigned to this contract.

• **Administration of Term Contract**

DES may maintain contract information and pricing and make it available on DES's website. The Contractor is not responsible for the accuracy of the information on this DES web site. The Contractor will maintain a web site for this Participating Addendum meeting the guidelines of the NASPO Master Agreement including but not limited to contract information, product price lists and other information to assist customers. The contract prices are the maximum price contractor can charge. The contractor may offer volume discounts to purchasers.

4.4 Contractor Administrator Supervision and Coordination

Contractor shall:

- a. Competently and efficiently supervise and coordinate the implementation and completion of all contract requirements specified herein.
- b. Identify the contractor's Authorized Representative, who will be the principal point of contact for DES concerning contractor's performance under this contract.
- c. Promptly notify the Contract Administrator in writing of any change of designated Authorized Representative assigned to this contract.
- d. Be responsive to all written communications given to the contractor's Authorized Representative.

DES shall provide Contractor with timely written notice of a material violation of this section, so that so that Contractor can take corrective action.

4.5 Term Contract Management

Upon award of a term contract, the contractor shall:

- a. Promote and market the use of this contract to all authorized contract purchasers.
- b. Exert reasonable efforts to confirm that those who endeavor to utilize this contract are authorized purchasers under this contract.
- c. At no additional charge, assist purchasers in making the most cost effective, value based purchases which may include, but is not limited to:
 - Having representatives available to provide information regarding products and services, including visiting the purchaser site if needed, and providing purchaser with materials/supplies/equipment recommendations.

- Providing purchasers with a detail list of contract items including current contract pricing and part numbers.

The contractor shall identify a means to contact a Contractor customer service representative responsible for addressing purchaser issues including but not limited to:

- Logging requests for service, ensuring repairs are completed in a timely manner, dispatching service technicians and processing warranty claim documentation.
- Providing purchasers with regular and timely status updates in the event of a delay in repair or order fulfillment.
- Acting as the lead and liaison between the manufacturer and purchaser in resolving warranty claims for contract items purchased.

4.6 Changes

Alterations to any of the terms, conditions, or requirements of this contract shall only be effective upon written issuance of a mutually agreed contract amendment by DES. Changes to point of contact information may be updated without the issuance of mutually agreed contract amendment.

4.7 Statewide Payee Desk

Contractors must register with the Statewide Payee Desk, maintained by DES, to be paid for contract sales. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: [Receiving Payment from the State.](#)

4.8 Management Fee

Contractor will pay a management fee of 2 percent to DES on all state contract sales/purchase prices for work orders. The purchase price is defined as total invoice price less sales tax.

The management fee must be rolled into the contractor's current pricing for this Participating Addendum; the fee must not be shown as a separate line item on an invoice unless specifically requested and approved by DES.

How to determine the fee: Total invoiced sales (not including sales tax) x .0200 = management fee.

DES may increase, reduce or eliminate the management fee, and reserves the right to negotiate contract pricing with the contractor when adjustment of the management fee might justify an increase in pricing.

For purposes of the management fee, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.

Taxability (if applicable): In 2013, the Washington Department of Revenue ruled that if the underlying transaction requires sales tax, the DES management fee portion of the transaction is also subject to a sales tax.

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced and all management fees have been paid. Failure to accurately report total net sales, to submit a timely sales report, or remit timely payment of the management fee may be cause for contract termination, the charging of interest or penalties, or the exercise of other remedies provided by law. Contractor shall be provided a written copy of the audit results and shall have ten (10) business days to respond to audit findings.

The parties agree that the State's or any third-party's access to Contractor's books and records or Subcontractor's books and records shall not include access to personnel, profit or internal cost data. In addition, the parties shall agree to mutually agree to what documents and records the State or any third-party shall gain access prior to the State or any third-party accessing such records and/or data. The State or any third-party shall bear all costs it incurs associated with audit activity.

The management fee does not include or supersede fees owed to other entities such as the NASPO ValuePoint or government entities other than the state of Washington.

DES will invoice the contractor every quarter based on sales reported by contractor. Contractors are not to remit payment until they receive an invoice from DES.

Management fee payment must reference the contract number, work request number (if applicable), the year and quarter for which the management fee is being remitted, and the contractor's name as it is known to DES, if not already included on the face of the check.

Remit management fee to:

Washington State Department of Enterprise Services
Finance Office
PO Box 41460
Olympia, WA 98504-1460

NOTE: DO NOT send payment to the DES Contract Administrator and do not pay prior to receiving the invoice.

4.9 Contract Sales/Usage Report

The management fee will be based on total contract sales, which must be reported quarterly by the contractor in the Contract Sales Reporting System. DES will provide a login password and a vendor number.

Each sales report must identify every authorized purchaser by name as identified on the Contract Sales Reporting System and its total combined sales amount **invoiced** during the reporting period (i.e., sales of an **entire agency** or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by DES, and use of this option without prior approval by DES may be cause for contract termination.

USAGE REPORT DUE DATE: Reports must be submitted electronically within 30 days after the end of the calendar quarter:

For sales invoiced during ...	Due date
Q1 (Jan / Feb / March)	April 30
Q2 (April / May / June)	July 31
Q3 (July / Aug / Sept.)	Oct. 31
Q4 (Oct / Nov / Dec.)	Jan. 31

Failure to provide reports in accordance with the schedule above may be cause for contract termination.

The report may be corrected or modified by DES with subsequent written notice to the contractor.

Upon request by DES, contractor shall provide Contractor's contact information to clarify what is noted on the sales report during the term of this contract. Contractor shall refer sales reporting questions to the Contract Administrator.

4.10 Other Required Term Contract Reports

DES may require the contractor to provide a detailed annual contract sales history report. This report, if requested, will include at a minimum, but is not limited to: product description, part number or other product identifier, per unit quantities sold, and contract price. This report must be provided to DES in an electronic format that can be read by MS Excel. Unless the solicitation specifies otherwise, all other required reports will be designed and approved by the parties by mutual agreement.

4.11 Common Vendor Registration and Bid Notification System

Contractor shall be registered in the state's common vendor registration and bid notification system, RCW 39.29.006, known as Washington's Electronic Business Solutions (WEBS) at www.ga.wa.gov/webs. Contractors already registered need not re-register. It is the sole responsibility of contractors to properly register and maintain an accurate vendor profile.

4.12 Payment

a. Advance payment prohibited:

No advance payment shall be made for the products and services furnished by contractor under this contract.

Notwithstanding the above, maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter.

b. Payment:

Payment is the sole responsibility of, and will be made by, the purchaser.

Payment is due upon receipt of invoice. Under Chapter 39.76 RCW, if purchaser fails to make timely payment(s), contractor may invoice for 1 percent per month on the amount overdue or a minimum of \$1. Payment will not be considered late if a check is mailed within the time specified. If no terms are specified otherwise in the solicitation, net 30 days will automatically apply.

Payment for materials, supplies and/or equipment received and for services rendered shall be made by purchaser and be redeemable in U.S. dollars. Unless otherwise specified, the purchaser's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the contractor.

Note: when the state and the Contractor agree that the state has been overcharged or otherwise reimbursed, the purchaser may elect to have either direct payments or written credit memos issued. If the contractor fails to make timely payment(s) or issuance of credit memos, the purchaser may impose a 1% per month on the amount upon written notice to Contractor and a 30 day cure period.

c. Invoicing and discounts

Contractor must provide a properly completed invoice to purchaser. All invoices are to be delivered to the address indicated in the purchase order.

Each invoice must be identified by the applicable purchaser's order number, and must be in U.S. dollars. Invoices must be prominently annotated by the contractor with all applicable prompt payment and/or volume discount(s) and shipping charges unless otherwise specified in the solicitation.

Invoices for payment will accurately reflect all discounts due the purchaser. Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in U.S. dollars and until all invoiced items are received and accepted according to the Acceptance requirements in section 28 of the Master Agreement. If an adjustment in payment is necessary due to damage or dispute, any prompt payment discount period shall commence on the date final approval for payment is authorized.

4.13 Taxes, fees and licenses

a. Taxes

Where required by statute or regulation, the contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, the purchaser agrees to pay State of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. Contractor agrees not to invoice the State of Washington for federal excise taxes provided that Contractor has been provided the applicable exemption certificate(s).

b. Collection of retail sales and use taxes

In general, contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state contractors must collect and remit "use tax" to Department of Revenue if the activity carried on by the seller in the State of Washington is significantly associated with contractor's ability to establish or maintain a market for its products in Washington. Examples of such activity include where the contractor either directly or by an agent or other representative:

- Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;
- Maintains an in-state inventory or stock of goods for sale;
- Regularly solicits orders from purchasers located within the State of Washington via sales representatives entering the State of Washington;
- Sends other staff into the State of Washington (e.g. product safety engineers, etc.) to interact with purchasers in an attempt to establish or maintain market(s); or
- Other factors identified in WAC 458-20.

c. Department of Revenue registration for out-of-state contractors

Out-of-state contractors meeting any of the above criteria must register and establish an account with the Department of Revenue. Refer to WAC 458-20-193, and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state contractors are not required to collect and remit "use tax," purchasers located in the State of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

d. Taxes on invoice

Contractor shall calculate and enter the appropriate state and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

e. Overpayments to contractor

When the purchaser and Contractor agree that the purchaser has made an erroneous payment or overpayment under this contract, Contractor shall refund to purchaser the mutually agreed amount of such erroneous payment or overpayment within 30

days' written notice. If contractor fails to make timely refund, purchaser may charge contractor 1 percent per month on the amount due, until paid in full.

4.14 Insurance

The following are general insurance provisions for the State of Washington. Additional requirements specific to a good/service may be detailed elsewhere in a solicitation or its appendices.

1. General requirements

Contractor shall, at its own expense, obtain and keep in force insurance as follows until completion of the contract.

Upon request, contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, may result in contract termination.

Any insurance requirements for subcontractors will be mutually approved in the applicable transaction document.

All insurance provided in compliance with this contract shall be primary only with respect to liability arising out this contract.

2. Specific requirements

Employer's Liability (Stop Gap): The contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than \$1,000,000.00. The State of Washington will not be held responsible in any way for worker's compensation claims filed by the contractor or their employees with regard to services performed under the terms of this contract.

Commercial General Liability Insurance: The contractor shall at all times during the term of this contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for product liability, premises liability, advertising injury liability, bodily injury, including disease, illness and death, third party property damage and contractual liability, each arising out of services provided under this contract and resulting from IBM's negligence for which IBM is legally liable. IBM subcontractors used in the performance of this contract shall maintain insurance coverages of the types and in the amounts customary for businesses of similar size and in accordance with industry practice.

IBM's insurer waives rights of subrogation with respect to DES and its authorized purchasers under this Contract for the recovery of damages to the extent they are covered under the Commercial General Liability Insurance policy. Each policy must include a waiver of subrogation in favor of DES and its authorized purchasers. IBM's

commercial general liability insurance policy shall apply on a primary and non-contributory basis only with respect to liability arising out of this Contract.

The limits of liability insurance shall not be less than as follows:

General aggregate limits (other than products-completed operations)	\$2 million
Products-completed operations aggregate	\$2 million
Personal and advertising injury aggregate	\$1 million
Each occurrence (applies to all of the above)	\$1 million
Fire damage limit (per occurrence)	\$50,000
Medical expense limit (any one person)	\$5,000

3. Business Auto Policy (BAP)

In the event that the use of Contractor owned vehicles is involved with providing the services delivered pursuant to this contract or the transportation of clients pursuant to this contract, automobile liability insurance shall be required. The coverage provided applies to all sums IBM legally must pay as damages because of bodily injury or property damage caused by an accident involving a Contractor owned vehicle as a consequence of the performance of this service by the contractor.

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than \$1,000,000 per occurrence.

IBM's insurer waives rights of subrogation with respect to DES and its authorized purchasers under this Contract for the recovery of damages to the extent they are covered under the Business Auto Insurance policy. Each policy must include a waiver of subrogation in favor of DES and its authorized purchasers. IBM's insurance policies shall apply on a primary and non-contributory basis only with respect to liability arising out of this Contract.

4. Additional insurance provisions

All above insurance policies shall include, but not be limited to, the following provisions:

- **Additional insured:** State of Washington shall be named as an additional insured on the Commercial General Liability and Automobile Liability insurance policies. These two policies shall be primary and non-contributory with respect to liability arising out of this Contract.

- **Notice of policy cancellation/Non-renewal:**

For insurers subject to Chapter 48.18 RCW (admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the director of purchasing or designee 45 calendar days prior to cancellation or any material change to the policy as it relates to this contract. Written notice shall include the affected contract reference number.

- **Cancellation for non-payment of premium:**

If cancellation on any policy is due to non-payment of premium, a written notice shall be given the director of purchasing or designee 10 calendar days prior to cancellation. Written notice shall include the affected contract reference number.

- **Identification:**

Certificates of insurance shall include the affected contract reference number.

5. Insurance carrier rating

The insurance required above shall be issued by an insurance company authorized to do business within the State of Washington. Insurance is to be placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best's Reports.

Any exception must be reviewed and approved by the Risk Manager for the State of Washington, by submitting a copy of the contract and evidence of insurance before contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC .

6. Excess coverage

The limits of all insurance required to be provided by the contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the contractor from liability in excess of such limits.

7. Limit adjustments

The state reserves the right to increase or decrease limits as appropriate. To be in effect, any such change shall be included in a written amendment to the Contract mutually approved in writing by the parties in compliance with section 4.1 above.

4.15 Antitrust

The state maintains that, in actual practice, overcharges by Contractor's suppliers resulting from antitrust violations of state or federal antitrust laws are borne by the purchaser. Therefore, during the term of this Contract, to the extent the purchaser bears all expenses, the contractor hereby assigns to the State of Washington any and all of the contractor's claims for such price fixing or overcharges which arise under federal or state antitrust

laws, relating to the materials, supplies, services and/or equipment purchased under this contract.

4.16 Disputes and remedies

a. Problem resolution and disputes

Problems arising out of the performance of this contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. Both parties agree to exercise good faith in problem resolution. If a problem persists and cannot be resolved, it may be escalated within each organization.

The following procedure will be followed if resolution is required to a conflict arising during a transaction under this Contract:

- When an issue arises between purchaser and Contractor, purchaser and Contractor team member(s) will first strive to work out the problem in a timely and amicable manner.
- **Level 1:** If the team members cannot resolve the conflict within five (5) working days, the purchaser and Contractor Administrator will confer to resolve the issue.
- **Level 2:** If the conflict is not resolved within five (5) working days after being escalated to Level 1, the DES Contract Administrator and the Contractor Administrator will confer to resolve the issue.
- If the issue remains unresolved after Level 2 intervention, then either party may terminate the transaction. If the conflict is addressed by termination, purchaser agrees to pay Contractor as described below in section 4.20 Transaction Termination.
- During any issue resolution, Contractor agrees to provide services relating to items not in dispute, to the extent practicable pending resolution of the issue. Purchaser agrees to pay invoices as per this Contract.

b. Administrative suspension

When it is in the best interest of the state, DES may at any time, and without cause, upon ten (10) calendar days written notice to Contractor Administrator, suspend the contract or any portion thereof for a period of not more than 30 calendar days per event. Contractor shall exert commercially reasonable efforts to resume performance five (5) business days following the specified suspension period. The parties will work together to determine the impact on the delivery schedule based on any such administrative suspension. The parties agree that maintenance will not be halted under this administrative suspension.

c. Force majeure

The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of war, riots, strikes, fire, floods, windstorms, epidemics or other similar occurrences.

Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this contract if, and to the extent that, such party's performance of this contract is prevented by reason of force majeure.

Notification: If either party is delayed by force majeure, said party shall exert commercially reasonable efforts to provide written notification within 48 hours. The notification shall provide reasonable evidence of the force majeure to the other party.

Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this contract.

Rights reserved: During a force majeure event, and solely in relation to products and/or services affected by such a force majeure event, DES reserves the right to authorize an amendment to this contract, terminate the contract in accordance with Section 4.19 e herein, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall not prevent DES from taking such action.

d. Alternative dispute resolution fees and costs

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys' fees incurred as a result of the alternative dispute resolution method.

e. Non-exclusive remedies

The remedies provided for in this contract shall not be exclusive but are in addition to all other remedies available under law.

4.17 Liquidated damages

a. Liquidated damages - General

DES and or the purchasers and the contractor agree that the liquidated damages provisions in the contract are a reasonable forecast of the actual damages that would be suffered by the purchaser in the event of contractor's nonperformance, that such liquidated damages are not a penalty but represent the reasonable compensation due purchaser in the event of a breach, and that such liquidated damages will be assessed as appropriate.

Any delay by contractor in meeting the Delivery Date, Installation Date, maintenance or repair date, or other applicable date set forth in this contract may interfere with the proper implementation of purchaser's programs and may result in loss and damage to purchaser.

Based on the specific circumstances of each purchase, when applicable, the purchaser and Contractor will mutually agree on the amount of any applicable liquidated damages in the transaction document.

As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform and/or purchaser and contractor agrees that in the event of any such failure(s) to perform, as defined in the transaction document, the amount of damage which will be sustained will be assessed as appropriate based upon the purchasers inability to perform their function and the parties agree that contractor shall pay such amounts as liquidated damages and not as a penalty, as set forth in the transaction document.

Liquidated damages provided under the terms of this contract are subject to the same limitations as provided in the section titled Limitation of Liability.

b. Limitation of liability

The Limitation of Liability terms in the Master Agreement, Exhibit A – Terms and Conditions, Section C17, shall apply to this Contract.

4.18 Debarment and suspension

To the best of the undersigned's knowledge and belief, Contractor Administrator certifies that neither Contractor nor Contractor's affiliates presently are debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this contract by Department of Enterprise Services and its authorized purchasers. Contractor Administrator also shall exert commercially reasonable efforts to notify DES if Contractor Administrator becomes aware that Contractor's debarment status changes after receiving notice of contract award, if any.

4.19 Contract termination

a. Termination for Cause

i. Material breach conditions

At DES' sole discretion, DES may terminate this Contract for cause due to material breach by Contractor, for failing to perform a material contractual requirement or for a material breach of any material term or condition. Material breach of a term or condition of the contract may include but is not limited to:

- Reserved
- Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
- Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from

creditors and/or debtors that endangers the contractor's proper performance hereunder;

- Appointment of any receiver, trustee, or similar official for contractor or any of the contractor's property and such appointment endangers the contractor's proper performance hereunder;
- A determination that the contractor is in violation of applicable federal, state, or local laws or regulations and that such determination renders the contractor unable to perform any material aspect of the contract.

- ii. **Opportunity to cure** In the event that contractor fails to perform a material contractual requirement or materially breaches any material term or condition, DES may issue a written cure notice. The contractor will be provided a reasonable period of time in which to cure, which shall not be less than ten (10) days or other time period as mutually agreed upon. The Parties agree and acknowledge that it is DES's standard practice to issue a ten (10) day cure period, however, if Contractor requests additional time to cure, DES will consider granting Contractor's request in good faith and in consideration of the circumstances.

DES is not required to allow the Contractor such time to cure defects if the opportunity for cure would result in irreparable further harm to DES. Time allowed for cure shall not diminish or eliminate contractor's liability for liquidated or other damages as otherwise set forth herein, or otherwise affect any other remedies available against contractor under the contract or by law.

If the material breach remains after contractor has been provided the opportunity to cure, DES may do any one or more of the following, as applicable:

- Exercise any remedy provided by law;
- Terminate this contract and any related contracts or portions thereof;
- Procure replacements as set forth elsewhere in this contract;
- As agreed upon in the applicable transaction document, impose actual or liquidated damages;
- Suspend or bar contractor from receiving future solicitations or other opportunities;
- Pursue remedies otherwise set forth herein, subject to the Limitation of Liability section.

- iii. **Effect of Termination for Material Breach**

In the event DES, in its sole discretion, determines that the contractor has failed to comply with the material conditions of this contract or is in material breach, DES has the right to suspend or terminate this contract, in part or in whole.

DES shall notify the contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days or as otherwise mutually approved, or if such corrective action is reasonably deemed by DES to be insufficient to cure the material breach, the Contract may be terminated. DES reserves the right to suspend all or part of the Contract.

In the event of termination under this Section 4.19(a), DES shall have the right to procure for all purchasers any replacement materials, supplies, services and/or equipment that are the subject of this contract on the open market.

In addition, the Contractor may be liable for damages subject to the Limitation of Liability terms herein and in the Master Agreement.

If it is determined under this Section 4.19(a) that: (1) the contractor was not in material breach; or (2) failure to perform was outside of contractor's or its subcontractor's control, fault or negligence, the termination shall be deemed to be a "termination for convenience" and subject to the terms and conditions of Section 4.19(b) below. The rights and remedies of DES and/or the purchaser provided in this contract are not exclusive and are in addition to any other rights and remedies provided by law.

b. Termination for convenience

Except as otherwise provided in this contract, DES, at the sole discretion of DES, may terminate this contract, in whole or in part by giving not less than 30 calendar days or other appropriate and mutually agreed time period written notice beginning on the second day after mailing to the contractor. If this contract is so terminated, purchasers shall be liable for payment required under this contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and accepted by the purchaser in accordance with the Acceptance requirements in section 28 of the Master Agreement prior to the effective date of contract termination, in addition to termination fees as set forth in the applicable transaction document (but such payment obligations will be exclusively with regard to purchasers' payment obligations due to such Termination for Convenience hereunder).

Purchasers shall promptly return or render payment to Contractor for any materials, supplies, and/or equipment that were delivered but not yet accepted prior to the termination date, in materially the same condition as when such items were delivered, at purchasers' own cost. For the avoidance of doubt, this Section 4.19(b) does not limit DES's or purchasers' other payment obligations hereunder apart from their Termination for Convenience payment obligations.

This Termination for Convenience clause may be invoked by DES when it is in the best interest of the State of Washington.

c. Termination for withdrawal of authority

In the event that DES' authority to perform any of its duties is withdrawn, reduced, or limited such that DES would be unable to fulfill its duties under the contract, then after the commencement of this contract and prior to normal completion, DES may terminate this contract, in whole or in part, by thirty (30) calendar day's written notice, or other appropriate and mutually agreed time period with written notice, to contractor. This termination shall otherwise be considered a Termination for Convenience in accordance with and subject to section 4.19(b) above and shall not be considered a Termination for Material Breach.

Purchasers shall promptly return or issue payment to Contractor for any materials, supplies, and/or equipment that were delivered but not yet accepted prior to the termination date, in materially the same condition as when such items were delivered, at purchasers' own cost.

d. Termination for non-allocation of funds

If sufficient funds are not allocated to a purchaser to fund a purchase in any future period, purchaser may terminate the applicable Order with at least seven (7) calendar days written notice, or other appropriate time period, to contractor, or work with contractor to arrive at a mutually acceptable resolution of the situation.

Purchaser will pay Contractor in accordance with section 4.19(c) above. For the avoidance of doubt, purchaser's payment obligations under this Contract for any applicable consecutive periodic payments would be satisfied with the payment for the services, materials, supplies, and equipment delivered and accepted by the purchaser, in accordance with Section 4.19 (c). Purchasers shall promptly return to Contractor any materials, supplies, and/or equipment that were delivered but not yet accepted prior to the termination date, in materially the same condition as when such items were delivered, at purchasers' own cost. DES and/or purchaser agree to notify contractor in writing of such non-allocation at the earliest possible time.

No penalty shall accrue to the purchaser in the event this section shall be exercised. This section shall not be construed to permit DES to terminate this contract (or purchaser to terminate an Order) in order to acquire similar materials, supplies, services and/or equipment from a third party.

e. Termination for conflict of interest

DES may terminate this contract by written notice to contractor if it is determined, after due notice and examination, that any party to this contract has violated Chapter 42.52 RCW, Ethics in Public Service, under this Contract, or any other applicable laws

regarding ethics in public acquisitions and procurement and performance of contracts. In the event this contract is so terminated:

- Due to Contractor's violation of Chapter 42.52 RCW, DES may terminate this Contract for cause in accordance with section 4.19 c above.
- Due to DES, one or more purchaser's, or other third party's violation of Chapter 42.52 RCW, DES may terminate this Contract for convenience in accordance with section 4.19 e above.

f. Termination by mutual agreement

DES and the contractor may terminate this contract in whole or in part, at any time, by mutual agreement. This shall be considered a Termination for Convenience in accordance with section 4.19 d above.

g. Termination procedure

In addition to the procedures set forth below, if DES terminates this contract, contractor shall follow any procedures mutually agreed upon receipt of DES' termination notice.

Upon termination of this contract and in addition to any other rights provided in this contract, DES may require the contractor to deliver to the purchaser any property specifically produced or acquired for the performance of such part of this contract as has been terminated.

Upon termination of this contract or a purchase order under sections 4.19 a. through 4.19f above, the purchaser shall pay to the contractor the agreed upon price, if separately stated, for completed work and service(s) Accepted by the purchaser, and the amount agreed upon by the contractor and the purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are Accepted by the purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case DES, the purchaser, and the Contractor shall mutually agree on the extent of the liability of the purchaser. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract.

The rights and remedies of DES and/or the purchaser provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a termination notice, and except as otherwise expressly directed in writing by DES, the contractor shall:

- Stop all work, order fulfillment, shipments, and deliveries under the contract on the date, and to the extent specified, in the notice;

- Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the contract except as is necessary to complete or fulfill such portion of the contract that is not terminated;
- Complete or fulfill such portion of the contract that is not terminated in compliance with all contractual requirements;
- Subject to DES and purchasers' payment obligations for the applicable termination, fulfill any outstanding orders specifically arising out of such termination of orders and subcontracts pursuant to its payment obligations hereunder, provided, however that this clause does not limit either Party's ability to seek any remedies available to it under applicable law;
- In accordance with the applicable transaction document, transfer title to the purchaser and deliver in the manner, at the times, and to the extent directed by DES on behalf of the purchaser any property which, if the contract had been completed, would have been required to be furnished to the purchaser, provided that the purchaser has paid Contractor for the property;
- Take such mutually agreed action as may reasonably be necessary for the protection and preservation of the property related to this contract which is in the possession of the contractor and in which DES and/or the purchaser has or may acquire an interest.

4.20 Transaction Termination

Either party (the purchaser or the Contractor) may terminate a transaction under this Contract by giving the other party at least thirty (30) days written notice. Upon termination, purchaser will pay Contractor for (i) completed materials, supplies, services rendered and/or shipping cost for the of equipment, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment, and (iv) associated travel expenses incurred prior to transaction termination. The purchaser and Contractor shall negotiate in good faith an agreement as to the percent complete and the associated fees for then in-progress milestone(s) or Services prior to the effective date of termination.

4.21 Federal funding (if applicable)

In the event that a federally funded acquisition results from this procurement, the contractor may be required to provide additional information (free of charge) at the request of DES or purchaser. Further, the contractor may be subject to those federal requirements specific to the commodity as mutually agreed and specified in the applicable transaction document.

4.22 Federal restrictions on lobbying (if applicable)

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

5. Primary Contacts: The primary contact individual (or their named successor) for this Participating Addendum is as follows:

Contractor

Name	Karen Schneider
Address	4660 La Jolla Village Drive Suite 300, San Diego, CA 92122
Telephone	720-397-5563
Email	Kasch@us.ibm.com

Participating Entity

Name	Momi Friedlander Contract Specialist Department of Enterprise Services
Address	1500 Jefferson Street SE, Olympia, WA 98501
Telephone	360-407-8505
Email	Momi.friedlander@des.wa.gov

6. Minority and Women's Business Enterprises (MWBE)

In accordance with the legislative findings and policies set forth in RCW 39.19, the State of Washington encourages participation in all of its contracts by minority and woman-owned businesses firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). While the state does not give preferential treatment, it does seek equitable representation from the minority and women's business community. In addition, the state welcomes participation by self-identified minority and woman owned firms and strongly encourages such firms to become certified by OMWBE.

Contractor shall consider and encourage minority and women owned firms in their pool of subcontractors. However, unless required by federal statutes, regulations, grants, or contract terms no preference will be included in the evaluation of bids.

Any applicable affirmative action requirements set forth in federal regulations or statutes included or referenced in the original solicitation shall apply. Contact OMWBE for information on other certified firms for potential sub-contracting arrangements. DES encourages participation by non-MWBE firms as well as MWBE firms. Prior to performance, an awarded bidder that is a MWBE or intends to use MWBE subcontractors is encouraged to identify the participating firm(s) to DES.

6.1. Public records and exempt information

To the extent consistent with the Public Records Act (PRA), DES shall maintain the confidentiality of any submitted documents designated "confidential" or "proprietary" by the record owner. Any such designation must be clear and prominent. DES' sole responsibility shall be limited to:

- (i) taking reasonable steps to protect any such clearly marked document, and
- (ii) notifying the record owner of any public records request(s) for the documents in accordance with the public records requests procedure defined below.

All documents submitted by said Contractor to DES during the performance of this agreement are subject to disclosure unless specifically exempt under Revised Code of Washington (RCW) 42.56 (The Public Records Act).

Confidential documents: DES strongly discourages submittal of any confidential material. DES considers confidential material to be any portion of your information that is clearly marked or designated all or in part "Confidential," "Proprietary" or "Trade Secret" (or the equivalent).

- The exchange of any confidential information between a purchaser and Contractor in the performance of this Contract will be made under a signed, separate confidentiality agreement which shall be negotiated between purchaser and Contractor.
- All confidential information shall be handled in accordance with RCW 42.56 (The Public Disclosure Act). In the event there is a conflict between RCW 42.56 and subsequent confidentiality agreements, RCW 42.56 shall take precedent.

Public records requests: If a public records request seeks to view or obtain a copy of Contractor's confidential information that is clearly marked or designated "Confidential," "Proprietary" or "Trade Secret" (or the equivalent), DES will:

- Promptly notify you in writing of the date DES will disclose the requested records;
- Give you an opportunity to seek a court order that stops DES from disclosing the records.

