

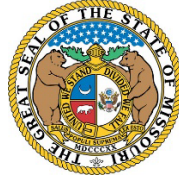


NOTICE OF AWARD

State Of Missouri
Office Of Administration
Division Of Purchasing
PO Box 809
Jefferson City, MO 65102-0809
<http://oa.mo.gov/purchasing>

CONTRACT NUMBER CT241162003	CONTRACT TITLE NASPO ValuePoint Computer Equipment, Peripherals & Related Services
AMENDMENT NUMBER NA	CONTRACT PERIOD May 1, 2024 through June 30, 2025
REQUISITION/REQUEST NUMBER R3152401430	MissouriBUYS SYSTEM ID MB00090301
CONTRACTOR NAME AND ADDRESS International Business Machines Corporation P.O. Box 676673 Dallas, TX 75267-6673	STATE AGENCY'S NAME AND ADDRESS Office of Administration Information Technology Services Division 301 W. High Street Jefferson City, MO 65101
ACCEPTED BY THE STATE OF MISSOURI AS FOLLOWS: In accordance with section 34.046, RSMo, contract CT241162003 between the State of Missouri and International Business Machines Corporation is hereby awarded by the State of Missouri consisting of the attached documentation as specified on page 16 of the attached Cooperative Contract Procurement document.	
BUYER Kelsey Huwe	BUYER CONTACT INFORMATION Email: kelsey.huwe@oa.mo.gov Phone: (573) 522-1308 Fax: (573) 526-9816
SIGNATURE OF BUYER 	DATE 5/1/2024
DIRECTOR OF PURCHASING  Karen S. Boeger	

State of Missouri
Office of Administration, Division of Purchasing



Cooperative Contract (COOP) for Computer Equipment, Peripherals & Related Services

COOP CONTRACT NUMBER NO.:	CT241162003
COOP CONTRACT ISSUED ON BEHALF OF:	Office of Administration, Information Technology Services Division
ISSUE DATE:	4/10/24
CONTRACT PERIOD:	Effective Date of Contract through June 30, 2025
REQUISITION NO.:	R3152401430

REQUESTED RESPONSE DATE: 4/18/24

Response may be submitted by e-mail to the buyer or record or mail, courier, or hand-delivered to the Division of Purchasing at 301 W. High Street, Rm. 630, Jefferson City, MO 65101.

COOP CONTACT INFORMATION:

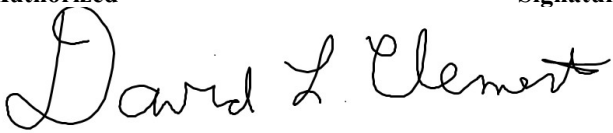
BUYER: Kelsey Huwe
PHONE NO.: (573) 522-1308
EMAIL: kelsey.huwe@oa.mo.gov

DELIVER SUPPLIES/SERVICES FREE ON BOARD (FOB) DESTINATION TO THE FOLLOWING ADDRESS:

**Office of Administration
Information Technology Services Division
301 W. High Street
Jefferson City, MO 65101**

Vendor's Organization Name:	International Business Machines (IBM)		
MissouriBUYS System ID:	MB00090301		
Point of Contact:	David Clements		
Phone Number:	573-303-4266	Email Address:	David.clements@ibm.com
Mailing Address:	3212 Emerald Lane		
City/State/Zip:	Jefferson City, MO 65109		
Vendor Tax Filing Type with IRS (check one):	☒ Corporation ☐ Individual ☐ State/Local Government ☐ Partnership ☐ Sole Proprietor ☐ IRS Tax-Exempt		

The Contractor hereby agrees to provide the services and/or supplies described in the attached NASPO ValuePoint Contract #23012 established by the State of Minnesota for the State of Missouri subject to the conditions stated on page 2. The Contractor further agrees that when a Notice of Award is signed and issued by an authorized official of the State of Missouri, a binding contract shall exist between the Contractor and the State of Missouri.

Authorized Signature 	Date 4/22/2024
Printed Name David L Clements	Title Technology Sales Executive

ATTENTION:

1. After reviewing the Cooperative Contract Document (COOP), the contractor must complete and return the **cover page above and all necessary exhibits**.
2. Due to lead times for obtaining the information needed to complete the various **Business Compliance Exhibits** herein as explained in the cooperative contract document's Vendor Response Exhibits, the vendor are encouraged to IMMEDIATELY begin securing these verifications.
3. The vendor must be registered in MissouriBUYS in an **"Approved" registration status** in MissouriBUYS **to be considered for a contract award**. Reference Section 5.

Cooperative Contract Organization:

COOP Sections	Section 1	Introduction and Background Information Section
	Section 2	Scope of Work Section
	Section 3	Terms and Conditions Section
	Section 4	General Contractual Requirements Section
	Section 5	Vendor Submission and Award Information Section
COOP Vendor Response Exhibits	Exhibit A	Response Submittal Checklist
	BUSINESS COMPLIANCE EXHIBITS	
	Exhibit B	State of Missouri Tax Compliance
	Exhibit C	Registration of Business Name with the Missouri Secretary of State
	Exhibit D	Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization
	Exhibit E	Anti-Discrimination Against Israel Act Certification
	Exhibit F	Services Outside the United States
	Exhibit G	Employee/Conflict of Interest
COOP Attachments	Attachment (Separate Documents) (Do not return these documents with response)	
	Attachment 1	Missouri Statewide Contract Quarterly Administrative Fee Report
	Attachment 2	Missouri Statewide Contract Admin. Fee Quarterly Usage Instructions and Report

1. INTRODUCTION AND BACKGROUND INFORMATION SECTION

1.1 Introduction:

- 1.1.1 Purpose: This document constitutes a request from the State of Missouri, Office of Administration, Division of Purchasing, to enter into a cooperative contract for the provision of Computer Equipment, Peripherals & Related Services as set forth herein for Office of Administration, Information Technology Services Division (hereinafter referred to as “state agency”) in accordance with the requirements, provisions, and pricing specified herein.

1.2 Cooperative Contract Authority:

- 1.2.1 Section 34.046, RSMo, allows the commissioner of administration may also participate in, sponsor, conduct or administer a cooperative purchasing agreement whereby supplies are procured in accordance with a contract established by another governmental entity provided that such contract was established in accordance with the laws and regulations applicable to the establishing governmental entity.

1.3 General Instructions and Requirements:

- 1.3.1 The vendor must complete and sign the first page of this document, thereby agreeing to provide the referenced products and/or services under the requirements, terms and conditions provided herein. Contractor signature is required to confirm the offer to contract for the products and/or services described herein and to confirm agreement that upon receipt of a Notice of Award signed by an authorized official from the State of Missouri, Division of Purchasing, a binding procurement contract shall exist between the vendor and the State of Missouri. Invoices for products and/or services provided for the State of Missouri must be submitted to the address shown on Page 1.

1.4 Glossary of Terms and Acronyms:

- 1.4.1 Whenever the following terms and acronyms appear in the cooperative contract document or any addendum thereto, the definitions or meanings described below shall apply.

1.4.2 General Glossary, Acronyms, and Abbreviations:

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Division of Purchasing (Purchasing)**. The agency is also responsible for payment, unless otherwise specified herein.
- b. **Amendment** means a written, official modification to a contract.
- c. **Attachment** applies to all documents which are included with cooperative contract document to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Buyer** means the procurement staff member of Purchasing.
- e. **Code of State Regulation (CSR)** contains the current administrative rules of executive agencies of Missouri government. The regulations are arranged by agency rather than by subject.
- f. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- g. **Contractor** means a supplier, offeror, person, or organization who is a successful vendor as a result of a cooperative contract and who enters into a contract.
- h. **Exhibit** applies to forms which are included with a cooperative contract document for the vendor to complete and submit with their response.
- i. **May** means that a certain feature, component, or action is permissible, but not required.
- j. **Must** means that a certain feature, component, or action is a mandatory condition.
- k. **Party** refers to either the State of Missouri or the contractor as an entity that may enter into a contract pursuant to the terms herein.

- l. **Purchase Order** means the authorized document issued by the state agency to the contractor indicating descriptions, quantities, and agreed prices for products and/or services.
- m. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of Purchasing.
- n. **Shall** has the same meaning as the word must.
- o. **Should** means that a certain feature, component and/or action is desirable but not mandatory.
- p. **State** collectively referring to the state government and/or the agencies thereof.
- q. **Vendor** means the supplier, offeror, person, or organization that responds to a cooperative contract by submitting a response to the cooperative contract document.

****END OF INTRODUCTION AND BACKGROUND INFORMATION SECTION****

2. SCOPE OF WORK SECTION

2.1 General Requirement:

- 2.1.1 The contractor shall perform the services/provide the supplies specified by the State of Missouri, Office of Administration, Information Technology Services Division (ITSD) in Section 2.3.1. below at the firm, fixed prices specified in the then-current NASPO ValuePoint Price List at <https://www.naspovaluepoint.org/portfolio/computer-equipment-peripherals-related-services-2023-2028/ibm-corporation/>. All references to the State of Minnesota, in the attached documentation shall be deemed to refer to the State of Missouri with the exception of information specific to State of Minnesota such as background information, statistical/factual information, etc.

2.2 Participation and Usage:

- 2.2.1 As identified in the Participating Addendum executed between the State of Missouri and IBM Corporation, cooperative contract CT241162003 serves as the State of Missouri's Director of Division of Purchasing's authorization to allow ITSD to use the NASPO ValuePoint contract for Computer Equipment, Peripherals & Related Services with IBM Corporation for Band 3, Servers and Storage.
- 2.2.2 Prices reflect list price and the contract's discounts per unit of one (1). The state agency must check with IBM or an approved IBM Business Partner to learn more about discounts for volume or establishing standard configurations.
- 2.2.3 The NASPO Master Agreement has established configuration limits. Configuration is defined as the combination of hardware and software components that make up the total functioning system. Software purchases are considered as a part of the configuration limit of the equipment. The state has elected to use the configuration limit of \$8,500,000.00 per single configuration.
- 2.2.4 The State of Missouri may check with the contractor's Authorized Reseller for configuration support and additional volume discounts.
- 2.2.5 Systems & Servers - IBM's Power Systems Server Solutions include operating systems, systems software, services support, and training for System P, System I, and Linux Platforms.
- 2.2.6 Storage Solutions - IBM's Storage Solutions include disk storage, flash storage, hybrid storage, cloud storage, software defined storage, storage area networks (SAN), tape and virtual tape storage, and optical storage connected to IBM Power Systems and z Systems.
- 2.2.7 Maintenance & Services - Maintenance and Support Services are available from IBM and approved IBM Business Partners for all products eligible to be sold under your state's Participating Addendum. Prices are determined based on the products and options selected.
- a. Support Services available 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/help desk, and any other directly related technical support service required for the effective operation of a product offered or supplied.
- 2.2.8 Software - IBM's Software Solutions include Passport Advantage and distributed software which run on IBM Power Systems and z Systems which may be purchased on premise or in the cloud as either perpetual licenses or subscription based licenses including software as a service.
- a. Software such as middleware which is not always installed on the equipment, but is related to storage and server equipment purchased, is allowed and may be procured after the initial purchase of equipment.

2.3 Cooperative Procurement Program:

- 2.3.1 The contractor shall participate in the State of Missouri's Cooperative Procurement Program. The contractor shall provide the products and/or services as described herein under the terms and conditions, requirements, and specifications of the contract, including prices, to other government entities in accordance with the Technical Services Act (section 67.360, RSMo, which is available on the internet at: <https://revisor.mo.gov/main/OneSection.aspx?section=67.360&bid=2758&hl>). The contractor shall further understand and agree that participation by other governmental entities is discretionary on the part of that governmental entity and the State of Missouri bears no financial responsibility for any payments due the contractor by such governmental entities. The following website identifies the current members of the Cooperative Procurement Program: <https://purch.oa.mo.gov/media/pdf/cooperative-procurement-program-members-listing>.

2.4 Missouri Statewide Contract Quarterly Administrative Fee:

- 2.4.1 The contractor shall pay a one percent (1%) administrative fee to the State of Missouri which shall apply to all payments received by the contractor for all services provided under the contract. Payment of the one percent administrative fee shall be non-negotiable.
- 2.4.2 The contractor shall pay the administrative fee at the end of each calendar quarter (i.e. March 31, June 30, September 30, December 31). The total administrative fee for a given quarter must equal one percent (1%) of the total payments (minus returns and credits) received by the contractor during the calendar quarter as reported on the contractor's Missouri Statewide Contract Quarterly Administrative Fee Report specified below. The administrative fee must be received by the Division of Purchasing (Purchasing) no later than the 15th calendar day of the month immediately following the end of the calendar quarter, unless the 15th is not a business day in which case the next business day thereafter shall be considered the administrative fee deadline.
- 2.4.3 Payments shall be made using one of the following acceptable payment methods:
- a. Check: Personal check, company check, cashier's check, or money order made payable to the "Missouri Revolving Information Technology Trust Fund" and sent to the following mailing address: Division of Purchasing, P.O. Box 809, Jefferson City, MO 65102 – 0809 OR Division of Purchasing, 301 West High Street, Room 630, Jefferson City, MO 65101-1517. The contractor's payment by check shall authorize the State of Missouri to process the check electronically. The contractor understands and agrees that any returned check from the contractor may be presented again electronically and may be subject to additional actions and/or handling fees.
 - b. Electronic Payment: Instructions on how to submit payments electronically by automated clearing house (ACH) will be provided upon request by contacting the Division of Purchasing at (573) 751-2387.
- 2.4.4 All payments of the administrative fee shall include the contract number on any check or transmittal document. However, only one contract number must be entered on a check or transmittal document. If submitting an administrative fee payment for more than one contract, then a separate check or electronic payment and associated transmittal document must be submitted by the contractor for each contract.
- 2.5 Missouri Statewide Contract Quarterly Administrative Fee Report:**
- 2.5.1 The contractor shall submit a Missouri Statewide Contract Quarterly Administrative Fee Report to the Division of Purchasing which shall identify the total payments (minus returns and credits) received by the contractor from state agencies, political subdivisions, universities, and governmental entities in other states that were made pursuant to the contract.

- 2.5.2 The contractor shall prepare and submit the Missouri Statewide Contract Quarterly Administrative Fee Report at the end of each calendar quarter (i.e. March 31, June 30, September 30, December 31) for total payments (minus returns and credits) received by the contractor during the calendar quarter. The Missouri Statewide Contract Quarterly Administrative Fee Report must be received by the Division of Purchasing (Purchasing) no later than the 15th calendar day of the month following the reporting quarter entered on the report, unless the 15th is not a business day in which case the next business day thereafter shall be considered the reporting deadline. Even if there has been no usage of the contract during the reporting quarter, the contractor must still submit a report and indicate no payments were received by marking the appropriate box on the report form.
- 2.5.3 The Missouri Statewide Contract Quarterly Administrative Fee Report form may be downloaded from the following Purchasing website: <http://oa.mo.gov/purchasing/vendor-information>. The Missouri Statewide Contract Quarterly Administrative Fee Report is also included herein as Attachment 1. The Missouri Statewide Contract Quarterly Administrative Fee Report must be submitted using one of the following methods:
- a. Mail: Division of Purchasing,
P.O. Box 809, Jefferson City MO 65102-0809
- OR
- Division of Purchasing,
301 West High Street, Room 630, Jefferson City, MO 65101-1517
- b. Fax: (573) 526-9815
 - c. Email: ereports@oa.mo.gov
- 2.5.4 The contractor shall agree that the Division of Purchasing reserves the right to modify the requested format and content of the Missouri Statewide Contract Quarterly Administrative Fee Report by providing thirty (30) calendar days written notice to the contractor. The contractor shall also agree the Division of Purchasing may unilaterally amend the contract, with thirty (30) calendar days notice to the contractor to change the method of payment of the administrative fee, the timing for submission of the Missouri Statewide Contract Quarterly Administrative Fee Report, and/or timing for payment of the administrative fee. The contractor shall understand and agree that if such an amendment is issued by the Division of Purchasing, the contractor shall comply with all contractual terms, as amended.

2.6 Missouri Statewide Contract Quarterly Usage Report:

- 2.6.1 The contractor shall submit a Missouri Statewide Contract Quarterly Usage Report to the Division of Purchasing that provides the Data Element information listed below:

Data Element	Description
Contractor Name	Contractor name as it appears on the contract.
Statewide Contract Number	Statewide contract number as listed on the cover page of your contract with the State of Missouri.
Report Contact Name	Name of the person completing the report on behalf of the contractor.
Contact Phone Number	Phone number for the person completing the report.
Contact Email Address	Email address for the person completing the report.
Date Report Submitted	Date the Missouri Statewide Contract Quarterly Usage Report is submitted to the Division of Purchasing.
Reporting Quarter	Quarter for which the contractor is reporting purchases on the contract.
Entity Type	Indicate the type of entity by entering "S" for Missouri state agency, "P" for Missouri political subdivision, "U" for Missouri university, or "O" for political subdivision or state entity from another state.

Data Element	Description
Customer Name	Customer's name. If the customer has multiple locations, please only use the main entity name.
Product or Service Description	Description of product or service purchased.
Purchase Authorization Number/Identifier	Purchase Authorization Number/Identifier supplied by customer to contractor. Enter PO or other authorization number/identifier. If procurement card used, enter "P-Card".
Contract Line Item Number	Line item number on the contract.
Quantity Delivered	Quantity (i.e. excluding returns) of products delivered. Enter a quantity of "1" for a service/project.
Unit Price Charged	Unit Price Charged (i.e. excluding credits) for the product or service purchased.
Extended Price	Quantity Delivered X Unit Price Charged.