DES shall not:

- Evaluate or defend your claim of confidentiality. It is your responsibility to support your claim and take appropriate legal action to do so;
- Withhold or redact your documents without a court order.

Questions about the confidentiality of your submittal can be directed to the Procurement Coordinator or the DES Public Records Officer at (360) 407-8768 or publicrecords@des.wa.gov.

6.2 Legal notices

Any notice or demand or other communication required or permitted to be given under the contract or applicable law (except notice of malfunctioning Equipment) will be effective only if

it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail, to the parties at the addresses and fax numbers, e-mail addresses provided in the *Authorized Offer and Contract Signature Page* below. For purposes of complying with any provision in the contract or applicable law that requires a "writing," such communication, when digitally signed shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form. Notices will be effective upon receipt or four business days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to the contract is served upon contractor or DES, such party agrees to promptly notify the other party (unless prohibited by the applicable government authority or court of competent jurisdiction) in the most expeditious fashion possible following receipt of such subpoena or other legal process. The contractor and DES further agree to use reasonable efforts to cooperate with the other party (at the other party's expense) in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

6.3 Information and Communications

Proprietary or confidential information

To the extent consistent with Chapter 42.56 RCW, the Public Disclosure Act, DES shall maintain the confidentiality of contractor's information marked confidential or proprietary. If a request is made to view contractor's proprietary information, DES will promptly notify contractor of the request and of the date that the records will be released to the requester unless contractor obtains a court order enjoining that disclosure. If contractor fails to obtain the court order enjoining disclosure, DES will release the requested information on the date specified.

The state's sole responsibility shall be limited to maintaining the above data in a secure area and to notify contractor of any request(s) for disclosure for so long as DES retains contractor's information in DES records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by contractor of any claim that such materials are exempt from disclosure.

7. Subcontractors: As defined in the Master Agreement, each State represented by NASPO ValuePoint participating in the Master Agreement independently has the option of utilizing Partners. Only Partners approved by this Participating State may be deployed. The Participating State will define the process to add partners. The Contractor's Partners' participating will be in accordance with the terms and conditions set for the in the aforementioned Master Agreement. The Contractor will identify and define the Partner program(s) available. Approved Partners and instructions on how to utilize those Partners will be listed on the Contractor's web site for this State's Participating Addendum.

8. Orders: Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Participating Addendum must have the State Contract number on the Purchase Order in order to be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order. Purchase orders must be submitted with a valid quote and written acceptance from agency prior to contract performance.

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

Participating State: Washington	Contractor: International Business Machines Corporation (IBM)
By: <i>C. F. Presnell</i>	By: <i>K. Schneider</i>
Name: <i>Farrell Presnell</i>	Name: Karen Schneider
Title: <i>Assist. Dir.</i>	Title: NASPO ValuePoint National Program Manager
Date: <i>01/29/2016</i>	Date: <i>Jan 29, 2016</i>

Participating State: Washington	Participating State: Washington
By (Signature): <i>Mami S. Friedlander</i>	By (Signature)
Name: <i>Mami S. Friedlander</i>	Name:
Title: <i>Contact Specialist</i>	Title:
Date: <i>29 Jan 2016</i>	Date:



STATE OF MINNESOTA
 Materials Management Division
 112 Administration Building
 50 Sherburne Avenue
 St. Paul, MN 55155
 Voice: 651.296.2600
 Fax: 651.297.3996



MN WSCA-NASPO SOLICITATION
MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD
 WITH
IBM CORPORATION
 FOR
**COMPUTER EQUIPMENT: Servers and Storage including related
 Peripherals & Services**

TO: IBM Corporation
 Suite 300
 4660 La Jolla Village Drive
 San Diego, CA 92122

Contract Vendor Administrator:
 Karen A. Schneider
 Email: Kasch@Us.ibm.com
 Phone: 720.397.5563

CONTRACT NO: MNWNC-116

CONTRACT PERIOD: April 1, 2015, or upon final executed signatures, whichever is later

THROUGH March 31, 2017

EXTENSION OPTION: UP TO 36 MONTHS

You are hereby notified that your response to our solicitation, which opened January 31, 2014, is accepted. The following documents, in order of precedence, are incorporated herein by reference and constitute the entire Contract between you and the State: 1. A Participating Entity's Participating Addendum ("PA"). A Participating Entity's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contract Vendor under the Terms of Minnesota WSCA-NASPO Master Agreement.; 2. Minnesota WSCA-NASPO Master Agreement (includes negotiated Terms and Conditions); 3. The Solicitation; and 4. the Contract Vendor's response to the Solicitation. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above.

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

1. IBM CORPORATION

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

By: K Schneider
 Signature
Karen A. Schneider
 Printed Name
 Title: WSCA-NASPO National Program Manager
 Date: 27 Feb 2015

By: _____
 Signature

 Printed Name
 Title: _____
 Date: _____

2. MINNESOTA MATERIALS MANAGEMENT DIVISION

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

By: J Kasch
 Signature
 Title: Master Agreement Administrator
 Date: 3/3/15

3. MINNESOTA COMMISSIONER OF ADMINISTRATION
 Or delegated representative.

By: Original signed
 Date: _____

MAR 03 2015

By Lucas J. Jannett



COMPUTER EQUIPMENT
2014-2019



MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD
TABLE OF CONTENTS

SUMMARY 3

EXHIBIT A - TERMS & CONDITIONS..... 5

EXHIBIT B - PRICING..... 25

EXHIBIT B - PRICING SCHEDULE..... 27

EXHIBIT C - PRODUCT AND SERVICE SCHEDULE(PSS) 28

EXHIBIT D - WEBSITE 29

EXHIBIT E - ACTION REQUEST UPDATE FORM (ARF) 30

EXHIBIT F - REPORTING..... 32

EXHIBIT G - DEFINITIONS..... 33



**COMPUTER EQUIPMENT
2014-2019**



**MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD
SUMMARY**

1. **BACKGROUND.** The State of Minnesota, Department of Administration, Materials Management Division publicly posted a Request for Proposal on behalf of the State of Minnesota and WSCA-NASPO Cooperative Procurement Program ("WSCA-NASPO") resulting in a Master Agreement Award. After evaluation by a multi-state sourcing team the solicitation resulted in this Minnesota WSCA-NASPO Master Agreements with qualified manufacturers for **Computer Equipment (Desktops, Laptops, Tablets, Servers, and Storage including related Peripherals & Services).**

The original solicitation contains the requirements and definitions establishing the following Product Bands allowed on the Master Agreement. The configuration limits and restrictions for this Master Agreement are provided below. Participating Entities may revise these in their Participating Addendum. **Bands awarded are identified below:**

- Band 4: Server
- Band 5: Storage

The original solicitation included Band 6: Ruggedized. This band has been removed and ruggedized equipment will be allowed in Bands 1-5. The original solicitation and responses may be found on the WSCA-NASPO Website.

2. **EFFECTIVE DATE.** The Master Agreement contract term will begin on April 1, 2015, or upon final executed signatures, whichever is later, through March 31, 2017, with the option to extend up to 36 months, upon agreement by both parties. Contract Sales may not begin until the Website, Product and Service Schedule and third party products have been approved by the Master Agreement Administrator.
3. **PARTICIPATION.** All authorized governmental entities in any State are welcome to use the resulting Master Agreements through WSCA-NASPO with the approval of the State Chief Procurement Official. Contract Vendors are able to sign Participating Addendums (PA) at the option of Participating States. Participating States reserve the right to add State specific terms and conditions and modify the scope of the contract in their Participating Addendum as allowed by the Master Agreement.
4. **CONFIGURATION DOLLAR LIMITS.** The following configuration limits apply to the Master Agreement. Participating States may define their configuration limits in their participating addendum. The Participating State's Chief Procurement Official may increase or decrease the configuration limits, as defined in their Participating Addendum. The Participating State will determine with the Contract Vendor how to approve these modifications to the State's Product and Service Schedule.

The dollar limits identified below are based on a **SINGLE** computer configuration. This is **NOT** a restriction on the purchase of multiple configurations (e.g., an entity could purchase 10 laptops @ \$10,000 for a total purchase price of \$100,000).

ITEM	CONFIGURATION*
Server	\$500,000
Storage	\$500,000
Desktops	\$ 10,000
Laptops	\$ 10,000
Tablets	\$ 5,000
Peripherals	\$ 5,000
Services	Addressed by each State in participating addendum

* Configuration is defined as the combination of hardware and software components that make up the total functioning system. Software purchases are considered a part of the configuration limit of the equipment.

5. **RESTRICTIONS.** The following restrictions apply to the Master Agreement. A Participating State may set further restrictions of products in their Participating Addendum. The Participating State will determine with the Contract Vendor how to approve these modifications to the State's Product and Service Schedule.

a. Software

1. Software is restricted to operating systems and commercial off-the-shelf (COTS) software and is subject to equipment configuration limits.
2. Software is an option which must be related to the procurement of equipment.
3. Software must be pre-loaded or provided as an electronic link with the initial purchase of equipment.
4. Software such as middleware which is not always installed on the equipment, but is related to storage and server equipment (Band 4&5) purchased, is allowed and may be procured after the initial purchase of equipment.

b. Services

1. Services must be related to the procurement of equipment.
2. Service limits will be addressed by each State.
3. Wireless phone and internet service is not allowed.
4. Cloud Services including acquisitions structured as managed on-site services are not allowed.
5. Managed Print Services are not allowed.

c. Third Party Products.

1. Contract Vendors can only offer Third Party Products in the bands they have been awarded.
2. Contract Vendor cannot offer products manufactured by another Contract Vendor holding a Minnesota WSCA-NASPO Master Agreement unless approved by the Lead State.

d. Additional Product/Services

1. Hardware and software required to solely support wide area network (WAN) operation and management are not allowed.
2. Lease/Rentals of equipment may be allowed and will be addressed by each State.
3. Cellular Phone Equipment is not allowed.
4. EPEAT Bronze requirement may be waived, on a State case by case basis, if approved by the State's Chief Procurement Officer.

6. **PARTNER UTILIZATION.** Each state represented by WSCA-NASPO that chooses to participate in this Master Agreement independently has the option of utilizing partners. Only partners approved by the Participating State may be deployed. The participating State will define the process to add and remove partners in their participating addendum.



COMPUTER EQUIPMENT 2014-2019



MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD EXHIBIT A - TERMS & CONDITIONS

MASTER AGREEMENT TERMS AND CONDITIONS

A. GENERAL TERMS, CONDITIONS & INSTRUCTIONS

- 1. ACCEPTANCE OF TERMS AND CONDITIONS.** The contents of the RFP and the response of the successful responder will become Master Agreement contractual obligations, along with the final Master Agreement, if acquisition action ensues. A statement of acceptance of the proposed Contract Terms and Conditions, unless taken exception to, as specified in the RFP must be included in the response. Any suggestions for alternate language shall be presented. The Lead State is under no obligation to accept wording changes submitted by the responder. The Lead State is solely responsible for rendering decisions in matters of interpretation on all terms and conditions. Any response which fails to comply with this requirement may be disqualified as nonresponsive.

All general proposal terms, specifications and WSCA-NASPO Terms & Conditions form a part of this RFP and will apply to any Master Agreements entered into as a result thereof.

- 2. CONFLICT OF TERMS/ORDER OF PRECEDENCE.** The Master Agreement shall consist of the following documents:
 - a. A Participating Entity's Participating Addendum ("PA");
 - b. Minnesota WSCA-NASPO Master Agreement (includes negotiated Terms and Conditions)
 - c. The Solicitation including all addendums; and
 - d. Contract Vendor's response to the Solicitation.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

- 3. ADDENDA TO THE RFP.** Any addendum issued will become a part of the RFP. The Lead State may modify or clarify the RFP by issuing one or more addenda to all parties who have received the RFP. Each responder must follow the directions on the addendum. Addenda will be numbered consecutively in the order they are issued.
- 4. AWARD.** The award of this solicitation will be based upon the total accumulated points as established in the RFP, for separate items, by grouping items, or by total lot, and where at its sole discretion the Lead State believes it will receive the best value. The Lead State reserves the right to award this solicitation to a single responder, or to multiple responders, whichever is in the best interest of the Lead State. It is the State's intent to award to multiple responders. The Lead State reserves the right to accept all or part of an offer, to reject all offers, to cancel the solicitation, or to re-issue the solicitation, whichever is in the best interest of the Lead State.

The Sourcing Team will make a recommendation on the award of this RFP. The commissioner of Administration or designee may accept or reject the recommendation of the Sourcing Team. The final award decision will be made by the Commissioner of Administration and the WSCA-NASPO Management Board.

- 5. CLARIFICATION.** If a responder discovers any significant ambiguity, error, conflict, discrepancy, omission, or other deficiency in the RFP, the responder shall immediately notify the Acquisition Management Specialist in writing, as specified in the introduction, of such error and request modification or clarification of the document. This notification is due no later than seven calendar days prior to the proposal due date and time.

Responders are cautioned that any activity or communication with a State employee or officer, or a member of the Evaluation Team, regarding this Solicitation's contents or process, is strictly prohibited and may, as a result, have its response rejected. Any communication regarding this Solicitation, its content or process, must be directed to the Acquisition Management Specialist listed in the Solicitation documents.

6. **COMPLETION OF RESPONSES.** A response may be rejected if it is conditional or incomplete. Responses that contain conflicting, false, or misleading statements or that provide references that contradict or do not support an attribute or condition stated by the responder, may be rejected.
7. **MASTER AGREEMENT ADMINISTRATOR.** The Master Agreement Administrator designated by WSCA-NASPO and the State of Minnesota, Department of Administration is: Susan Kahle. Direct all correspondence and inquiries, legal questions, general issues, or technical issues regarding this RFP to:

Susan Kahle
Acquisition Management Specialist
Department of Administration
Materials Management Division
50 Sherburne Avenue
112 Administration Building
St. Paul, MN 55155

Fax: 651.297.3996
E-mail: susan.kahle@state.mn.us

8. **DISPOSITION OF DATA SUBMITTED BY CONTRACT VENDOR.** All materials submitted in response to this RFP will become property of the Lead State and will become public record after the evaluation process is completed. The evaluation process is complete when negotiations with the selected vendors are final.

By executing this Contract, the Contract Vendor certifies and agrees that all information provided in the Contract and in response to the solicitation will be made public in accordance with the solicitation and that no information has been designated Trade Secret pursuant to the Minnesota Government Data Practices Act.