- a. The contractor shall prepare and submit the Missouri Statewide Contract Quarterly Usage Report at the end of each calendar quarter (i.e. March 31, June 30, September 30, December 31) for the purchases made under the contract during the calendar quarter. The Missouri Statewide Contract Quarterly Usage Report must be received by the Division of Purchasing no later than the 15th calendar day of the month following the reporting quarter entered on the Missouri Statewide Contract Quarterly Usage Report, unless the 15th is not a business day in which case the next business day thereafter shall be considered the reporting deadline. Even if there has been no usage of the contract during the reporting quarter, the contractor must still submit a report and indicate no purchases were made.
- b. The contractor must submit a Missouri Statewide Contract Quarterly Usage Report electronically either utilizing the "Missouri Statewide Contract Quarterly Usage Report" worksheet included herein in Attachment 2 which is downloadable from <https://purch.oa.mo.gov/vendor-information> or utilizing another format which is Excel-exportable. The contractor must submit the Missouri Statewide Contract Quarterly Usage Report to the following email address: ereports@oa.mo.gov.
- c. The contractor shall agree that the Division of Purchasing reserves the right to modify the requested format and content of the Missouri Statewide Contract Quarterly Usage Report by providing thirty (30) calendar days' written notice to the contractor. The contractor shall also agree the Division of Purchasing may unilaterally amend the contract, with thirty (30) calendar days' notice to the contractor to change the timing for submission of the Missouri Statewide Contract Quarterly Usage Report. The contractor shall understand and agree that if such an amendment is issued by the Division of Purchasing, the contractor shall comply with all contractual terms, as amended.

2.7 Electronic Funds Transfer, Invoicing, and Payment Requirements:

- 2.7.1 Electronic Funds Transfer (EFT): The State of Missouri will submit contract payments to the contractor at the remittance address listed in the contractor's MissouriBUYS vendor registration. However, the contractor understands and agrees the state reserves the right to make contract payments to the contractor through electronic funds transfer (EFT). Therefore, prior to any payments becoming due under the contract, the contractor must verify and update, if applicable, their vendor registration with their current remittance address and ACH-EFT payment information at <https://MissouriBUYS.mo.gov>.
- 2.7.2 Invoicing: The contractor shall submit invoices to the state agency. Invoices shall be due by the last day of the month following the month in which the contractor provided services under the contract.
 - a. The contractor shall invoice the state agency on the contractor's original descriptive business invoice form and submit the invoice to the address on the front page of this document.

- b. The contractor shall use uniquely identifiable invoice numbers to distinguish an invoice from a previously submitted invoice and shall include on the invoice the remittance address listed in the contractor's MissouriBUYS vendor registration.
- c. Each contractor invoice must be on the contractor's original descriptive business invoice form and must contain a unique invoice number and the remittance address included in the contractor's MissouriBUYS vendor registration. The invoice number will be listed on the state's EFT addendum record to enable the contractor to properly apply state payments to invoices. The contractor must comply with all other invoicing requirements stated in the cooperative contract.
- d. The statewide financial management system has been designed to capture certain receipt and payment information. For each purchase order received, an invoice must be submitted that references the purchase order number and should be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- e. The contractor shall not invoice federal or state taxes unless otherwise required under law or regulation.

2.7.3 Payment:

- a. Payments are due upon receipt of a valid invoice, payable in 30 calendar days. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in section 34.055, RSMo.
- b. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- c. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- d. The contractor may obtain detailed information for payments issued for the past 24 months from the State of Missouri's central accounting system (SAM II) on the Vendor Services Portal at <https://www.vendorservices.mo.gov/vendorservices/Portal/Default.aspx>.

2.7.4 Inspection and Acceptance Specifications: For purposes of acceptance, no equipment, supplies, and/or services received by the state pursuant to a contract shall be deemed accepted until the state has had reasonable opportunity to inspect said equipment, supplies, and/or services.

- a. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected by the state. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- b. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- c. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

2.7.5 If the state agency denies a request by the contractor for payment, the state agency will provide the contractor with written notice of the reason(s) for denial.

- 2.7.6 If the contractor is overpaid by the state agency the contractor, upon notification by the state agency, shall provide the state agency (1) with a check payable as instructed by the state agency or (2) deduct the overpayment from the invoice(s) as requested by the state agency.
- 2.7.7 Other than the payments specified in the contract, no other payments shall be made to the contractor.

******END OF SCOPE OF WORK SECTION******

3. TERMS AND CONDITIONS SECTION

3.1 Applicable Laws and Regulations:

- 3.1.1 The contract shall be construed according to the laws of the State of Missouri. The contractor and the State of Missouri must follow all applicable federal, state, and local laws and regulations that apply to the performance of the contract. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and Purchasing.

3.2 Non-Discrimination and Affirmative Action:

- 3.2.1 Contractors with 50 or more employees must comply with and have an affirmative action plan in accordance with Executive Order 94-03, Article XIII.

3.3 Americans with Disabilities Act:

- 3.3.1 In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA), ADA is 42 U.S.C. section 1201, et seq.

3.4 Anti-Discrimination Against Israel Act Contractor Requirements:

- 3.4.1 If the contractor meets the definition of a company as defined in section 34.600, RSMo, and has ten or more employees, the contractor shall not engage in a boycott of goods or services from the State of Israel; from companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or from persons or entities doing business in the State of Israel as defined in section 34.600, RSMo.
- 3.4.2 If during the life of the contract, the contractor's business status changes according to section 34.600, RSMo, then the contractor shall comply with, complete, and submit to the Division of Purchasing an updated Exhibit D, Anti-Discrimination Against Israel Act Certification.

3.5 Authorized Personnel/E-Verify:

- 3.5.1 For work performed under the contract, the contractor shall only employ personnel authorized to work in the United States in accordance with applicable federal and state laws, including section 285.530 RSMo and Executive Order 07-13. If the contractor employs personnel not authorized to work in the United States, the state shall have the right to cancel the contract immediately without penalty or recourse, and to pursue any other remedies permitted by the contract or by applicable state or federal law.
- 3.5.2 Prior to the performance of any services, a contractor meeting the definition of a business entity in section 285.525, RSMo, shall maintain enrollment and participation in the E-Verify Federal work authorization program with respect to the employees hired after enrollment in the program for work in connection with the contracted services included herein. If the contractor's business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, then the contractor shall enroll and participate in the E-Verify program.
- 3.5.3 The contractor shall only be required to provide the affidavits required in section 285.530.2, RSMo, to the state on an annual basis. <https://purch.oa.mo.gov/vendor-information/affidavit-work-authorization-annual-renewal>

3.6 Business Registration:

- 3.6.1 The contractor must meet the requirements for conducting business in the State of Missouri, prior to performance of services under the contract, and for the duration of the contract. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations. Such business requirements for formation and operation include, but are not limited to, those in Chapters 347-359 RSMo.

3.7 Data Breach:

- 3.7.1 If a data breach impacting the State of Missouri's data requires the state to comply with section 407.1500 RSMo, the contractor shall assist the state by providing to the state any requested information held by the contractor concerning the breach and the state's data stored in the software and services being provided as a result of the contract.

3.8 Elected or Appointed Officials and Employees:

- 3.8.1 Elected or appointed officials or employees of the State of Missouri or any political subdivision thereof, serving in an executive or administrative capacity, must comply with sections 105.452 and 105.454, RSMo, regarding conflict of interest.

3.9 Indemnification:

- 3.9.1 Unless expressly provided by Missouri law to the contrary, pursuant to the Constitution of the State of Missouri, Article III, section 39, subsections 2 and 5, the state shall not indemnify, hold harmless, or agree in advance to defend, any person or entity.

3.10 Legal Proceedings:

- 3.10.1 For any legal action or other proceedings, per section 27.050 and section 27.060 RSMo, the Missouri Attorney General is given the authority to represent the State of Missouri's interests. The venue for any legal proceeding relating to or arising out of the cooperative contract shall be in circuit court for Cole County, Missouri or the United States District Court for the Western District of Missouri, Central Division.
- 3.10.2 The contractor and the state agree that if a dispute concerning the contract arises that the parties shall make an attempt to resolve the dispute through informal methods before initiating litigation.
- 3.10.3 The State of Missouri does not agree to any arbitration. The State of Missouri does not voluntarily agree to the payment of attorneys' fees. The state may, but is not required to, mediate any dispute arising under the contract, and any vendor provisions requiring mediation or dispute resolution processes shall not be binding upon the state.

3.11 Invoicing and Payment:

- 3.11.1 Invoicing and payments must follow section 33.120, section 34.055, and section 34.057 RSMo. All payments shall be made in arrears, unless the requirements of 1 CSR 10-3.010 allow for advance payment of goods or services.