If the Contract Vendor submits information after execution of this Contract that it believes to be trade secret materials, as defined by the Minnesota Government Data Practices Act, Minn. Stat. § 13.37, the Contract Vendor must:

- a. clearly mark all trade secret materials at the time the information is submitted;
 - b. include a statement with regard to the information justifying the trade secret designation for each item; and,
 - c. defend any action seeking release of the materials it believes to be trade secret, and indemnify and hold harmless the Lead State, its agents and employees, from any judgments awarded against the Lead State in favor of the party requesting the materials, and any and all costs connected with that defense. This indemnification survives the Lead State's award of a Master Agreement. In submitting a response to the RFP, the responder agrees that this indemnification survives as long as the trade secret materials are in possession of the Lead State. The Lead State will not consider the prices submitted by the responder to be trade secret materials.
9. **DISPUTE RESOLUTION PROCEDURES.** Any issue a responder has with the RFP document, which includes, but is not limited to, the terms, conditions, and specifications, must be submitted in writing to and received by the Master Agreement Administrator prior to the opening due date and time. Any issue a responder has with the Master Agreement award must be submitted in writing to the Master Agreement Administrator within five working days from the time the notice of the intent to award is issued. This notice may be made by any of the following methods: notification by letter, fax or email, or posted on the Materials Management website, www.mmd.admin.state.mn.us. The Lead State will respond to any protest received that follows the above procedure. For those protests that meet the above submission requirements, the appeal process is, in sequence: The responsible Master Agreement Administrator, the Materials Management Division (MMD) Assistant Director, and the MMD Director.
 10. **ELECTRONIC FILES TO DOWNLOAD, COMPLETE, AND RETURN.** Responders must download a Word/Excel document.
 11. **ENTIRE AGREEMENT.** A written Master Agreement (including the contents of this RFP and selected portions of Contract Vendor's response incorporated therein by reference) and any written addenda thereto constitute the entire agreement of the parties to the Master Agreement.
 12. **IRREVOCABLE OFFER.** In accordance with this Request for Proposal, and subject to all conditions thereof, the undersigned agrees that its response to this RFP, or any part thereof, is an irrevocable offer for 180 days following the submission deadline date unless stated otherwise in the RFP. It is understood and agreed that the response, or any

part thereof, when accepted by the appropriate department and State officials in writing, may become part of a legal and binding Master Agreement between the undersigned vendor and the State of Minnesota.

- 13. MATERIAL DEVIATION.** A responder shall be presumed to be in agreement with these terms and conditions unless it takes specific exception to one or more of the conditions. Submission by the responder of its proposed language shall not be viewed as an exception unless the responder specifically states in the response that its proposed changes are intended to supersede the terms and conditions.

RESPONDERS ARE CAUTIONED THAT BY TAKING ANY EXCEPTION THEY MAY BE MATERIALLY DEVIATING FROM THE REQUEST FOR PROPOSAL. IF A RESPONDER MATERIALLY DEVIATES FROM THE GENERAL TERMS, CONDITIONS AND INSTRUCTIONS OR THE WSCA-NASPO TERMS AND CONDITIONS AND/OR SPECIFICATIONS, ITS RESPONSE MAY BE REJECTED.

A material deviation is an exception to the Request for Proposal general or WSCA-NASPO terms and conditions and/or specifications that:

- a. gives the responder taking the exception a competitive advantage over other vendors; or,
- b. gives the Lead State something significantly different from that which the Lead State requested.

- 14. NONRESPONSIVE RESPONSES.** Responses that do not comply with the provisions in the RFP may be considered nonresponsive and may be rejected.

- 15. NOTICES.** If one party is required to give notice to the other under the Master Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices to the Lead State shall be addressed as follows:

STATE OF MINNESOTA:
MN WSCA-NASPO COMPUTER EQUIPMENT CONTRACT ADMINISTRATOR
112 Administration Bldg.
50 Sherburne Avenue
St. Paul, MN 55155
651-296-2600

MASTER AGREEMENT TERMS AND CONDITIONS

B. WSCA-NASPO TERMS AND CONDITIONS

1. **ADMINISTRATIVE FEES.** The Contract Vendor shall pay a WSCA-NASPO Administrative Fee of one-tenth of one percent (0.1% or 0.001) in accordance with the Terms and Conditions of the Master Agreement no later than 60 days following the end of each calendar quarter. The WSCA-NASPO Administrative Fee shall be submitted quarterly and is based on sales of products and services (less any charges for taxes or shipping). The WSCA-NASPO Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

Additionally, some states may require an additional fee be paid directly to the state on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contract Vendor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements may not affect the WSCA-NASPO Administrative Fee or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

2. **AGREEMENT ORDER OF PRECEDENCE.** Master Agreement shall consist of the following documents:

- a. A Participating Entity's Participating Addendum ("PA");
- b. Minnesota WSCA-NASPO Master Agreement (includes negotiated Terms and Conditions)
- c. The Solicitation including all addendums; and
- d. Contract Vendor's response to the Solicitation

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

3. **AMENDMENTS. NEGOTIATED.** The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the WSCA-NASPO Master Agreement Administrator and the IBM WSCA-NASPO Master Agreement Administrator.
4. **ASSIGNMENT OF ANTITRUST RIGHTS.** Contract Vendor irrevocably assigns to a Participating Entity any claim for relief or cause of action which the Contract Vendor now has or which may accrue to the Contract Vendor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided to the Contract Vendor for the purpose of carrying out the Contract Vendor's obligations under this Master Agreement or Participating Addendum, including, at a Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.
5. **ASSIGNMENT/SUBCONTRACT. NEGOTIATED.** Contract Vendor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the WSCA-NASPO Master Agreement Administrator. The assignment of this Agreement, in whole or in part, within the Enterprise of which either party is a part or to a successor organization by merger or acquisition does not require the consent of the other except to the extent such assignee is debarred by state or federal governments from contracting with Participating Entity or is barred from contracting with Participating Entity based on state or federal laws. IBM is also permitted to assign its rights to payments without obtaining Customer's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.
6. **CANCELLATION.** Unless otherwise stated in the terms and conditions, any Master Agreement may be canceled by either party upon 60 days' notice, in writing, prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise limited or stated in the special terms and conditions of this solicitation or in the applicable Participating Addendum. Cancellation may be in whole or in part. Any cancellation under this provision shall not affect the rights and obligations attending orders outstanding at the time of cancellation, including any right of a Participating Entity to indemnification by the Contract Vendor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in

association with any order. Cancellation of the Master Agreement due to Contract Vendor default may be immediate if defaults cannot be reasonably cured as allowed per Default and Remedies term.

7. CONFIDENTIALITY, NON-DISCLOSURE AND INJUNCTIVE RELIEF, NEGOTIATED.

7.1 Confidentiality. Contract Vendor acknowledges that it and its employees or agents may, in the course of providing the Product under this Master Agreement, be exposed to or acquire information that is confidential to Participating Entity or Participating Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contract Vendor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (a) any Participating Entity records, (b) personnel records, and (c) information concerning individuals, is confidential information of Participating Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contract Vendor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (a) is or becomes (other than by disclosure by Contract Vendor) publicly known; (b) is furnished by Participating Entity to others without restrictions similar to those imposed by this Master Agreement; (c) is rightfully in Contract Vendor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (d) is obtained from a source other than Participating Entity without the obligation of confidentiality, (e) is disclosed with the written consent of Participating Entity or; (f) is independently developed by employees, agents or subcontractor of Contract Vendor who can be shown to have had no access to the Confidential Information

7.2 Non-Disclosure. Contract Vendor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the performance of this Master Agreement to Participating Entity hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contract Vendor shall use commercially reasonable efforts to assist Participating Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contract Vendor shall advise Participating Entity immediately if Contract Vendor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement and Contract Vendor shall at its expense cooperate with Participating Entity in seeking injunctive or other equitable relief in the name of Participating Entity or Contract Vendor against any such person. Except as directed by Participating Entity, Contract Vendor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Participating Entity's request, Contract Vendor shall turn over to Participating Entity all documents, papers, and other matter in Contract Vendor's possession that embody Confidential Information. Notwithstanding the foregoing, Contract Vendor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement. Confidential information disclosed by either party shall be subject to the Agreement for Exchange of Confidential Information between IBM and the State of Minnesota. For the other Participating Entities IBM proposes that, with respect to other confidential information not covered by the above provision, that the respective parties mutually agree to a separate Agreement for Confidential Information if there is not one already in place between the parties.

7.3 Injunctive Relief. Contract Vendor acknowledges that breach of this Section, including disclosure of any Confidential Information, may cause irreparable injury to Participating Entity that is inadequately compensable in damages. Accordingly, Participating Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contract Vendor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Participating Entity and are reasonable in scope and content.

7.4 Participating Entity is agreeing to the above language to the extent is not in conflict with Participating Entities public disclosure laws.

8. DEBARMENT. The Contract Vendor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntary excluded from participation in this transaction (Master Agreement) by any governmental department or agency. If the Contract Vendor cannot certify this statement, attach a written explanation for review by WSCA-NASPO.

In any order against this Master Agreement for a requirement established by a Purchasing Entity that discloses the use of federal funding, to the extent another form of certification is not required by a Participating Addendum or the order of the Purchasing Entity, the Contractor's quote represents a recertification consistent with the terms of paragraph 8, Section 2D, Minnesota Terms and Conditions

9. DEFAULTS & REMEDIES.NEGOTIATED.

- a. The occurrence of any of the following events shall be an event of default under this Master Agreement:
 - i. Nonperformance of material contractual requirements; or
 - ii. A material breach of any term or condition of this Master Agreement; or
 - iii. Any representation or warranty by Contract Vendor in response to the solicitation or in this Master Agreement proves to be knowingly or intentionally untrue or materially misleading; or
 - iv. Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contract Vendor, or the appointment of a receiver or similar officer for Contract Vendor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
 - v. Any default specified in another section of this Master Agreement.
- b. Upon the occurrence of an event of default, Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 30 calendar days in which Contract Vendor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contract Vendor's liability for damages, including liquidated damages as mutually agreed by the parties as to the amount of those damages or determined by a court of law*to the extent provided for under this Master Agreement.
- c. If Contract Vendor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contract Vendor shall be in breach of its obligations under this Master Agreement and Lead State shall have the right to exercise any or all of the following remedies:
 - i. Exercise any remedy provided by law; and
 - ii. Terminate this Master Agreement and any related Master Agreements or portions thereof; and
 - iii. Impose liquidated damages as mutually agreed by the parties as to the amount of the damages as provided in this Master Agreement; and
 - iv. Suspend Contract Vendor from receiving future bid solicitations; and
 - v. Suspend Contract Vendor's performance; and
 - vi. Withhold payment until the default is remedied.
- d. In the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code. Notwithstanding any provision to the contrary, any remedies available to a Purchasing Entity shall be subject to the Limitation of Liability provision in the Master Agreement.

10. DELIVERY. Unless otherwise indicated in the Master Agreement, the prices are the delivered price to any Purchasing Entity. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the Contract Vendor. Additional delivery charges will not be allowed for back orders.

11. FORCE MAJEURE. Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The WSCA-NASPO Master Agreement Administrator may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

12. GOVERNING LAW. NEGOTIATED. This procurement and the resulting agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of any Participating Addendum or order against the Master Agreements shall be governed by and construed in accordance with the laws of the Participating Entity's State. Venue for any claim, dispute or action concerning an order placed against the Master Agreements or the effect of a Participating Addendum shall be in the Purchasing Entity's State. Venue for certain claims or disputes may be in a Federal Court subject to proper jurisdiction to the extent Participating Entity is not giving up any rights as its status of a state entity.

13. INDEMNIFICATION. DELETED. SEE SECTION 2C17.

14. INDEMNIFICATION – INTELLECTUAL PROPERTY. DELETED. SEE SECTION 2C17

15. **INDEPENDENT CONTRACT VENDOR.** The Contract Vendor shall be an independent Contract Vendor, and as such shall have no authorization, express or implied to bind WSCA-NASPO or the respective states to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA-NASPO or the states, except as expressly set forth herein.
16. **INDIVIDUAL CUSTOMER.** Except to the extent modified by a Participating Addendum, each Participating Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or to recover any costs allowed in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contract Vendor will apply the charges and invoice each Purchasing Entity individually.
17. **INSURANCE. NEGOTIATED.** Except to the extent modified by a Participating Addendum, Contract Vendor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contract Vendor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of Best's Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or at a Participating Entity's option, result in termination of its Participating Addendum.

Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below, with no deductible for each of the following categories:

- a. Commercial General Liability covering the risks of bodily injury (including death), property damage and personal injury, including coverage for contractual liability, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
- b. Contract Vendor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

Contract Vendor shall pay premiums on all insurance policies.

Prior to commencement of the work, Contract Vendor shall provide to the Participating Entity a certificate with reference to the Contract Vendor's general liability insurance policy that (i) names the Participating Entity as an additional insured, (ii) provides that the Contract Vendor's liability insurance policy shall be primary, with any liability insurance of the Participating Entity as secondary and noncontributory.

Contract Vendor shall furnish to Participating Entity copies of certificates of all required insurance within thirty (30) calendar days of the Participating Addendum's effective date and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after renewal date. Failure to provide evidence of coverage may, at the Lead State Master Agreement Administrator's sole option, result in this Master Agreement's termination.

Coverage and limits shall not limit Contract Vendor's liability and obligations under this Master Agreement.

18. **LAWS AND REGULATIONS.** Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.
19. **LICENSE OF PRE-EXISTING INTELLECTUAL PROPERTY. DELETED.** – SEE SECTION 2B30 FOR REVISED TERM ADDRESSING TITLE OF PRODUCT.
20. **NO WAIVER OF SOVEREIGN IMMUNITY.** The Lead State, Participating Entity or Purchasing Entity to the extent it applies does not waive its sovereign immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any action based on this Contract.
- If a claim must be brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court of the Participating Entity's State.
21. **ORDER NUMBERS.** Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels (if possible), packing slips, invoices, and on all correspondence.
22. **PARTICIPANTS. WSCA-NASPO** Cooperative Purchasing Organization LLC is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the WSCA/NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges,

school districts, counties, cities, etc.) for all 50 states and the District of Columbia. Obligations under this Master Agreement are limited to those Participating States who have signed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting award will be permissive.

23. **PARTICIPATION OF ENTITIES.** Use of specific WSCA-NASPO cooperative Master Agreements by state agencies, political subdivisions and other entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.
24. **PAYMENT.** Payment for completion of an order under this Master Agreement is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contract Vendor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.
25. **PUBLIC INFORMATION.** The Master Agreement and all related documents are subject to disclosure pursuant to the Participating Entity's public information laws.
26. **RECORDS ADMINISTRATION AND AUDIT. NEGOTIATED.** The disclosure of records in Participating States relating to Participating addenda and orders placed against the Master Agreement shall be governed by the laws of the Participating State and entity who placed the order.

The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and orders placed by Purchasing Entities under it to the extent and in such detail as shall reasonably and adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of five (5) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, to assure compliance with the terms hereof or to evaluate performance hereunder. Audits are limited to no more than one audit on an annual basis. In no event shall any audit include the confidential financial information of the Contractor.

Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for an overpayments inconsistent with the terms of the Master Agreement or orders or underpayment of fees found as a result of the examination of the Contractor's records.

The rights and obligations herein right exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State Master Agreement Administrator to review compliance with those obligations.

Records will be retained longer if required by Participating Entity's law.

27. **REPORTS - SUMMARY AND DETAILED USAGE.** In addition to other reports that may be required by this solicitation, the Contract Vendor shall provide the following WSCA-NASPO reports.
 - a. **Summary Sales Data.** The Contractor shall submit quarterly sales reports directly to WSCA-NASPO using the WSCA-NASPO Quarterly Sales/Administrative Fee Reporting Tool found at <http://www.naspo.org/WNCPO/Calculator.aspx>. Any/all sales made under the contract shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than the last day of the month following the end of the calendar quarter (as specified in the reporting tool).
 - b. **Detailed Sales Data.** Contract Vendor shall also report detailed sales data by: state; entity/customer type, e.g., local government, higher education, K12, non-profit; Purchasing Entity name; Purchasing Entity bill-to and ship-to locations; Purchasing Entity and Contract Vendor Purchase Order identifier/number(s); Purchase Order Type (e.g., sales order, credit, return, upgrade, determined by industry practices); Purchase Order date; Ship Date; and line item description, including product number if used. The report shall be submitted in any form required by the

solicitation. Reports are due on a quarterly basis and must be received by the Lead State no later than the last day of the month following the end of the reporting period. Reports shall be delivered to the Lead State and to the WSCA-NASPO Cooperative Development Team electronically through email; CD-Rom, jump drive or other electronic matter as determined by the Lead State.

Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in Section 6, Attachment H.

- c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the Participating Addendum. Specific data in relation to sales to employees for personal use to be defined in the final contract award to ensure only public information is reported.
- d. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and WSCA-NASPO shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

28. ACCEPTANCE AND ACCEPTANCE TESTING. NEGOTIATED.

- a. **Acceptance.** Purchasing Entity (the entity authorized under the terms of any Participating Addendum to place orders under this Master Agreement) shall determine whether all Products and Services delivered meet the Contractor's published specifications (a.k.a. "Specifications"). No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within thirty (30) calendar days following delivery of non-acceptance of a Product or completion of Service. In the event that the Contractor has not been notified within 30 calendar days from delivery of Product or completion of Service, the Product and Services will be deemed accepted on the 31st day after delivery of Product or completion of Services. This clause shall not be applicable, if acceptance testing and corresponding terms have been mutually agreed to by both parties in writing.
- b. **Acceptance Testing.** The Purchasing Entity (the entity authorized under the terms of any Participating Addendum to place orders under this Master Agreement) and the Contract Vendor shall determine if Acceptance Testing is applicable and/or required for the purchase. The terms in regards to acceptance testing will be negotiated, in writing, as mutually agreed. If Acceptance Testing is NOT applicable, the terms regarding Acceptance in the Contract shall prevail.
- c. **Eligible software acquired via the IBM International Passport Advantage Program Agreements shall be accepted according to the software license agreements.**

Purchasing entities who are currently enrolled in the Passport Advantage program will continue to acquire products via their established Passport Advantage agreements.

For new customers, acquisition of eligible IBM products requires enrollment into the Passport Advantage program. Additional information can be found on: www.ibm.com/software/passportadvantage. Information on this website will include the terms of the IBM International Passport Advantage Agreement ("PPA") and the terms of the IBM International Program License Agreement ("IPLA")

29. SYSTEM FAILURE OR DAMAGE. NEGOTIATED. TERM REMOVED. SEE WARRANTY TERM.

30. TITLE OF PRODUCT. NEGOTIATED.

OWNERSHIP

"Materials – literary works or other works of authorship (such as software programs and code, documentation, reports, and similar works) that IBM may deliver to Customer as part of a Service. The term "Materials" does not include Programs, Machine Code, or other items available under their own license terms or agreements.

An Attachment or Transaction Document will specify Materials to be delivered to Customer and identify them as "Type I Materials," "Type II Materials," or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

Customer will own the copyright in Materials created as part of a Service that are identified as "Type I Materials" and each such Material will constitute a "work made for hire" to the extent permissible under U.S. copyright law. If any

such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to Customer. Customer grants IBM an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works based on, Type I Materials.

IBM or its suppliers will own the copyright in Materials created as part of a Services transaction that are identified as Type II Materials. IBM grants Customer an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute (within Customer's Enterprise only) copies of Type II Materials.

IBM or its suppliers retains ownership of the copyright in any of IBM's or its suppliers' works that pre-exist or were developed outside of this Agreement and any modifications or enhancements of such works that may be made under this Agreement. To the extent they are embedded in any Materials, such works are licensed in accordance with their separate licenses provided to Customer, if any, or otherwise as Type II Materials.

The Contract Vendor grants the Purchasing Entity a perpetual, irrevocable, non-exclusive, royalty free the license in Contract Vendor's pre-existing intellectual property that is contained in the products, materials, equipment or services that are purchased through this Master Agreement.

Any and all licensing, maintenance, or order specific agreements referenced within the terms and conditions of this Master agreement are agreed to only to the extent that the terms do not conflict with the terms of the Participating Addendum or the Master Agreement, and to the extent the terms are not in conflict with the Participating Entities' applicable laws. In the event of conflict the terms and conditions, the Participating Addendum, and then the Master Agreement shall take precedence, as detailed in the Order of Precedence defined herein. Notwithstanding the foregoing, licensing, maintenance agreements, or order specific agreements may be further negotiated by the Contract Vendor and the potential Purchasing Entity, provided the contractual documents are duly executed in writing.

31. **WAIVER OF BREACH.** Failure of Lead State Master Agreement Administrator, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State or Participating Entity must be in writing. Waiver by the Lead State Master Agreement Administrator, Participating Entity, or Purchasing Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or breach of any terms or requirements shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, a Participating Addendum, or order.

32. **WARRANTY. NEGOTIATED.**
Warranty for IBM Machines

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for an IBM Machine is a fixed period commencing on its Date of Installation and specified in a Transaction Document. During the warranty period, IBM provides repair and exchange Service for the IBM Machine, without charge, under the type of Service IBM designates for the IBM Machine. If an IBM Machine does not function as warranted during the warranty period and IBM is unable to either i) make it do so or ii) replace it with one that is at least functionally equivalent, Customer may return it to IBM for a refund.

Warranty for ICA Programs

IBM warrants that each warranted ICA Program, when used in the Specified Operating Environment, will conform to its Specifications. ICA programs include program terms regarding license, distributed license options, program services, compliance verification and program termination.

During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted ICA Program for at least one year following its general availability. The warranty period for an ICA Program expires when its Program Services are no longer available.

If an ICA Program does not function as warranted during the first year after Customer obtains its license and IBM is unable to make it do so, Customer may return the ICA Program and the charges Customer paid for the license will be refunded. To be eligible, Customer must have obtained its license while Program Services (regardless of the remaining duration) were available for the ICA Program.

Warranty for IBM PassPort Advantage License Programs

IBM warrants that the Program, when used in its specified operating environment will conform to its specifications. The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free

operation of the Program, or that IBM will correct all Program defects. Licensee is responsible for the results obtained from use of the Program.

During the Warranty Period (one year, starting on the date the original Licensee is granted the license) IBM provides Licensee with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge. Consult the IBM software Support Handbook for further information at <http://www.ibm.com/software/support>

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, Licensee may return the Program and its Proof of Entitlement (PoE) to the party from whom Licensee obtained it and receive a refund of the amount Licensee paid. After returning the Program, Licensee's license terminates. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

Warranty for IBM Services

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment, or a Transaction Document. Customer agrees to provide timely written notice of any failure to comply with this warranty so that IBM can take corrective action.

Warranty for Systems

When IBM specifies in an Attachment or Transaction Document that it is providing Products to Customer that are intended to operate together as a system, IBM warrants that those Products are compatible and, when installed in accordance with their Specifications, will operate with one another. This warranty is in addition to IBM's other applicable warranties.

Extent of Warranty

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties. The warranties stated above will not apply to the extent that there has been misuse (including, but not limited to, use of any Machine capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, improper maintenance by Customer or a third party, or failure or damage caused by a product for which IBM is not responsible. The warranty for IBM Machines is voided by removal or alteration of Machine or parts identification labels. THESE WARRANTIES ARE CUSTOMER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

Items Not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects. IBM will identify IBM Machines and ICA Programs that it does not warrant. Unless otherwise specified in an Attachment or Transaction Document, IBM provides Materials, non-IBM Products (including those provided with, or installed on, an IBM Machine at Customer's request), and non-IBM Services **WITHOUT WARRANTIES OF ANY KIND**. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to Customer. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements".

MASTER AGREEMENT TERMS AND CONDITIONS

C. MINNESOTA TERMS AND CONDITIONS

- 1. ACCEPTANCE OF PROPOSAL CONTENT.** The contents of this RFP and selected portions of response of the successful Proposer will become contractual obligations, along with the final Master Agreement, if acquisition action ensues. The Lead State is solely responsible for rendering the decision in matters of interpretation of all terms and conditions.
- 2. ACCESSIBILITY STANDARDS.** The State of Minnesota has developed IT Accessibility Standards effective September 1, 2010, which entails, in part, the Web Content Accessibility Guidelines (WCAG) 2.0 (Level AA) and Section 508 Subparts A-D which can be viewed at http://www.mmd.admin.state.mn.us/pdf/accessibility_standard.pdf

Responders must complete the WCAG VPAT form included in the FORMS section of the RFP. The completed VPAT form will be scored based on its compliance with the Accessibility Standards. The requested WCAG VPAT applies to the responder's website to be offered under the Contract. For products offered, VPATS are only to be provided upon request by the participating entity.

Upon request by the participating entity, the responder must make best efforts to provide Voluntary Product Accessibility Templates (VPATS) for all products offered in its response. Click here for link to VPATS for both Section 508 VPAT and WCAG 2.0 VPAT <http://mn.gov/oet/policies-and-standards/accessibility/#>.

- 3. ADMINISTRATIVE PERSONNEL CHANGES.** The Contract Vendor must notify the Contract Administrator of changes in the Contract Vendor's key administrative personnel, in advance and in writing. Any employee of the Contract Vendor who, in the opinion of the State of Minnesota, is unacceptable, shall be removed from the project upon written notice to the Contract Vendor. In the event that an employee is removed pursuant to a written request from the Acquisition Management Specialist, the Contract Vendor shall have 10 working days in which to fill the vacancy with an acceptable employee.
- 4. AMENDMENT(S).** Master Agreement amendments shall be negotiated by the Lead State with the Contract Vendor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. An approved Master Agreement amendment means one approved by the authorized signatories of the Contract Vendor and the Lead State as required by law.
- 5. AMERICANS WITH DISABILITIES ACT (ADA). DELETE.**
- 6. AWARD OF RELATED CONTRACTS. NEGOTIATED.** In the event the Lead State undertakes or awards supplemental Contracts for work related to the Master Agreement or any portion thereof, the Contract Vendor shall cooperate fully with all other Contract Vendors and the State in all such cases. All Master Agreements between subcontractors and the Contract Vendor shall include a provision requiring compliance with this section. Subject to mutual agreement between the parties on the scope of services, certain services may be performed for additional fees.
- 7. AWARD OF SUCCESSOR CONTRACTS. NEGOTIATED.** In the event the State undertakes or awards a successor for work related to the Contract or any portion thereof, the current Contract Vendor shall cooperate fully during the transition with all other Contract Vendors and the State in all such cases. All Master Agreements between subcontractors and the Contract Vendor shall include a provision requiring compliance with this section. Subject to mutual agreement between the parties on the scope of services, certain services may be performed for additional fees.
- 8. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION**
 - a. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.**

Instructions for certification:

 1. By signing and submitting this proposal, the prospective lower tier participant [responder] is providing the certification set out below.
 2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the federal government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to whom this proposal [response] is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms covered transaction, debarred, suspended, ineligible lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverages section of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this response that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction [subcontract equal to or exceeding \$25,000] with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled, "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion – Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the list of parties excluded from federal procurement and nonprocurement programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

b. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions.

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

- 9. CHANGE REQUESTS.** The Lead State reserves the right to request, during the term of the Master Agreement, changes to the products offered. Products introduced during the term of the Master Agreement shall go through a formal review process. A formal process of changing the Master Agreement shall be developed during the negotiation of the Master Agreement. The Contract Vendor shall evaluate and recommend products for which agencies have an expressed need. The Lead State shall require the Contract Vendor to provide a summary of its research of those products being recommended for inclusion in the Master Agreement as well as defining how adding the product will enhance the Master Agreement. The Lead State may request that products, other than those recommended, are added to the Master Agreement.

In the event that the Lead State desires to add new products and services that are not included in the original Master Agreement, the Lead State requires that independent manufacturers and resellers cooperate with the already established Contract Vendor in order to meet the Lead State's requirements. Evidence of the need to add products or services should be demonstrated to the Lead State. The Master Agreement shall be modified via supplement or amendment. The Lead State will negotiate the inclusion of the products and services with the Contract Vendor. No products or services will be added to the Master Agreement without the Lead State's prior approval.

10. **CONFLICT MINERALS.** Contract Vendor must provide information to the public on its website regarding the use of conflict minerals, as required by Section 13(p) of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder. See <http://www.sec.gov/rules/final/2012/34-67716.pdf>.
11. **COPYRIGHTED MATERIAL WAIVER.** The Lead State reserves the right to use, reproduce and publish proposals in any manner necessary for State agencies and local units of government to access the responses and/or to respond to request for information pursuant to Minnesota Government Data Practices Act, , including but not limited to emailing, photocopying, State Intranet/Internet postings, broadcast faxing, and direct mailing. In the event that the response contains copyrighted or trademarked materials, it is the responder's responsibility to obtain permission for the Lead State to reproduce and publish the information, regardless of whether the responder is the manufacturer or reseller of the products listed in the materials. By signing its response, the responder certifies that it has obtained all necessary approvals for the reproduction and/or distribution of the contents of its response and agrees to indemnify, protect, save and hold the Lead State, its representatives and employees harmless from any and all claims arising from the violation of this section and agrees to pay all legal fees incurred by the Lead State in the defense of any such action.
12. **EFFECTIVE DATE.** Pursuant to Minnesota law, the Master Agreement arising from this RFP shall be effective upon the date of final execution by the Lead State, unless a later date is specified in the Master Agreement.
13. **FOREIGN OUTSOURCING OF WORK.** Upon request, the Contract Vendor is required to provide information regarding the location of where services, data storage and/or location of data processing under the Master Agreement will be performed.
14. **GOVERNMENT DATA PRACTICES.** The Contract Vendor and the Lead State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, (and where applicable, if the Lead State contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the Lead State to the Contract Vendor and all data provided to the Lead State by the Contract Vendor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contract Vendor in accordance with the Master Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

In the event the Contract Vendor receives a request to release the data referred to in this article, the Contract Vendor must immediately notify the Lead State. The Lead State will give the Contract Vendor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data by either the Contract Vendor or the Lead State.

The Contract Vendor agrees to indemnify, save, and hold the State of Minnesota, its agent and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of the Master Agreement. In the event that the Contract Vendor subcontracts any or all of the work to be performed under the Master Agreement, the Contract Vendor shall retain responsibility under the terms of this article for such work.

15. **HAZARDOUS SUBSTANCES.** To the extent that the goods to be supplied by the Contract Vendor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable State and federal laws and regulations, the Contract Vendor must provide Material Safety Data Sheets regarding those substances. A copy must be included with each delivery.
16. **HUMAN RIGHTS/AFFIRMATIVE ACTION.** The Lead State requires affirmative action compliance by its Contract Vendors in accordance with Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600.