3.12 Non-Appropriation of Funds:

- 3.12.1 The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, have been withheld, or have been restricted, and the state shall not be liable for any costs associated with termination caused by lack of appropriations or authority to spend. This includes, but is not limited to, the

provisions of the Mo. Const. Article IV, sections 23, 27, 28 and in sections 33.030 and 33.065, RSMo and 1 CSR 10-3.010 (1)(B).

3.13 Work Outside the United States:

- 3.13.1 Unless work outside the United States is prohibited by the cooperative contract, any work performed outside of the United States for the contract must comply with Executive Order 04-09.

3.14 Open Records:

- 3.14.1 Pursuant to section 610.021, RSMo, the contract and related documents are available for public review. Pursuant to section 610.021, RSMo, responses and related documents shall not be available for public review until after a contract is executed.

3.15 Record Access:

- 3.15.1 The contractor shall grant the State Auditor access to records/items as stated in section 29.235, RSMo.

3.16 Taxes:

- 3.16.1 The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax. No contract shall be awarded to a vendor that does not meet the conditions of section 34.040.7, -

*****END OF TERMS AND CONDITIONS SECTION*****

4. GENERAL CONTRACTUAL REQUIREMENTS SECTION

4.1 Contract Definition:

- 4.1.1 The cooperative contract awarded by the State of Missouri consisting of the following documents with any conflict among the documents being resolved by giving priority to the documents in the order listed below:
- a. The Division of Purchasing's acceptance of the response by "notice of award;
 - b. The terms and conditions sections included herein the cooperative contract document between the State of Missouri and IBM Corporation;
 - c. The attached Participating Addendum between the State of Missouri and IBM Corporation;
 - d. The attached contract #23012 signed by the State of Minnesota, as amended by contract amendment(s); and
 - e. The attached solicitation #29720 issued by the State of Minnesota.
- 4.1.2 The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
- 4.1.3 The contractor shall agree to furnish the products and services specified in the contract, at the prices quoted therein.
- 4.1.4 The state agency may sign or "click-through" and accept agreements if required by the contractor in order to receive services; however, all provisions of such agreements that conflict with the contract shall have no force or effect.

4.2 Contract Amendment:

- 4.2.1 All changes to the cooperative contract must be accomplished by a formal contract amendment executed by both the contractor and the Division of Purchasing prior to the effective date of such change. No other means shall be used or construed as an amendment or modification to the contract.

4.3 Contract Period:

- 4.3.1 The original contract period shall be as specified on the cover page and the subsequent Notice of Award of the cooperative contract. The cooperative contract's contract period shall not exceed the term of the governmental entity's contract the cooperative contract was established.

4.4 Termination for Convenience:

- 4.4.1 The Division of Purchasing reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. The contractor shall be entitled to receive compensation for services and supplies delivered to and accepted by the State of Missouri pursuant to the contract prior to the effective date of termination. The state shall determine the value of any work in process, but not completed and accepted by the state, based on the work products created and agreed to by both parties.

4.5 Cancellation for Breach of Contract:

- 4.5.1 In the event of material breach of the contractual obligations by the contractor, the Division of Purchasing may cancel the contract. At its sole discretion, the Division of Purchasing may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. As specified by the Division of Purchasing, the actual cure must be completed within no more than fifteen (15) state business days from notification, or at a minimum the contractor must provide the Division of Purchasing within ten (10) state business days from notification a written plan detailing how the contractor intends to cure the breach.

4.5.2 If the contractor fails to cure the breach or if circumstances demand immediate action, the Division of Purchasing will issue a notice of cancellation terminating the contract immediately. If it is determined the Division of Purchasing improperly cancelled the contract, such cancellation shall be deemed a termination for convenience in accordance with the contract.

4.5.3 The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated or where the funds are withheld by the governor, and the state shall not be liable for any costs associated with termination caused by lack of appropriations or due to the governor's withholding.

4.5.4 The contractor's default and remedies requirements shall be in accordance with the attached contract #23012 signed by the State of Minnesota, as amended by contract amendment.

4.6 Contractor Liability:

4.6.1 The contractor shall be responsible for any and all personal injury (including death) or property damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assignees, from every expense, liability, or payment arising out of such negligent act.

- a. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent act or omission committed by a person employed by or under the supervision of the contractor under the terms of the contract.
- b. The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.
- c. Under no circumstances shall the contractor be liable for any of the following: (1) third party claims against the state for losses or damages (other than those listed above); (2) loss of, or damage to, the state's records or data; or (3) economic consequential damages (including lost profits or savings) or incidental damages, even if the contractor is informed of their possibility.

4.7 Insurance:

4.7.1 The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract.

4.7.2 In the event any insurance coverage is cancelled, the state agency must be notified at least thirty (30) calendar days prior to such cancellation.

4.7.3 The contractor's insurance shall be in accordance with the attached contract #23020 signed by the State of Minnesota, as amended by contract amendment.

4.8 Property:

4.8.1 Notwithstanding the foregoing, the state acknowledges that the contractor, in the normal conduct of its business, may use ideas, skills, techniques, concepts or modifications of concepts developed while serving other customers. The state acknowledges the benefit which may accrue to it and expressly and irrevocably permits the contractor to continue in perpetuity, and without payment of a royalty, this practice of using

these ideas, skills, techniques and concepts developed while serving the state, and modifications of such concepts. Nothing in the contract shall be construed to restrain the contractor or its employees, consultants or subcontractors in the use of the techniques and skills of computer operation and programming which may be acquired in the course of performance of any services rendered pursuant to the contract. Nothing herein shall give the state any ownership rights in any works or innovations created by the contractor prior to the performance of services by the contractor under the contract.

- a. The state understands and agrees that any ancillary software tools, techniques, methodologies, or pre-printed materials or previously or independently created materials and any modifications or derivatives thereof (e.g., project management software tools or training software tools, etc.) developed or acquired by the contractor ("contractor materials") that may be necessary to perform a particular service required hereunder but not required as a specific deliverable of the contract, shall remain the property of the contractor; however, the contractor shall ensure such contractor materials are being used in accordance with applicable intellectual property rights and copyrights. The contractor grants to the State of Missouri a non-exclusive, fully-paid up license to use any contractor materials contained in a deliverable in connection with its use thereof upon full payment to the contractor.
- b. The contractor shall further agree that no reports, documentation, or material prepared, which contains the state's proprietary or confidential information, including the program(s) developed as required by the contract, shall be used or marketed by the contractor or released to the public without the prior written consent of the state.

4.8.2 The contractor shall use safeguards designed to prevent the inappropriate use or disclosure of the state's proprietary or confidential information.

4.8.3 In the event of expiration, termination, or cancellation of the contract, after return of state data and state property to the state, all state information and any other property of the state documents must be held by the contractor for at least sixty (60) calendar days at no additional cost to the state, subject to directions of the state as set out herein. The contractor shall not take any action to intentionally destroy any data or digital content from the solution until the data and digital content has been successfully transferred to the state in a format acceptable to the state and the state informs the contractor in writing of such data or digital content that may be permanently destroyed.

- a. After completing successful transfer of the data and digital content, and upon expiration, termination, or cancellation of the services, the contractor shall destroy the data and digital content in its systems or otherwise in its possession or under its control, unless otherwise required by law. Once any requirement by law to retain the state's information is fulfilled, the contractor shall destroy all data and digital content in all of its forms. The data and digital content shall be permanently destroyed and shall not be recoverable, according to the National Institute of Standards and Technology or other state approved comparable industry standard methods. The contractor shall provide a confirmation of destruction to the state within seven (7) calendar days after receipt of written request from the state. There shall be no cost to the state for permanent destruction of the state's data and digital content.

4.8.4 The contractor's intellectual property indemnification requirements shall be in accordance with the attached contract #23020 signed by the State of Minnesota, as amended by contract amendment.

4.9 Inventions, Patents, and Copyrights:

4.9.1 The contractor should have a process in place to notify the state as to claims of patent or copyright infringement pertaining to the software and/or solution provided under the contract that directly impact the services under the contract.

4.9.2 Upon approval by the Missouri Attorney General, the contractor shall have the right to defend and settle any claim, suit or proceeding brought against the state on the issue of infringement of any United States patent or copyright by any performance and/or product or any part thereof supplied or produced by the

contractor to the state under this agreement, in accordance with the contractor's documentation. However, the Missouri Attorney General may exercise its rights noted in section 3.10 above. It is agreed and understood that if the contractor is not approved to handle the defense of any claim, suit or proceeding brought against the state, the contractor shall not be obligated to pay any settlement or judgment against the state.