- a. Covered contracts and Contract Vendors. One-time acquisitions, or a contract for a predetermined amount of

goods and/or services, where the amount of your response is in excess of \$100,000 requires completion of the Affirmative Action Certification page. If the solicitation is for a contract for an indeterminate amount of goods and/or services, and the State estimated total value of the contract exceeds \$100,000 whether it will be a multiple award contract or not, you must complete the Affirmative Action Certification page. If the contract dollar amount or the State estimated total contract amount exceeds \$100,000 and the Contract Vendor employed more than 40 full-time employees on a single working day during the previous 12 months in Minnesota or in the state where it has its principal place of business, the Contract Vendor must comply with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600. A Contract Vendor covered by Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400 to 5000.3600 that had more than 40 full-time employees within Minnesota on a single working day during the previous 12 months must have a certificate of compliance issued by the commissioner of the Department of Human Rights (certificate of compliance). A Contract Vendor covered by Minn. Stat. § 363A.36, subd. 1 that did not have more than 40 full-time employees on a single working day during the previous 12 months within Minnesota but that did have more than 40 full-time employees in the state where it has its principal place of business and that does not have a certificate of compliance must certify that it is in compliance with federal affirmative action requirements.

- b. Minn. Stat. § 363A.36, subd. 1 requires the Contract Vendor to have an affirmative action plan for the employment of minority persons, women, and qualified disabled individuals approved by the commissioner of the Department of Human Rights (commissioner) as indicated by a certificate of compliance. Minn. Stat. § 363A.36 addresses suspension or revocation of a certificate of compliance and contract consequences in that event. A contract awarded without a certificate of compliance may be voided.
- c. Minn. R. 5000.3400-5000.3600 implement Minn. Stat. § 363A.36. These rules include, but are not limited to, criteria for contents, approval, and implementation of affirmative action plans; procedures for issuing certificates of compliance and criteria for determining a Contract Vendor's compliance status; procedures for addressing deficiencies, sanctions, and notice and hearing; annual compliance reports; procedures for compliance review; and contract consequences for noncompliance. The specific criteria for approval or rejection of an affirmative action plan are contained in various provisions of Minn. R. 5000.3400-5000.3600 including, but not limited to, parts 5000.3420-5000.3500 and parts 5000.3552-5000.3559.
- d. Disabled Workers. Minn. R. 5000.3550 provides the Contract Vendor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

- (a) The Contract Vendor must not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The Contract Vendor agrees to take affirmative action to employ, advance in employment, and otherwise treat qualified disabled persons without discrimination based upon their physical or mental disability in all employment practices such as the following: employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- (b) The Contract Vendor agrees to comply with the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (c) In the event of the Contract Vendor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with Minn. Stat. § 363A.36 and the rules and relevant orders of the Minnesota Department of Human Rights issued pursuant to the Minnesota Human Rights Act.
- (d) The Contract Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the commissioner of the Minnesota Department of Human Rights. Such notices must state the Contract Vendor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment, and the rights of applicants and employees.
- (e) The Contract Vendor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contract Vendor is bound by the terms of Minn. Stat. § 363A.36 of the Minnesota Human Rights Act and is committed to take affirmative action to employ and advance in employment physically and mentally disabled persons.

- e. **Consequences.** The consequences of a Contract Vendor's failure to implement its affirmative action plan or make a good faith effort to do so include, but are not limited to, suspension or revocation of a certificate of compliance by the commissioner, refusal by the commissioner to approve subsequent plans, and termination of all or part of the Contract by the commissioner or the State.
- f. **Certification.** The Contract Vendor hereby certifies that it is in compliance with the requirements of Minn. Stat. § 363A.36, subd. 1 and Minn. R. 5000.3400-5000.3600 and is aware of the consequences for noncompliance. It is agreed between the parties that Minn. Stat. 363.36 and Minn. R. 5000.3400 to 5000.3600 are incorporated into any contract between these parties based upon this specification or any modification of it. A copy of Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600 are available upon request from the contracting agency.

17. INDEMNIFICATION AND LIMITATION OF LIABILITY: NEGOTIATED

Items for Which IBM May Be Liable

The Contractor shall indemnify, keep and save harmless the State of Minnesota, its officials, and employees against suits or claims (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party that a court finally awards against the State or are included in a settlement approved in advance by Contractor which are attributable to bodily injury or death, or to injury to or destruction of tangible personal property arising out of or in connection with the services acquired hereunder. Contractor shall be given timely written notice of any suit or claim, and State shall allow Contractor to control to the extent approved by the Minnesota Attorney General's Office, which will not be unreasonably withheld and State shall reasonably cooperate with Contractor in the defense and any related settlement negotiations." If the Minnesota Attorney General's Office does not give such approval, IBM has no obligation to defend the State of Minnesota as set forth above.

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate for actual, direct damages will not exceed the amount of \$10,000,000.

For purposes of this Limitation of Liability section, the term "Product" also includes Materials and Machine Code. This limit also applies to any of IBM's subcontractors and Program developers. It is the maximum for which IBM and its subcontractors and Program developers are collectively responsible. The following amounts are not subject to a cap on the amount of damages:

- a. payments referred to in the Intellectual Property Protection section above; and
- b. damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.

Items for Which IBM Is Not Liable

Except as expressly required by law without the possibility of contractual waiver, under no circumstances is IBM, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:

- a. loss of, or damage to, data;
- b. special, incidental, exemplary, or indirect damages or for any economic consequential damages; or
- c. lost profits, business, revenue, goodwill, or anticipated savings.

This clause shall not be construed to bar any legal remedies the Contract Vendor may have with the State's failure to fulfill its obligations pursuant to the Master Agreement.

For purposes of this Intellectual Property Protection section, the term "Product" also includes Materials and Machine Code.

Third Party Claims

If a third party asserts a claim against Customer that an IBM Product that IBM provides to Customer under this Agreement causes property damage, personal injury, death or infringes that party's patent or copyright, IBM will defend Customer against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards against Customer or that are included in a settlement approved in advance by IBM, provided that Customer:

- a. promptly notifies IBM in writing of the claim;
- b. allows IBM to control, and cooperates with IBM in, the defense and any related settlement; and
- c. is and remains in compliance with the Product's applicable license terms and Customer's obligations under the remedies section) below.

Remedies

If such a claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, either to i)

enable Customer to continue to use the Product, ii) modify it, or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, then on IBM's written request, Customer agrees to promptly return the Product to IBM and discontinue its use. IBM will then give Customer a credit equal to:

- a. for a Machine, Customer's net book value calculated according to generally-accepted accounting principles;
- b. for an ICA Program, the amount Customer paid IBM for the Program's license or 12 months' charges (whichever is less); and
- c. for Materials, the amount Customer paid IBM for the creation of the Materials.

Claims for Which IBM is Not Responsible

IBM has no obligation regarding any claim based on any of the following:

- a. anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;
- b. a Product's use other than in accordance with its applicable licenses and restrictions or use of a non-current version or release of a Product, to the extent a claim could have been avoided by using the current release or version;
- c. any modification of a Product made by Customer or by a third party on Customer's behalf or the combination, operation, or use of a Product with any other Product, hardware device, program, data, apparatus, method, or process;
- d. distribution/use of product outside customer's enterprise;
- e. non IBM product or other IBM program.

This intellectual property section states IBM's entire obligation and Customer's exclusive remedy regarding any 3rd party Intellectual property claims.

18. JURISDICTION AND VENUE. NEGOTIATED. This RFP and any ensuing Master Agreement, its amendments and supplements thereto, shall be governed by the laws of the State of Minnesota, USA. Venue for all legal proceedings arising out of the Master Agreement, or breach thereof, shall be in the State or federal court with competent jurisdiction in Ramsey County, Minnesota. By submitting a response to this Request for Proposal, a Responder voluntarily agrees to be subject to the jurisdiction of Minnesota for all proceedings arising out of this RFP, any ensuing Master Agreement, or any breach thereof, except or any legal proceedings which are subject to a federal court of competent jurisdiction to the extent Participating Entity is not waiving any protections as it's status of a state entity.

19. LAWS AND REGULATIONS. Any and all services, articles or equipment offered and furnished must comply fully with all local, State and federal laws and regulations, including Minn. Stat. § 181.59 prohibiting discrimination and business registration requirements of the Office of the Minnesota Secretary of State.

20. NONVISUAL ACCESS STANDARDS. Pursuant to Minn. Stat. § 16C.145, the Contract Vendor shall comply with the following nonvisual technology access standards :

- a. That the effective interactive control and use of the technology, including the operating system applications programs, prompts, and format of the data presented, are readily achievable by nonvisual means;
- b. That the nonvisual access technology must be compatible with information technology used by other individuals with whom the blind or visually impaired individual must interact;
- c. That nonvisual access technology must be integrated into networks used to share communications among employees, program participants, and the public; and
- d. That the nonvisual access technology must have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

These standards do not require the installation of software or peripheral devices used for nonvisual access when the information technology is being used by individuals who are not blind or visually impaired.

21. NOTICE TO RESPONDERS. Pursuant to Minn. Stat. § 270C.65, subd. 3, Contract Vendors are required to provide their Federal Employer Identification Number or Social Security Number. This information may be used in the enforcement of federal and State tax laws. Supplying these numbers could result in action to require a Contract Vendor to file tax returns and pay delinquent tax liabilities. These numbers will be available to federal and State tax authorities and State personnel involved in the payment of State obligations.

22. ORGANIZATIONAL CONFLICTS OF INTEREST. The responder warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are no relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:

- a Contract Vendor is unable or potentially unable to render impartial assistance or advice to the State;
- the Contract Vendor's objectivity in performing the work is or might be otherwise impaired; or
- the Contract Vendor has an unfair competitive advantage.

The Contract Vendor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contract Vendor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel the Master Agreement. In the event the Contract Vendor was aware of an organizational conflict of interest prior to the award of the Master Agreement and did not disclose the conflict to the Master Agreement Administrator, the State may terminate the Master Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contract Vendor," "Master Agreement", "Master Agreement Administrator" and "Contract Administrator" modified appropriately to preserve the State's rights.

23. PAYMENT CARD INDUSTRY DATA SECURITY STANDARD AND CARDHOLDER INFORMATION SECURITY. NEGOTIATED. Contract Vendor assures all of its Network Components, Applications, Servers, and Subcontractors (if any) comply with the Payment Card Industry Data Security Standard ("PCIDSS"). "Network Components" shall include, but are not limited to, Contract Vendor's firewalls, switches, routers, wireless access points, network appliances, and other security appliances; "Applications" shall include, but are not limited to, all purchased and custom external (web) applications. "Servers" shall include, but are not limited to, all of Contract Vendor's web, database, authentication, DNS, mail, proxy, and NTP servers. "Cardholder Data" shall mean any personally identifiable data associated with a cardholder, including, by way of example and without limitation, a cardholder's account number, expiration date, name, address, social security number, or telephone number.

Subcontractors (if any) must be responsible for the security of all Cardholder Data in its possession; and will only use Cardholder Data for assisting cardholders in completing a transaction, providing fraud control services, or for other uses specifically required by law. Contract Vendor must have a business continuity program which conforms to PCIDSS to protect Cardholder Data in the event of a major disruption in its operations or in the event of any other disaster or system failure which may occur to operations; will continue to safeguard Cardholder Data in the event this Agreement terminates or expires; and ensure that a representative or agent of the payment card industry and a representative or agent of the State shall be provided with full cooperation and access to conduct a thorough security review of Contract Vendor's operations, systems, records, procedures, rules, and practices in the event of a security intrusion in order to validate compliance with PCIDSS.

In performing our obligations under this Participating Addendum, neither IBM nor our Subcontractors, if any, will have access to Cardholder Data as such term is defined in Section 23. (PAYMENT CARD INDUSTRY DATA SECURITY STANDARD AND CARDHOLDER INFORMATION SECURITY) of Exhibit C (Minnesota Terms and Conditions) of the Minnesota WSCA - NASPO Master Agreement. Accordingly, the parties agree that Section 23 is not applicable to IBM or our Subcontractors.

24. PERFORMANCE WHILE DISPUTE IS PENDING. Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under the Master Agreement that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under the Master Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

25. PREFERENCE.

Targeted/Economically Disadvantaged. In accordance with Minn. Stat. § 16C.16, subds. 6 and 7, eligible certified targeted group (TG) businesses and certified economically disadvantaged (ED) businesses will receive a 6 percent preference on the basis of award for this RFP. The preference is applied only to the first \$500,000 of the response to the RFP. Eligible TG businesses must be currently certified by the Materials Management Division prior to the bid opening date and time.

To verify TG/ED certification, refer to the Materials Management Division's web site at www.mmd.admin.state.mn.us under "Vendor Information, Directory of Certified TG/ED Vendors."

To verify TG eligibility for preference, refer to the Materials Management Division's web site under "Vendor

Information, Targeted Groups Eligible for Preference in State Purchasing" or call the Division's HelpLine at 651.296.2600.

Reciprocal Preference.In accordance with Minn. Stat. §16C.06, subd 7, the acquisition of goods or services shall be allowed a preference over a non-resident vendor from a state that gives or requires a preference to vendors from that state, the preference shall be equal to the preference given or required by the state of the non-resident vendor. If you wish to be considered a Minnesota Resident vendor you must claim that by filling out the Resident Vendor Form included in this solicitation and include it in your response.

Veteran.In accordance with Minn. Stat. § 16C.16, subd. 6a, (a) Except when mandated by the federal government as a condition of receiving federal funds, the commissioner shall award up to a six percent preference in the amount bid on state procurement to **certified small businesses** that are **majority-owned and operated by:**

- (1) recently separated veterans who have served in active military service, at any time on or after September 11, 2001, and who have been discharged under honorable conditions from active service, as indicated by the person's United States Department of Defense form DD-214 or by the commissioner of veterans affairs;
- (2) veterans with service-connected disabilities, as determined at any time by the United States Department of Veterans Affairs; or
- (3) any other veteran-owned small businesses certified under section 16C.19, paragraph (d).

In accordance with Minn. Stat. § 16C.19 (d), a veteran-owned small business, the principal place of business of which is in Minnesota, is certified if it has been verified by the United States Department of Veterans Affairs as being either a veteran-owned small business or a service disabled veteran-owned small business, in accordance with Public Law 109-461 and Code of Federal Regulations, title 38, part 74.

To receive a preference the veteran-owned small business must meet the statutory requirements above by the solicitation opening date and time. The preference is applied only to the first \$500,000 of the response. If responder is claiming the veteran-owned preference, attach documentation, sign and return form with response to the solicitation. Only eligible veteran-owned small businesses that meet the statutory requirements and provide adequate documentation will be given the preference.

26. **PUBLIC INFORMATION.** Once the information contained in the responses is deemed public information, interested parties may request to obtain the public information. You may call 651.201.2413 between the hours of 8:00 a.m. to 4:30 p.m. to arrange this.
27. **PUBLICITY.** Any publicity given to the program, publications or services provided resulting from a State contract for goods or services, including but not limited to notices, informational pamphlets, press releases, research, reports, signs and similar public notices prepared by or for the Contract Vendor, or its employees individually or jointly with others, or any subcontractors, shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in the Master Agreement prior to its approval by the State's Authorized Representative and the State's Assistant Director or designee of Materials Management Division. The Contract Vendor shall make no representations of the State's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of the Master Agreement without the prior written consent of the State's Assistant Director or designee of Materials Management Division. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.
28. **PURCHASE ORDERS.** The State requires that there will be no minimum order requirements or charges to process an individual purchase order. The Master Agreement number and the PO number must appear on all documents (e.g., invoices, packing slips, etc.). The Ordering Entity's purchase order constitutes a binding contract
29. **RIGHTS RESERVED.** Notwithstanding anything to the contrary, the State reserves the right to:
 - a. reject any and all responses received;
 - b. select, for Master Agreements or for negotiations, a response other than that with the lowest cost;
 - c. waive or modify any informalities, irregularities, or inconsistencies in the responses received;
 - d. negotiate any aspect of the proposal with any responder and negotiate with more than one responder;
 - e. request a BEST and FINAL OFFER, if the State deems it necessary and desirable; and
 - f. terminate negotiations and select the next response providing the best value for the State, prepare and release a new RFP, or take such other action as the State deems appropriate if negotiations fail to result in a successful Master Agreement.
30. **RISK OF LOSS OR DAMAGE. NEGOTIATED.** The State is relieved of all risks of loss or damage to the goods and/or equipment during periods of transportation. Responsibility and liability for loss or damage shall remain with the

Contractor up to the time it is delivered to the Purchasing Entity or Purchasing Entity's designed location, except as to latent defects, fraud and Contractor's warranty obligations. Thereafter the Purchasing Entity assumes the risk. Customer must report any loss or damage in writing to IBM within ten (10) business days of delivery. However, the risk of loss or damage passes to the Contractor during the Contractor's installation of the goods and or equipment and while the goods and or equipment are in the Contractor's possession.

31. **SEVERABILITY.** If any provision of the Master Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both the State and the Contract Vendor shall be relieved of all obligations arising under such provisions. If the remainder of the Master Agreement is capable of performance it shall not be affected by such declaration or finding and shall be fully performed.
32. **STATE AUDITS** (Minn. Stat. § 16C.05, subd. 5). The books, records, documents, and accounting procedures and practices of the Contract Vendor or other party, that are relevant to the Master Agreement or transaction are subject to examination by the contracting agency and either the Legislative Auditor or the State Auditor as appropriate for a minimum of six years after the end of the Master Agreement or transaction. The State reserves the right to authorize delegate(s) to audit this Master Agreement and transactions.
33. **SURVIVABILITY. NEGOTIATED.** The following rights and duties of the State and responder will survive the expiration or cancellation of the resulting Master Agreements. These rights and duties include, but are not limited to paragraphs: Indemnification, Hold Harmless and Limitation of Liability, State Audits, Government Data Practices, Governing Law, Jurisdiction and Venue, Publicity, Intellectual Property Indemnification, and Admin Fees. These rights and duties shall terminate two(2) years after the expiration or termination of the Master Agreement unless the obligations contained in the clauses referred to in this section are required to be maintained longer pursuant to Participating Entity's laws.
34. **TRADE SECRET/CONFIDENTIAL INFORMATION.** Any information submitted as Trade Secret must be identified and submitted per the Trade Secret Form and must meet Minnesota Trade Secret as defined in Minn. Stat. § 13.37



COMPUTER EQUIPMENT 2014-2019



MINNESOTA WCSA-NASPO MASTER AGREEMENT AWARD

EXHIBIT B - PRICING

1. **BAND(S) AWARDED:** Band 4: Server Band 5: Storage.
2. **PRICE STRUCTURE.** The contract employs a MINIMUM discount-off baseline price list structure with category exceptions for each band. The category discounts may be higher or lower than the than the band discount. The minimum discount and categorized exceptions will be applied to all "quantity one" procurements. An end user will be able to verify pricing using the named base line price list and the minimum discounts with the categorized exceptions provided in the Master Agreement.
3. **PRICE GUARANTEE.** These discounts must remain firm, or the discount may be increased, during the term of the Master Agreement.
4. **BASELINE PRICE LIST.** The Base Line Price is designated in the Pricing Discount Schedule. The Base Line Price List must be accessible and verifiable by potential end users preferably on the Contract Vendor Website. All historic versions of the Baseline Price List must be made available upon request pursuant to the audit provisions.
5. **PRODUCT AND SERVICE SCHEDULE (PSS).** The Product and Service Schedule (PSS) identifies a complete listing of all products and services included in the awarded Master Agreement. The PSS serves as the Contract Catalog. **The PSS will be submitted to the Lead State following contract award and must be approved by the Lead State prior to the start of any sales.** The PSS must be available on the Contract Vendor website for end users to verify pricing based on the minimum discounts with category exceptions provided off a designated base line price list. The Contract Vendor will work with each State to develop a satisfactory PSS reflecting the individual States restrictions.
6. **CHANGES TO THE PSS:** Contract Vendor will request changes to the PSS utilizing an Action Request Form (ARF) Submittals will be reviewed by the Lead State quarterly. Obsolete and discontinued products will be removed.
7. **BULK/VOLUME PRICING.** Further bulk/quantity savings may be obtained when additional quantities are requested. Additional savings are expected when competing awarded vendors for volume pricing.
8. **PROMOTIONAL OFFERS.** Contract Vendors may provide promotions for deeply discounted products based on their inventory and sales. The Contract Vendors will be responsible to market these offers.
9. **PREMIUM SAVINGS PACKAGE PROGRAM.** Contract Vendors participating in the Premium Savings Package (PSP) Program will commit to the standard configurations. The standards currently are refreshed every six months (May and November). Refresh schedule is subject to change. See current configurations: <http://www.wnpsp.com/index.html>. States and other Participating Entities can choose to purchase these packages without any signing additional documents.
10. **TRADE-IN.** Trade-in Programs are the option of the Participating Entity. The Participating Addendum by each State may address the allowance of Trade-Ins.
11. **SERVICES.** Services are at the option of the Participating Entity. The Participating Addendum by each State may address service agreement terms and related travel.

12. **LEASING.** The Discount schedule will indicate if the Contract Vendor provides leasing. Participating Entities may enter in to lease agreements if they have the legal authority to enter into these types of agreements. The Participating Addendum by each State will identify if and how leasing agreement terms will be conducted.
13. **FREIGHT.** All prices shall be FOB Destination, prepaid and allowed (with freight included in the price), to the address, receiving dock or warehouse as specified on the ordering agency's purchase order. In those situations in which the "deliver-to" address has no receiving dock or agents, the Contract Vendor must be able to deliver to the person specified on the PO without additional cost. If there is a special case where inside delivery fee must be charged, the Contract Vendor will notify the customer in advance in order for the customer to determine if the additional cost will affect the decision to utilize the Contract Vendor.
14. **DELIVERY.** Delivery of ordered product should be completed within thirty (30) calendar days after receipt of an order, unless otherwise agreed to by the ordering agency.



**COMPUTER EQUIPMENT
2014-2019**



**MINNESOTA WCSA-NASPO MASTER AGREEMENT AWARD
EXHIBIT B - PRICING SCHEDULE**

1. BASELINE PRICE LIST: IBM MSRP **POSTED ON WCSA-NASPO WEBSITE**

2. BAND DISCOUNTS	CATEGORY	MINIMUM DISCOUNT
BAND 4 SERVER	4M	15%
BAND 5 STORAGE	5M	15%

CATEGORY EXCEPTIONS:		
Category A Servers	4A	10%
Category A Storage	5A	5%

IMPORTANT: The minimum discount is provided, refer to Contract Vendor's Website for any additional discounts and request a quote for bulk/volume discounts. All prices shall be FOB Destination, prepaid and allowed (with freight included in the price). If there is a special case where inside delivery fee must be charged, the Contract Vendor will notify the customer in advance.

3. THIRD PARTY PRODUCTS – NO THIRD PARTY PRODUCTS ARE OFFERED

4. SERVICES – Request Quote. Individual Opportunities may receive additional discounts which will be calculated at the time of order

Services are at the option of Participating States. Participating Addendums by each State may address service agreement terms and related travel. States may negotiate additional services. The majority of hardware includes a one year warranty. Customer may purchase warranty upgrades for certain hardware as offered on the website. For standard warranty information see Master Agreement.

IBM provides services based on the IBM GSA IT rate card current at the time of order. Data below is example of rates available at the time of the original proposal. For further details see: <https://www-304.ibm.com/easyaccess3/gsa/contenttemplate/!//xmlid=105301>.

A1	\$404.00		G	\$190.00
A	\$336.00		H	\$168.00
B	\$307.00		I	\$136.00
C	\$280.00		J	\$109.00
D	\$246.00		K	\$73.00
E	\$216.00		L	\$43.00
F	\$206.00			

5. LEASING

Participating Addendum may identify if and how leasing agreement terms will be conducted.

6. ADDITIONAL DISCOUNTS – Request a quote for discounts on bulk/volume purchases.

Selected Category B Server Items	4B	3% (13%)
Selected Category C Server Items	4C	5% (15%)
Selected Category D Server Items	4D	11% (21%)
Selected Category E Server Items	4E	17% (27%)

Individual opportunities may receive additional discounts which will be calculated at time of order. IBM provides periodic promotions for specific products which will be posted on the website.

MIDDLEWARE

IBM's Middleware is discounted and the discounted pricing will be posted on the IBM WCSA-NASPO web site. The discounted pricing is available via a Government Price List and Education Price List.



**COMPUTER EQUIPMENT
2014-2019**



**MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD
EXHIBIT C - PRODUCT AND SERVICE SCHEDULE(PSS)**

1. **MAINTAINING THE PSS.** The Product and Service Schedule (PSS) identifies a complete listing of all products and services included in the awarded Master Agreement. The PSS serves as the WSCA-NASPO Contract Catalog. **The PSS will be submitted to the Lead State following contract award and must be approved by the Lead State prior to the start of any sales.** The PSS must be available on the Contract Vendor website for end users to verify pricing based on the minimum discounts with category exceptions provided off a designated base line price list. The Contract Vendor will work with each State to develop a satisfactory PSS reflecting the individual States restrictions. The Contract Vendor will work to develop a PSS satisfactory to the Lead State prior to the start of sales and containing the following information:
 - a. Band number
 - b. Part # - SKU #
 - c. Manufacturer
 - d. Description
 - e. Minimum Discount
 - f. Category Code (This code will be refined during the approval process)
 - g. Other fields approved by the Lead State
2. **CHANGES TO THE PSS:** Contract Vendor will request changes to the PSS utilizing an Action Request Form (ARF) Submittals will be reviewed by the Lead State quarterly. Obsolete and discontinued products will be removed.
3. **FORMAT:** The format for the final product and service schedule will be approved within 30 days of contract award. Suggested format is provided below:

MANUFACTURER NAME: _____ **DATE:** _____
BASELINE PRICE LIST: _____
LINK: _____

BAND	Part # - SKU#	MANUFACTURER	DESCRIPTION	MINIMUM DISCOUNT	CATEGORY CODE
1	XYZ	ABC	DESKTOP	60%	1M
2	550	ZZZZZZ	LAPTOP CART	10%	2TM
3	123A	ABC	SUPER TABLET	25%	3A

4. **THIRD PARTY PRODUCTS:** A list of third party products is to be submitted to the Lead State. Approval must be received from the Lead State prior to adding third party products to the Product and Service Schedule. Master Agreement restrictions of third party products include:
 - a. Contract Vendors can only offer Third Party Products in the bands they have been awarded.
 - b. Contract Vendor cannot offer products manufactured by another Contract Vendor holding a Minnesota WSCA-NASPO Master Agreement unless approved by the Lead State.
 - c. The Contract Vendor will assign the manufacturer or publisher's warranty and maintenance. The Contract Vendor will provide warranty and maintenance call numbers and assist the customer in engaging the manufacturer on warranty and maintenance issues.
 - d. Any additions to the Third Party Product list must be submitted utilizing the Action Request Form.
 - e. The approved Third Party Product list will be clearly posted on the Vendor provided website and updated as products are approved.



COMPUTER EQUIPMENT
2014-2019



MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD
EXHIBIT D - WEBSITE

1. **IMPLEMENTATION.** Within 30 calendar days of Master Agreement award, the Contract Vendor must provide a sample URL of the Master Agreement webpage to the Lead State for review and approval. The Lead State will review and determine acceptability of the website format and data. If the information is determined to be unacceptable or incorrect, the Contract Vendor will have 15 calendar days to provide revisions to the Lead State. Once the website is approved, the Contract Vendor may not make material changes to the website without notifying the Lead State and receiving written approval of the changes utilizing the Action Request Form. The Contract Vendor must continue to monitor and update the website throughout the life of the contract. Periodic audits may be conducted to ensure websites are updated and Contract Vendors will be expected to correct deficiencies.
2. **WEBSITE CONTENT.** The website must be separate from the Contract Vendor's commercially available (i.e., public) on-line catalog and ordering systems. Contract Vendor agrees to pursue design of a website to include the items listed below. The Lead State will review and determine acceptability of the website format and data as stated in Item 1 above.
 - a. Baseline Price List and historic versions
 - b. Approved Product and Service Schedule (PSS)
 - c. Product specifications, pricing, and configuration aids for the major product categories proposed that can be used to obtain an on-line quote
 - d. Third Party Product list will be clearly posted on the Vendor provided website and updated as products are approved
 - e. Link to the WSCA-NASPO EmarketCenter
 - f. Online ordering capability with the ability to remember multiple ship to locations if applicable to product
 - g. Contact information for order placement, service concerns (warranty and maintenance), problem reporting, and billing concerns
 - h. Sales representatives for participating entities
 - i. Purchase order tracking
 - j. Available Twenty-four (24) hours per day, seven (7) days per week availability, except for regularly scheduled maintenance
 - k. Additional Terms may not be posted on the Website without written approval of the Lead State
 - l. Link to the WSCA-NASPO EmarketCenter if a State is participating
 - m. Information on accessibility and accessible products
 - n. If participating in Premium Savings Package Program, lead with these products and display prominently on the website
 - o. Links to environmental certification, including but not limited to take-back/recycling programs,
 - p. Information regarding the use of Conflict minerals, as required by Section 13(p) of the Securities Exchange Act of 1934, as amended, and the rules promulgated thereunder. See: <http://www.sec.gov/rules/final/2012/34-67716.pdf>
 - q. Service options, service agreements for negotiations when allowed by a participating addendum
 - r. EPEAT, Energy Star, etc.
 - s. Link to Signed Participating Addendums
 - t. Link to Signed Master Agreement
 - u. Link to solicitation and Response.
3. **TERMINATION.** Upon termination or expiration of the Master Agreement awarded from this RFP all websites, on-line offering systems and Electronic Catalog functions supported and/or available as part of the Master Agreement will cease and be removed from public viewing access without redirecting to another website.



COMPUTER EQUIPMENT
2014-2019



MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD
EXHIBIT E - ACTION REQUEST UPDATE FORM (ARF)

The Action Request Form (ARF) provided in this document must be utilized by the Contract Vendor to provide quarterly updates of PSS and to make requests. The Action Request Forms may be reviewed quarterly by the Lead State.