- 4.9.3 The contractor, after approval of the Missouri Attorney General for the contractor to handle the defense, agrees to pay any judgment against the state for any claim, suit or proceeding brought against the state on the issue of infringement of any United States patent or copyright by any services performed and/or software supplied or produced by the contractor to the state under this agreement, and to take steps to either:
- a. Procure for the state the right under such patent or copyright to use as appropriate such software or services, or
 - b. Replace such software or services with other software or services suitable/equivalent for the contract, or
 - c. Suitably modify such software or services, or
 - d. Discontinue the use of such software or services and refund the prepaid aggregated payments for the applicable software or services that was to be provided after the effective date of termination, in accordance with the contractor's documentation.
- 4.9.4 The contractor shall not be liable for any cost, expense, or compromise, incurred or made by the state in conjunction with any issue of infringement without the contractor's prior written authorization.
- 4.9.5 If any copyrighted or non-copyrighted documentation is developed solely for the use of the State of Missouri as a result of the contract, it shall be documented and mutually agreed upon by the parties as to respective ownership and intellectual property rights.
- 4.9.6 Section 4.9 of the RFP provides the state's exclusive remedy for any infringement claims or damages.
- 4.9.7 The contractor shall have no liability to the extent the alleged infringement or misappropriation was caused by:
- a. Use of the Intellectual Property (IP) or deliverable other than as permitted under the contract or in combination with any products or services where such combination was not within the reasonable contemplation of the parties.
 - b. The failure to use corrections or enhancements to the IP or deliverable provided by the contractor; or
 - c. Specifications or direction provided by the state.
 - d. To receive the benefits of this provision, the state must promptly notify the contractor in writing of the third-party claim and provide reasonable cooperation and full authority to the contractor to defend or settle the claim, provided that such settlement does not impose any obligation (monetary or otherwise) on the state (other than to cease using the infringing IP or deliverable) without its consent.
- 4.10 **Confidentiality and Security Documents:**
- 4.10.1 Neither party shall disclose or use any confidential information of the other party, except as reasonably necessary to perform its obligations or to exercise its rights pursuant to the contract or with the other party's prior written permission.
- 4.10.2 If required by the state, the contractor must sign specific documents regarding confidentiality, security, or other similar documents that align with the confidentiality and security terms in the contract upon request, concerning the services provided for in the contract, and are consistent with the terms of the contract. The contractor shall have the opportunity to review, discuss, and approve the documents the contractor must sign prior to signature. The contractor shall ensure that its personnel adhere to the confidentiality and security required by the contract. Failure of the contractor to sign such documents absent a good faith basis may be considered a breach of contract and subject to the cancellation provisions of this document.

4.10.3 The contractor shall maintain strict confidentiality of all patient and client information or records supplied to it by the state agency or that the contractor establishes as a result of contract activities. The contents of such records shall not be disclosed to anyone other than the state agency and the patient/client or the patient's/client's parent or legal guardian unless such disclosure is required by law.

- a. The contractor assumes liability for all disclosures of confidential information and breaches by the contractor and/or the contractor's employees.
- b. The contractor agrees to comply with all applicable confidentiality and information security laws, including but not limited to sections 192.067 and 192.667, RSMo, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and regulations promulgated under HIPAA, including but not limited to the Federal Standards for Privacy of Individually Identifiable Health Information (45 CFR Parts 160 and 164, the "Privacy Rule"), the Security Standards for the Protection of Electronic Protected Health Insurance (45 CFR part 164, subpart C, the "Security Rule"), and Breach Notification for Unsecured Protected Health Information (45 CFR Parts 160 and 164, the "Breach Notification Rule").

4.10.4 The contractor shall agree that the state agency utilizing the contractor's services may be required to comply with 45 CFR 160 and 45 CFR 164, and that to achieve such compliance, the contractor must appropriately safeguard Protected Health Information (as that term is defined in 45 CFR 164.501), which the contractor receives from or creates or receives on behalf of the state agency. In such situations and to provide reasonable assurance of appropriate safeguards, the contractor shall be required to sign a Business Associate Agreement provided by the using state agency.

4.11 Warranties and Representations:

4.11.1 The contractor expressly warrants that all equipment, supplies, and/or services provided shall:

- a. Conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the Division of Purchasing,
- b. Be fit and sufficient for the purpose expressed in the contract,
- c. For any goods provided, be merchantable,
- d. Be of good materials and workmanship, and
- e. Be reasonably free from defect.

4.11.2 Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

4.12 Remedies and Rights:

4.12.1 No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future contractual right and/or contractual remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.

4.12.2 The contractor understands and agrees that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

4.12.3 The contractor understands and agrees that the state reserves the right to consider the contractor's failure to perform requirements and commitments specified in the contract in future procurement evaluations.

4.13 Survivability of Terms:

- 4.13.1 The contractual provisions as to definitions, indemnity, warranties, confidentiality, ownership, data, security, liability, insurance, governing law, venue, and remedy shall survive any payment for goods and services, expiration, termination or cancellation of the contract, and shall continue in full force and effect.

******END OF GENERAL CONTRACTUAL REQUIREMENTS SECTION******

5. VENDOR SUBMISSION AND AWARD INFORMATION SECTION

5.1 Preparation of Response:

5.1.1 Business Compliance Pre-Work: **Due to lead times for obtaining the information needed to complete the Business Compliance Exhibits explained herein, vendors are encouraged to IMMEDIATELY begin securing these verifications when preparing a response.**

5.1.2 Vendor Response Exhibits: The vendor must submit properly completed cooperative contract document's Vendor Response Exhibits as their response. Each exhibit includes instructions outlining the information to be provided in response to the exhibit.

5.2 Compliance with Requirements, Terms and Conditions:

5.2.1 If the vendor's response includes any exceptions to the mandatory provisions of the cooperative contract, the vendor must (1) identify the specific cooperative contract paragraph number to which the exception applies along with a description of why the vendor is taking exception to the provision; and (2) any proposed alternative language the vendor would like the state to consider to replace the provision. However, the vendor must understand and agree:

- a. Exceptions to mandatory provisions of the cooperative contract make the vendor's response non-responsive and ineligible for award. Any exceptions to mandatory provisions must be addressed in order to be eligible for a contract award.

5.3 Confidentiality and Proprietary Materials:

5.3.1 Missouri Sunshine Law: The Division of Purchasing is a governmental body under the Missouri Sunshine Law (chapter 610, RSMo). Section 610.011, RSMo, requires that all provisions be "liberally construed and their exceptions strictly construed" to promote the public policy that records are open unless otherwise provided by law.

5.3.2 Response Confidentiality: Regardless of any claim by a vendor as to material being proprietary and not subject to copying or distribution, or how a vendor characterizes any information provided in its response, all material submitted by the vendor in conjunction with the cooperative contract is subject to release after the award of a contract in relation to a request for public records under the Missouri Sunshine Law (see Chapter 610, RSMo). Only information expressly permitted to be closed pursuant to the strictly construed provisions of Missouri's Sunshine Law will be treated as a closed record by the Division of Purchasing and withheld from any public request submitted to the Division of Purchasing after award. The vendor should presume information provided to the Division of Purchasing in a response will be public following the award of the contract and made available upon request in accordance with the provisions of state law. Except for information the Division of Purchasing deems confidential, the vendor is advised not to include any information in the response that the vendor does not want to be viewed by the public, including personal identifying information such as social security numbers. Therefore, the **vendor should NOT include confidential material with their response.**

5.3.3 Information Not Considered Confidential: In no event will the following be considered confidential or exempt from the Missouri Sunshine Law; however, this is not meant to be an all-inclusive list:

- a. Vendor's entire response;
- b. Vendor's pricing;
- c. Vendor's product specifications unless specifications disclose scientific and technological innovations in which the owner has a proprietary interest (see subsection 15 of section 610.021, RSMo).

5.4 Foreign Vendor:

- 5.4.1 A foreign vendor who do not have an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must complete the appropriate IRS W-8 form (found on the www.irs.gov website) and must attach this completed and signed form when registering on the MissouriBUYS (<https://missouribuy.mo.gov>) website.
- a. When submitting a response, if the vendor does not have an IRS Employer Identification Number they should attach a note to the front page of their response advising the Division of Purchasing if: (1) a completed and signed W-8 form is included with the response or (2) a completed and signed W-8 form is attached to their vendor registration profile on the MissouriBUYS website.
 - b. A foreign vendor that have an IRS Employer Identification Number may register as a vendor on the MissouriBUYS (<https://missouribuy.mo.gov>) website by using the IRS Employer Identification Number assigned to their company and attaching a completed and signed IRS W-9 form to their vendor registration profile. (Note: Attaching a completed and signed IRS W-8 form is not necessary.)