DATE: _____

ATTN: WSCA-NASPO Master Agreement Administrator

RE: Master Agreement # _____ with _____ (Contract Vendor)

Dear WSCA-NASPO Master Agreement Administrator:

_____ (Contract Vendor) is providing the following update and/or requesting the action noted below.

Action Requested: _____
Action Log: _____ Verify Log is attached

SELECT ACTION BELOW AND PROVIDE REQUIRED INFORMATION:

- Update of Product & Service Schedule Provide summary of additions, deletions and pricing changes.
- Quarterly Self Audit Check this box to verify the Quarterly Self Audit has been completed
- Third Party Product Addition Provide warranty Guarantee
- Marketing Approval Attach Materials for review
- Material Website Change Describe and provide link for review
- Miscellaneous Inquiry Provide detail (e.g., key contact change, etc.)

The Contract Vendor certifies Products and Services provided meet the terms and conditions of the Master Agreement and understands they may be audited for compliance. Additional information may be requested upon submission. The Lead State may remove previously approved items throughout the life of the Master Agreement if in the best interest at its sole discretion.

Contract Vendor: _____ Name of Requester: _____
Title of Requester: _____



**COMPUTER EQUIPMENT
2014-2019**



**MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD
EXHIBIT F - REPORTING**

- OWNERSHIP:** Recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and WSCA-NASPO shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided.
- DUE DATE:** Reports shall be due no later than the last day of the month following the end of the calendar quarter.

	FROM	TO	DUE
Q1	January 1	March 31	April 30
Q2	April 1	June 30	July 31
Q3	July 1	September 30	October 31
Q4	October 1	December 31	January 31

3. REQUIRED REPORTS:

	Report Name	Submitted to	Purpose & Submittal
1	WSCA-NASPO Administrative Fee	WSCA-NASPO	Identify total sales and administrative fee due to WSCA-NASPO 1) Go to: http://www.naspo.org/WNCPO/Calculator.aspx 2) Complete all contract report information fields 3) Enter total sales per State or Select "no sales for quarter" checkbox 4) Click on Submit button
2	WSCA-NASPO Detailed Sales	WSCA-NASPO	Detailed sales data by line item. Currently via an Excel Report template. Future MAY involve a portal. No modifications may be made by the Contract Vendor to the template. This report may also fulfill the reporting requirements of self audits, premium savings sales, and Bring Your Own Device Employee Sales.
3	Participating States	Participating State	Contract Vendor may utilize the detailed sales report to report to individual States unless otherwise directed by the State. States may require additional reporting.
4	Participating Addendum Status	WSCA-NASPO	Provides status of Participating Addendums. Excel Template to be provided by WSCA-NASPO.
5	Premium Saving Package (PSP)	PSP Lead	Additional reporting may be requested.
6	Quarterly Updates of PSS and Self Audit	Lead State	Utilize the Action Request Form (ARF)



COMPUTER EQUIPMENT 2014-2019



MINNESOTA WSCA-NASPO MASTER AGREEMENT AWARD

EXHIBIT G - DEFINITIONS

Acceptance. See Master Agreement Terms regarding Acceptance and Acceptance Testing.

Accessory. Accessories do not extend the functionality of the computer, but enhances the user experience i.e., mouse pad, monitor stand. For the purposes of this proposal, accessories are considered peripherals.

Bands: For the purpose of this solicitation, there are six product bands which may be awarded. Each product band includes related peripherals and services. Responders must only respond to Bands in which they manufacture the defined product. Responder may receive an award in one or more bands for which they manufacture a product based on the evaluation.

BAND 1: DESKTOP. A desktop computer is a personal computer intended for regular use at a single location. A desktop computer typically comes in several units connected together during installation: 1) the processor, 2) display monitor and 3) input devices usually a keyboard and a mouse. All operating systems for tablets are allowed. Zero Clients, Thin clients, all in ones and workstations will also be included under desktops. Ruggedized equipment may also be included in the Product and Service schedule for this band.

BAND 2: LAPTOP. A laptop computer is a personal computer for mobile use. A laptop includes a display, keyboard, point device such as a touchpad and speakers into a single unit. A laptop can be used away from an outlet using a rechargeable battery. All operating systems for tablets are allowed. Laptops will include notebooks, ultrabook, mobile thin clients, chromebooks and netbooks. Computers with mobile operating systems will also be included under laptops. Tablets that have the option to be utilized with a keyboard can be sold in this band. Ruggedized equipment may also be included in the Product and Service Schedule for this band.

BAND 3: TABLET. A tablet is a mobile computer that provides a touchscreen which acts as the primary means of control. All operating systems for tablets are allowed. Ruggedized equipment may also be included as a category in the Product and Service Schedule for this band.

BAND 4: SERVER. A server is a physical computer dedicated to run one or more services or applications (as a host) to serve the needs of the users of other computers on a network. This band also includes server appliances. Server appliances have their hardware and software preconfigured by the manufacturer. It also includes embedded networking components such as those found in blade chassis systems. Ruggedized equipment may also be included in the Product and Service Schedule for this band.

BAND 5: STORAGE. Storage is hardware with the ability to store large amounts of data. This band includes SAN switching necessary for the proper functioning of the storage environment. Ruggedized equipment may also be included in the Product and Service Schedule for this band.

~~**BAND 6: RUGGEDIZED DEVICES** Ruggedized refers to devices specifically designed to operate reliably in harsh usage environments and conditions, such as strong vibrations, extreme temperatures and wet or dusty conditions. Ruggedized Devices may also be offered under bands 1-5 of the Master Agreement. BAND 6 REMOVED. RUGGEDIZED EQUIPMENT MAY BE SOLD IN BANDS 1-5, PROVIDED IT MEETS BAND REQUIREMENTS.~~

Cloud Services. Delivery of computing as a service rather than a product, whereby shared resources, software and information are provided to computers and other devices as a utility over a network, such as the Internet. (Cloud Services including acquisitions structured as managed on-site services are not allowed.)

Contract Vendor or Contractor. The manufacturer responsible for delivering products or performing services under the terms and conditions set forth in the Master Agreement. The Contract Vendor must ensure partners utilized in the performance of this contract adhere to all the terms and conditions. For the purposes of this RFP, the term Partner will be utilized in naming the relationship a manufacturer has with another company to market and sell the contract. Participating States will have final determination/approval if a Partner may be approved for that state in the role identified by the Contract Vendor.

Components. Parts that make up a computer configuration.

Configuration. The combination of hardware and software components that make up the total functioning system.

Desktop. This is Band 1 of this solicitation. A desktop computer is a personal computer intended for regular use at a single location. A desktop computer typically comes in several units connected together during installation: 1) the processor,

2) display monitor and 3) input devices usually a keyboard and a mouse. Desktop virtualization endpoints such as zero and thin clients will also be included under the Desktop Band.

Energy Star®. A voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes identification of energy efficient computers easy by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. Energy Star qualified computers and monitors automatically power down to 15 watts or less when not in use and may actually last longer than conventional products because they spend a large portion of time in a low-power sleep mode. For additional information on the Energy Star program, including product specifications and a list of qualifying products, visit the Energy Star website at <http://www.energystar.gov>.

EPEAT. A system for identifying more environmentally preferable computer desktops, laptops, and monitors. It includes an ANSI standard - the IEEE 1680 EPEAT standard – and website www.epeat.net to identify products manufacturers have declared as meeting the standard. EPEAT provides a clear and consistent set of performance criteria for the design of products. It is not a third-party certification program. Instead, Manufacturers self-certify that their products are in conformance with the environmental performance standard for electronic products.

FOB Destination. Shipping charges are included in the price of the item and the shipped item becomes the legal property and responsibility of the receiver when it reaches its destination unless there is acceptance testing required.

FOB Inside Delivery. Special Shipping arrangements, such as inside delivery, may include additional fees payable by the Purchasing Entity. Any FOB inside delivery must be annotated on the Purchasing Entity ordering document.

General Consulting. Services related to advising agencies on how best to use information technology to meet business objectives. Examples of such services would include management and administration of IT systems. Each State will have varying laws, rules, policies and procedures surrounding general consulting which need adherence. Minnesota Statute section 16C.08 defines general consulting for the State of Minnesota. <https://www.revisor.mn.gov/statutes/?id=16C.08>

Laptop. This is Band 2 of this solicitation. A laptop computer is a personal computer for mobile use. A laptop includes a display, keyboard, point device such as a touchpad and speakers into a single unit. A laptop can be used away from an outlet using a rechargeable battery. Laptop Band may include notebooks, ultrabooks, and netbooks. Computers with mobile operating systems will also be included under the Laptop Band.

Lead State. The State conducting this cooperative solicitation and centrally administering any resulting Master Agreement with the permission of the Signatory States. Minnesota is the Lead State for this procurement and the laws of Minnesota Statute Chapter 16C apply to this procurement.

Manufacturer. A company that, as one of its primary business function, designs, assembles owns the trademark/patent and markets branded computer equipment.

Master Agreement. The underlying agreement executed by and between the Lead State and the Contract Vendor.

Middleware. Middleware is the software "glue" that helps programs and databases (which may be on different computers) work together. Its most basic function is to enable communication between different pieces of software.

Options. An item of equipment or a feature that may be chosen as an addition to or replacement for standard equipment and features.

Order. A purchase order, sales order, or other document used by a Purchasing Entity to order the Equipment.

Participating Addendum. A written statement of agreement signed by the Contract Vendor and a Participating State or other Participating Entity that clarifies the operation of this Master Agreement for the Participating Entity (e.g., ordering procedures specific to a Participating State) and may add other state-specific language or other requirements. A Participating Addendum evidences the Participant's willingness to purchase and the Contract Vendor's willingness to provide equipment under the terms and conditions of this Master Agreement with any and all exceptions noted and agreed upon.

Participating States. States that utilize the Master Agreement established by the RFP and enter into a Participating Addendum which further defines their participation.

Participating Entity. A Participating State, or other legal entity, properly authorized by a Participating State to enter into the Master Agreement through a Participating Addendum and that authorizes orders from the Master Agreement by Purchasing Entities. Under the WSCA-NASPO program, in some cases, local governments, political subdivisions or other entities in a State may be authorized by the chief procurement official to execute its own Participating Addendum where a Participating Addendum is not executed by the chief procurement official for that state that covers local governments, political subdivisions, or other government entities in the state.

Partner. A company, authorized by the Contract Vendor and approved by the Participating State, to provide marketing, support, or other authorized contract services on behalf of the Contract Vendor in accordance with the terms and conditions of the Contract Vendor's Master Agreement. In the RFP, Partner is the term that is used to call out the many different relationships a manufacturer may have with another company to market their product including, but not limited to agents, subcontractors, partners, fulfillment partners, channel partners, business partners, servicing subcontractor, etc.

Peripherals. A peripheral means any hardware product that can be attached to, added within or networked with personal computers, servers and storage. Peripherals extend the functionality of a computer without modifying the core components of the system. For the purposes of this proposal, peripherals are defined as including accessories.

Peripherals may be manufactured by a third party, however, Contract Vendor shall not offer any peripherals manufactured by another Contract Vendor holding a Master Agreement. The Contract Vendors shall provide the warranty service and

maintenance for all peripherals on the Master Agreement. **Examples of peripherals/accessories/options:** Include but are not limited to: printers, monitors, multifunction printers, audiovisual equipment, instructional equipment, cabling, modems, networking to support server, storage and client applications such as routers, switches. Software is an option which must be related to the purchase of equipment and subject to configuration limits. **Third party products are allowed to be offered as peripherals/accessories/options and may be offered in any related band.**

Per Transaction Multiple Unit Discount. A contractual volume discount based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Participating Entity or multiple entities conducting a cooperative purchase.

Premium Savings Packages. Deeply discounted standard configurations available to Purchasing Entities using the Master Agreement. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals. WSCA-NASPO reserves the right to expand and modify the PSP throughout the life of the contract. See <http://www.wnpsp.com/index.html>.

Purchasing Entity – means a state, city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues an order against the Master Agreement and becomes financially committed to the purchase.

Ruggedized. This was band 6 of this solicitation. Ruggedized refers to equipment specifically designed to operate reliably in harsh usage environments and conditions, such as strong vibrations, extreme temperatures and wet or dusty conditions.

Services. Broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Agreement. These types of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk/helpdesk, and any other directly related technical support service required for the effective operation of a product offered or supplied. Contract Vendors may offer, but participating States and entities do not have to accept, limited professional services related **ONLY** to the equipment and configuration of the equipment purchased through the resulting contracts. **EACH PARTICIPATING STATE DETERMINES RESTRICTIONS AND NEGOTIATES TERMS FOR SERVICES.**

Server. This is Band 4 of this solicitation. A server is a physical computer dedicated to run one or more services or applications (as a host) to serve the needs of the users of other computers on a network. This band also includes server appliances. Server appliances have their hardware and software preconfigured by the manufacturer. It also includes embedded networking components such as those found in blade chassis systems. Ruggedized equipment may also be included in the Product and Service Schedule for this band.

Storage. This is Band 5 of this solicitation. Storage is hardware with the ability to store large amounts of data. This band includes SAN switching necessary for the proper functioning of the storage environment. Ruggedized equipment may also be included in the Product and Service Schedule for this band.

Storage Area Network. A storage area network (SAN) is a high-speed special-purpose network (or subnetwork) that interconnects different kinds of data storage devices with associated data servers on behalf of a larger network of users.

Storage as a Service (STaaS). An architecture model by which a provider allows a customer to rent or lease storage space on the provider's hardware infrastructure on a subscription basis. E.g., manage onsite or cloud services.

Software. For the purposes of this proposal, software is commercial operating off the shelf machine-readable object code instructions including microcode, firmware and operating system software that are preloaded on equipment. The term "Software" applies to all parts of software and documentation, including new releases, updates, and modifications of software.

Tablet. This is Band 3 of this solicitation. A tablet is a mobile computer that provides a touchscreen which acts as the primary means of control. Tablet band may include notebooks, ultrabooks, and netbooks that are touchscreen capable.

Takeback Program. The Contract Vendor's process for accepting the return of the equipment or other products at the end of life.

Third Party Products. Products sold by the Contract Vendor which are manufactured by another company.

Upgrade. Refers to replacement of existing software, hardware or hardware component with a newer version.

Warranty. The Manufacturers general warranty tied to the product at the time of purchase.

Wide Area Network or WAN. A data network that serves users across a broad geographic area and often uses transmission devices provided by common carriers.

WSCA-NASPO. The WSCA-NASPO cooperative purchasing program, facilitated by the WSCA-NASPO Cooperative Purchasing Organization LLC, a 501(c)(3) limited liability company that is a subsidiary organization of the National Association of State Procurement Officials (NASPO). The WSCA-NASPO Cooperative Purchasing Organization facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states and the District of Columbia. The WSCA-NASPO Cooperative Development Team is identified in the Master Agreement as the recipient of reports and may be performing contract administration functions as assigned by the Lead State Contract Administrator.