5.5 Business Compliance Requirements:

- 5.5.1 Due to lead times for obtaining the information needed to complete the Business Compliance Exhibits, the vendor is encouraged to IMMEDIATELY begin securing these verifications when preparing a response. In order to be considered a responsible and reliable vendor and therefore be considered eligible for award of a contract, the vendor must be in compliance with the laws regarding conducting business in the State of Missouri and provide the applicable documentation prior to the award of a contract. In order to verify the vendor's compliance, the state will review the vendor's response to the following Business Compliance Exhibits:
- a. **Business Compliance Exhibit B, State of Missouri Tax Compliance** - In accordance with section 34.040.7 RSMo, the vendor must be in tax compliance with the Missouri Department of Revenue. The Missouri Department of Revenue will issue a "Vendor No Tax Due" certificate if the vendor is properly registered to collect and have properly remitted sales and/or use tax, or if the vendor is not making retail sales in Missouri.
 - b. **Business Compliance Exhibit C, Registration of Business Name with the Missouri Secretary of State** - In accordance with section 351.572, RSMo, the vendor must obtain a certification of authority from be properly registered with the Missouri Secretary of State or identify how the vendor's business is exempt from registering with the Missouri Secretary of State.
 - c. **Business Compliance Exhibit D, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization** - Pursuant to section 285.530, RSMo, if the vendor meets the section 285.525, RSMo, definition of a "business entity" (<http://www.moga.mo.gov/mostatutes/stathtml/28500005301.html?&me=285.530>), the vendor must affirm the vendor's enrollment and participation in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services requested herein. The vendor should complete applicable portions of **Exhibit D, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization**.
 - d. **Business Compliance Exhibit E, Anti-Discrimination Against Israel Act Certification** - Pursuant to section 34.600, RSMo, if the vendor meets the section 34.600, RSMo, definition of a "company" (<https://revisor.mo.gov/main/OneSection.aspx?section=34.600>) and the vendor has ten or more employees, the vendor must certify in writing that the vendor is not currently engaged in a boycott of goods or services from the State of Israel as defined in section 34.600, RSMo, and shall not engage in a boycott of goods or services from the State of Israel, if awarded a contract, for the duration of the contract.

- e. **Business Compliance Exhibit F, Services Outside the United States** - If any services offered under this cooperative contract are being performed at sites outside the United States, the vendor must disclose such fact and provide details with the response.
- f. **Business Compliance Exhibit G, Employee/Conflict of Interest** – Elected or appointed officials or employees of the State of Missouri or any political subdivision serving in an executive or administrative capacity participating in a response to the RFP must disclose their involvement to identify the conflict of interest.
- g. **General Business Compliance** - The vendor must be in compliance with the laws regarding conducting business in the State of Missouri. The vendor certifies by signing the signature page of this document that the vendor either is presently in compliance with such laws or shall be in compliance with such laws prior to any resulting contract award. Likewise, the successful vendor shall remain in compliance with such laws for the duration of the resulting contract. The vendor shall provide documentation of compliance upon request by the Division of Purchasing. The compliance to conduct business in the state shall include, but not necessarily be limited to:
 - 1) Taxes (e.g., city/county/state/federal)
 - 2) State and local certifications (e.g., professions/occupations/activities)
 - 3) Licenses and permits (e.g., city/county license, sales permits)
 - 4) Insurance (e.g., worker's compensation/unemployment compensation)
- h. The response will be reviewed for business compliance with the laws regarding conducting business in the state of Missouri.

5.6 **Award:**

- 5.6.1 The cooperative contract will only be eligible for award if the vendor agrees to comply with the requirements identified herein.
- 5.6.2 Any award of a contract shall be made by notification via email from the Division of Purchasing to the vendor. The final contract award shall be made by the Division of Purchasing.
- 5.6.3 After a contract is executed, the response will be uploaded for public viewing into the Division of Purchasing's imaging system known as the Awarded Bid and Contract Document Search system (<https://purch.oa.mo.gov/bidding-contracts/awarded-bid-contract-document-search>).

****END OF VENDOR SUBMISSION AND AWARD INFORMATION SECTION****

EXHIBIT A, RESPONSE SUBMITTAL CHECKLIST

The following table is provided to assist the vendor in completing their response. It is the vendor's sole responsibility to ensure that all mandatory requirements are met and that their response, including all exhibits, are properly completed and submitted with their response. The vendor may want to check the Task Complete boxes to ensure that each of these items are completed and/or submitted with the vendor's response.

No.	Description	Task Complete
1.	Complete and sign the cover page.	☒
2.	Complete Business Compliance Exhibit B, State of Missouri Tax Compliance and attach "Vendor No Tax Due" certificate.	☒
3.	Complete Business Compliance Exhibit C, Registration of Business Name with the Missouri Secretary of State.	☒
4.	Complete and sign Business Compliance Exhibit D, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization (be sure to complete and return the Affidavit of Work Authorization and the vendor's E-Verify Memorandum of Understanding, if required).	☐
5.	Complete and sign Business Compliance Exhibit E, Anti-Discrimination Against Israel Act Certification.	☒
6.	Complete Business Compliance Exhibit F, Services Outside the United States.	☒
7.	Complete Business Compliance Exhibit G, Employee/Conflict of Interest.	☒
8.	If applicable, clearly mark, separate, and seal proprietary or confidential information and describe how the proprietary or confidential information meets Chapter 610, RSMo (ref. Section 5 of the cooperative contract).	☐

BUSINESS COMPLIANCE EXHIBITS

Instructions: In order to be awarded a contract, the vendor must be in compliance with the laws regarding conducting business in the State of Missouri.

The vendor certifies by signing the cover page of this document that the vendor either are presently in compliance with such laws or shall be in compliance with such laws prior to any resulting contract award. The vendor shall provide documentation of compliance with the vendor's response and upon request by the Division of Purchasing.

- Business Compliance Exhibit B, State of Missouri Tax Compliance
- Business Compliance Exhibit C, Registration of Business Name with the Missouri Secretary of State
- Business Compliance Exhibit D, Business Entity Certification, Enrollment Documentation, and Affidavit of Work Authorization
- Business Compliance Exhibit E, Anti-Discrimination Against Israel Act Certification
- Business Compliance Exhibit F, Services Outside the United States
- Business Compliance Exhibit G, Employee/Conflict of Interest

**BUSINESS COMPLIANCE EXHIBIT B,
STATE OF MISSOURI TAX COMPLIANCE**

STATE OF MISSOURI TAX COMPLIANCE

In accordance with section 34.040.7, RSMo, Purchasing is precluded from contracting with a vendor or its affiliate who makes sales at retail of tangible personal property or for the purpose of storage, use or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo.

In order to verify the vendor's State of Missouri tax compliance with the Missouri Department of Revenue (DOR), the vendor must provide "Vendor No Tax Due" certificate issued by DOR prior to award. By providing the "Vendor No Tax Due" certificate, the vendor is verifying the vendor is either registered to collect sales and/or use tax in Missouri or is not making retail sales of tangible personal property or providing taxable services in Missouri.

The DOR will issue the "Vendor No Tax Due" certificate if the vendor is properly registered to collect and have properly remitted sales and/or use tax, or if the vendor is not making retail sales in Missouri.

How To Obtain A Vendor No Tax Due Certificate

A "Vendor No Tax Due" certificate can be obtained from the Missouri Department of Revenue when a business pays all of its sales/use tax in full, up to date, does not have a sales tax delinquency or does not sell tangible personal property at retail in Missouri.

If taxes are due, depending on the payment history of the business, a cashier's check or money order may be required for payment before a "Vendor No Tax Due" certificate can be issued.

A "Vendor No Tax Due" certificate can be obtained by completing and submitting the Request For Tax Clearance, Form 943, to the Missouri Department of Revenue, Division of Taxation & Collection. This form is available at <http://dor.mo.gov/forms/943.pdf>. Make sure to select the appropriate "Reason for Request" on page 2 of the form.

For assistance, call (573) 751-9268 or e-mail taxclearance@dor.mo.gov. Additional information regarding section 34.040.7, RSMo, is available on the Department of Revenue's website at <http://dor.mo.gov/business/sales>.

NOTE: Make sure to request a "Vendor No Tax Due" certificate as there are other similar tax clearance forms that do not meet this verification requirement. The steps to obtain a "Vendor No Tax Due" certificate is outlined at <https://dor.mo.gov/taxation/business/tax-types/sales-use/hb600.html>.

Instructions: The vendor should complete the information below regarding their "Vendor No Tax Due" status.

"Vendor No Tax Due" Certificate is Included with the Response (Yes/No)

Yes ☒ No ☐

If the "Vendor No Tax Due" Certificate is Not Included, Identify Date Vendor Requested Certificate From DOR

Date: 4/22/2024 (MM/DD/YYYY)
(in case of expiration during processing)

**BUSINESS COMPLIANCE EXHIBIT C,
REGISTRATION OF BUSINESS NAME WITH THE MISSOURI SECRETARY OF STATE**

In accordance with section 351.572, RSMo, the vendor must be properly registered with the Missouri Secretary of State or identify how the vendor's business is exempt from registering with the Missouri Secretary of State.

In order to verify the vendor is properly registered with the Missouri Secretary of State, the vendor must either be 1) properly registered with the Missouri Secretary of State at time of response submission or prior to contract award or 2) must identify how the vendor's business is exempt from registering with the Missouri Secretary of State.

NOTE: For any questions regarding Secretary of State Registration, vendors should go to <https://www.sos.mo.gov/business/startBusiness.asp> or call 866-223-6535, Monday through Friday, 8:00 a.m. to 5:00 p.m., Central Time, excluding state holidays.

Missouri Secretary of State Registration Verification

Registration Verification Instructions: If the vendor's business is already registered, the vendor should complete the table below with the vendor's business name and the charter number assigned to the vendor's business.

Information on registering with Missouri Secretary of State: If the vendor's business is not yet properly registered with the Missouri Secretary of State, the vendor should refer to the Missouri Business Portal at <https://openforbiz.mo.gov/> for additional information.

Business Name	International Business Machines
Charter Number	F00007243
Proof of Good Standing Status Included	Yes ☒ No ☐
If Proof of Good Standing Not Included, Indicate the Date Vendor Requested Document from Missouri Secretary of State	Date: __/__/____ (MM/DD/YYYY)

Exemptions

Exemption Instructions: If the vendor is exempt from registering with the Missouri Secretary of State pursuant to section 351.572, RSMo, the vendor should identify the specific section of 351.572 RSMo, which supports the exemption by placing a checkmark in the appropriate box in the "Indicate if Exemption is Applicable" column in the table below. In addition, the vendor should provide documentation supporting an exemption, if applicable.

Section 351.572 RSMo Subsection 2. Exemption Description	Indicate if Exemption is Applicable (Check the appropriate box)
(1) Maintaining, Defending, or Settling any Proceeding	☐
(2) Holding Meetings of the Board of Directors or Shareholders or Carrying on Other Activities Concerning Internal Corporate Affairs	☐
(3) Maintaining Bank Accounts	☐
(4) Maintaining Offices or Agencies for the Transfer, Exchange, and Registration of the Corporation's Own Securities or Maintaining Trustees or Depositories with Respect to those Securities	☐
(5) Creating or Acquiring Indebtedness, Mortgages, and Security Interests in Real or Personal Property	☐
(6) Securing or Collecting Debts or Enforcing Mortgages and Security Interests in Property Securing the Debts	☐
(7) Conducting an Isolated Transaction that is Completed Within Thirty Days and that is Not One in the Course of Repeated Transactions of a Like Nature	☐
(8) Transacting Business in Interstate Commerce	☐
Other – Provide Description of Exemption (List of Exemptions Above is Not Exhaustive)	☐

**BUSINESS COMPLIANCE EXHIBIT D,
BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION, AND AFFIDAVIT OF
WORK AUTHORIZATION**

BUSINESS ENTITY CERTIFICATION:

The vendor must certify their current business status by completing either Box A or Box B or Box C on this Exhibit.

- | | |
|---------------|---|
| BOX A: | To be completed by a non-business entity as defined below. |
| BOX B: | To be completed by a business entity who has not yet completed and submitted documentation pertaining to the federal work authorization program as described at https://www.e-verify.gov/ . |
| BOX C: | To be completed by a business entity who has current work authorization documentation on file with a Missouri state agency including Division of Purchasing. |

Business entity, as defined in section 285.525, RSMo, pertaining to section 285.530, RSMo, is any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood. The term “**business entity**” shall include but not be limited to self-employed individuals, partnerships, corporations, and contractors. The term “**business entity**” shall include any business entity that possesses a business permit, license, or tax certificate issued by the state, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit. The term “**business entity**” shall not include a self-employed individual with no employees or entities utilizing the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

Note: Regarding governmental entities, business entity includes Missouri schools, Missouri universities, out of state agencies, out of state schools, out of state universities, and political subdivisions. A business entity does not include Missouri state agencies and federal government entities.

(Complete Box A if you are a non-business entity as defined above)

BOX A – CURRENTLY NOT A BUSINESS ENTITY

I certify that _____ (Company/Individual Name) **DOES NOT CURRENTLY MEET** the definition of a business entity, as defined in section 285.525, RSMo pertaining to section 285.530, RSMo as stated above, because: (check the applicable business status that applies below)

- ☐- I am a self-employed individual with no employees; **OR**
☐- The company that I represent employs the services of direct sellers as defined in subdivision (17) of subsection 12 of section 288.034, RSMo.

I certify that I am not an alien unlawfully present in the United States and if _____ (Company/Individual Name) is awarded a contract for the services requested herein under this cooperative contract and if the business status changes during the life of the contract to become a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo then, prior to the performance of any services as a business entity, _____ (Company/Individual Name) agrees to complete Box B, comply with the requirements stated in Box B and provide the Division of Purchasing with all documentation required in Box B of this exhibit.

 Authorized Representative's Name
 (Please Print)

 Authorized Representative's Signature

 Company Name (if applicable)

 Date

**BUSINESS COMPLIANCE EXHIBIT D,
BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION, AND AFFIDAVIT OF
WORK AUTHORIZATION - CONTINUED**

(Complete Box B if you DO NOT have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box B, do not complete Box C.)

BOX B – CURRENT BUSINESS ENTITY STATUS

I certify that _____ (Business Entity Name) **MEETS** the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530.

Authorized Business Entity Representative's
Name (Please Print)

*Authorized Business Entity
Representative's Signature*

Business Entity Name

Date

E-Mail Address

As a business entity, the vendor must perform/provide each of the following. The vendor should check each to verify completion/submission of all of the following:

- ☐- Enroll and participate in the E-Verify federal work authorization program (Website: <https://www.e-verify.gov/>; Phone: 888-464-4218; Email: e-verify@dhs.gov) with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein;
- AND**
- ☐- Provide documentation affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program. Documentation shall include EITHER the **E-Verify Employment Eligibility Verification page listing the vendor's name and company ID OR a page from the E-Verify Memorandum of Understanding (MOU) listing the vendor's name and the MOU signature page completed and signed**, at minimum, by the vendor and the Department of Homeland Security – Verification Division. If the signature page of the MOU lists the vendor's name and company ID, then no additional pages of the MOU must be submitted;
- AND**
- ☐- Submit a **completed, notarized Affidavit of Work Authorization** provided on the next page of this Exhibit.

**BUSINESS COMPLIANCE EXHIBIT D,
BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION, AND AFFIDAVIT OF
WORK AUTHORIZATION - CONTINUED**

AFFIDAVIT OF WORK AUTHORIZATION:

The vendor who meets the section 285.525, RSMo, definition of a business entity must complete and return the following Affidavit of Work Authorization.

Comes now _____ (Name of Business Entity Authorized Representative) as _____ (Position/Title) first being duly sworn on my oath, affirm _____ (Business Entity Name) is enrolled and will continue to participate in the E-Verify federal work authorization program with respect to employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri for the duration of the contract(s), if awarded in accordance with subsection 2 of section 285.530, RSMo. I also affirm that _____ (Business Entity Name) does not and will not knowingly employ a person who is an unauthorized alien in connection with the contracted services provided under the contract(s) for the duration of the contract(s), if awarded.

In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under section 575.040, RSMo.)

_____ <i>Authorized Representative's Signature</i>	_____ Printed Name
_____ Title	_____ Date
_____ E-Mail Address	_____ E-Verify Company ID Number

Subscribed and sworn to before me this _____ of _____. I am
(DAY) (MONTH, YEAR)
 commissioned as a notary public within the County of _____, State of _____
(NAME OF COUNTY)
 _____, and my commission expires on _____.
(NAME OF STATE) (DATE)

_____ <i>Signature of Notary</i>	_____ Date
-------------------------------------	---------------

**BUSINESS COMPLIANCE EXHIBIT D,
BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION, AND AFFIDAVIT OF
WORK AUTHORIZATION - CONTINUED**

(Complete Box C if you have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box C, do not complete Box B.)

BOX C – AFFIDAVIT ON FILE - CURRENT BUSINESS ENTITY STATUS

I certify that International Business Machines (IBM) **MEETS** the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530, RSMo and have enrolled and currently participates in the E-Verify federal work authorization program with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri. We have previously provided documentation to a Missouri state agency that affirms enrollment and participation in the E-Verify federal work authorization program. The documentation that was previously provided included the following.

- ✓ The E-Verify Employment Eligibility Verification page **OR** a page from the E-Verify Memorandum of Understanding (MOU) listing the vendor's name and the MOU signature page completed and signed by the vendor and the Department of Homeland Security – Verification Division
- ✓ A **current, notarized Affidavit of Work Authorization** (must be completed, signed, and notarized within the past twelve months).

Name of **Missouri State Agency** to Which Previous E-Verify Documentation Submitted:

Date of Previous E-Verify Documentation Submission: _____

Previous **Bid/Contract Number** for Which Previous E-Verify Documentation Submitted: _____ (if known)

Authorized Business Entity Representative's
Name (Please Print)

*Authorized Business Entity
Representative's Signature*

Business Entity Name

Date

E-Mail Address

E-Verify MOU Company ID Number

FOR STATE OF MISSOURI USE ONLY

Documentation Verification Completed By:

Buyer

Date

BUSINESS COMPLIANCE EXHIBIT E, ANTI-DISCRIMINATION AGAINST ISRAEL ACT CERTIFICATION

Statutory Requirement: Section 34.600, RSMo, precludes entering into a contract with a company to acquire products and/or services “unless the contract includes a written certification that the company is not currently engaged in and shall not, for the duration of the contract, engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel.”

Exceptions: The statute provides two exceptions for this certification: 1) “contracts with a total potential value of less than one hundred thousand dollars” or 2) “contractors with fewer than ten employees.” Therefore the following certification is required prior to any contract award.

Section 34.600, RSMo, defines the following terms:

Company: any for-profit or not-for-profit organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates of those entities or business associations.

Boycott Israel and Boycott of the State of Israel: engaging in refusals to deal, terminating business activities, or other actions to discriminate against, inflict economic harm, or otherwise limit commercial relations specifically with the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel, that are all intended to support a boycott of the State of Israel. A company’s statement that it is participating in boycotts of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel, or that it has taken the boycott action at the request, in compliance with, or in furtherance of calls for a boycott of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel shall be considered to be conclusive evidence that a company is participating in a boycott of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel; provided, however that a company that has made no such statement may still be considered to be participating in a boycott of the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel if other factors warrant such a conclusion.

Certification - The vendor must therefore certify their current status by completing either Box A, Box B, or Box C on the next page of this Exhibit.

- | | |
|---------------|--|
| BOX A: | To be completed by any vendor that <u>does not meet the definition of “company”</u> above, hereinafter referred to as “Non-Company.” |
| BOX B: | To be completed by a vendor that meets the definition of “Company” but has <u>less than ten employees</u> . |
| BOX C: | To be completed by a vendor that <u>meets the definition of “Company”</u> and <u>has ten or more employees</u> . |

BOX A – NON-COMPANY ENTITY

I certify that _____ (Entity Name) currently **DOES NOT MEET** the definition of a company as defined in section 34.600, RSMo, but that if awarded a contract and the entity's business status changes during the life of the contract to become a "company" as defined in section 34.600, RSMo, and the entity has ten or more employees, then, prior to the delivery of any services and/or supplies as a company, the entity agrees to comply with, complete, and return Box C to the Division of Purchasing at that time.

Authorized Representative's Name (Please Print)

Authorized Representative's Signature

Entity Name

Date

BOX B – COMPANY ENTITY WITH LESS THAN TEN EMPLOYEES

I certify that _____ (Company Name) **MEETS** the definition of a company as defined in section 34.600, RSMo, and currently has less than ten employees but that if awarded a contract and if the company increases the number of employees to ten or more during the life of the contract, then said company shall comply with, complete, and return Box C to the Division of Purchasing at that time.

Authorized Representative's Name (Please Print)

Authorized Representative's Signature

Company Name

Date

BOX C – COMPANY ENTITY WITH TEN OR MORE EMPLOYEES

I certify that ___ International Business Machines (IBM) **MEETS** the definition of a company as defined in section 34.600, RSMo, has ten or more employees, and is not currently engaged in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel as defined in section 34.600, RSMo. I further certify that if the company is awarded a contract for the services and/or supplies requested herein said company shall not engage in a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel as defined in section 34.600, RSMo, for the duration of the contract.

David L Clements

Authorized Representative's Name (Please Print)

David L Clements

Authorized Representative's Signature

International Business Machines (IBM)

Company Name

4/22/2024

Date

**BUSINESS COMPLIANCE EXHIBIT F,
SERVICES OUTSIDE THE UNITED STATES**

Pursuant to [Executive Order 04-09](#) subparagraph 4, no state agency shall award a contract to a vendor who contemplates performing work pursuant to the contract at a site outside of the United States, unless one of the exceptions identified below are met. This document must be satisfactorily completed prior to an award of a contract.

Therefore, the vendor must disclose whether services proposed would be performed at a location outside of the United States and provide details in the space below or on an attached page. If vendor does not complete the table below, the vendor is committing to complete all work in the United States for the duration of the contract.

Will any of the services proposed by the vendor be performed at sites outside the United States? If the answer is "yes", then provide the information below. If the answer is "no", then the vendor does not need to complete the rest of this exhibit.		Yes ☐	No ☒
Identify the name of the vendor that would be performing services at a site outside the United States.			
Describe the services proposed to be performed at sites outside the United States.			
Identify where the services would be performed at sites outside the United States.			
Identify when (specific timeframe) in the life of the contract the services would be performed at sites outside the United States.			
Identify why the services need to be performed at sites outside the United States.			
Identify whether the proposed services meet at least one of the conditions described in section 4, subparagraphs a, b, c, and d of Executive Order 04-09 and how the exception(s) is met. If the answer is "yes" and exemption applies, then provide the information below.		Yes ☐	No ☐
Mark the appropriate exemption below, and provide the requested details: (a) ☐ Unique good or service that is deemed mandatory pursuant to the requirements herein and has no comparable domestically-provided good or service that can adequately duplicate the unique features provided by the vendor. • EXPLAIN HOW THE GOOD OR SERVICE IS UNIQUE: _____ (b) ☐ Foreign firm hired to market Missouri services/products to a foreign country. • IDENTIFY THE APPLICABLE PARAGRAPHS HEREIN: _____ (c) ☐ A significant or substantial economic cost factor exists that outweighs the economic impact of providing the function or professional services within the United States, and such failure in using the vendor's services would result in economic hardship to the state. • EXPLAIN HOW: _____ (d) ☐ Vendor maintains significant business presence in the United States and only performs trivial portion of contract work outside US. • IDENTIFY MAXIMUM PERCENTAGE of the overall value of the contract, for any contract period, attributed to the value of the services being performed at sites outside the United States identified above: %			

**BUSINESS COMPLIANCE EXHIBIT G,
EMPLOYEE/CONFLICT OF INTEREST**

Vendors who are elected or appointed officials or employees of the State of Missouri or any political subdivision thereof, serving in an executive or administrative capacity, must comply with sections 105.450 to 105.458, RSMo, regarding conflict of interest. If the vendor or any owner of the vendor's organization is currently an elected or appointed official or an employee of the State of Missouri or any political subdivision thereof, please provide the following information. The information must be provided prior to the award of a contract.

Name and title of elected or appointed official or employee of the State of Missouri or any political subdivision thereof:	N/A
If employee of the State of Missouri or political subdivision thereof, provide name of state agency or political subdivision where employed:	
Percentage of ownership interest in vendor's organization held by elected or appointed official or employee of the State of Missouri or political subdivision thereof:	_____ %

**BUSINESS COMPLIANCE EXHIBIT D,
BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION, AND AFFIDAVIT OF
WORK AUTHORIZATION - CONTINUED**

(Complete Box B if you DO NOT have the E-Verify documentation and a current Affidavit of Work Authorization already on file with the State of Missouri. If completing Box B, do not complete Box C.)

BOX B – CURRENT BUSINESS ENTITY STATUS

I certify that IBM Corporation (Business Entity Name) MEETS the definition of a business entity as defined in section 285.525, RSMo pertaining to section 285.530.

David L Clements

Authorized Business Entity Representative's
Name (Please Print)

David L. Clements

Authorized Business Entity
Representative's Signature

IBM Corporation

Business Entity Name

4/24/2024

Date

David.Clements@IBM.com

E-Mail Address

As a business entity, the vendor must perform/provide each of the following. The vendor should check each to verify completion/submission of all of the following:

- ☒- Enroll and participate in the E-Verify federal work authorization program (Website: <https://www.e-verify.gov/>; Phone: 888-464-4218; Email: e-verify@dhs.gov) with respect to the employees hired after enrollment in the program who are proposed to work in connection with the services required herein;

AND

- ☒- Provide documentation affirming said company's/individual's enrollment and participation in the E-Verify federal work authorization program. Documentation shall include EITHER the **E-Verify Employment Eligibility Verification page listing the vendor's name and company ID OR a page from the E-Verify Memorandum of Understanding (MOU) listing the vendor's name and the MOU signature page completed and signed**, at minimum, by the vendor and the Department of Homeland Security – Verification Division. If the signature page of the MOU lists the vendor's name and company ID, then no additional pages of the MOU must be submitted;

AND

- ☒- Submit a **completed, notarized Affidavit of Work Authorization** provided on the next page of this Exhibit.

**BUSINESS COMPLIANCE EXHIBIT D,
BUSINESS ENTITY CERTIFICATION, ENROLLMENT DOCUMENTATION, AND AFFIDAVIT OF
WORK AUTHORIZATION - CONTINUED****AFFIDAVIT OF WORK AUTHORIZATION:**

The vendor who meets the section 285.525, RSMo, definition of a business entity must complete and return the following Affidavit of Work Authorization.

Comes now David L. Clements (Name of Business Entity Authorized Representative) as Technology Sales Leader (Position/Title) first being duly sworn on my oath, affirm IBM (Business Entity Name) is enrolled and will continue to participate in the E-Verify federal work authorization program with respect to employees hired after enrollment in the program who are proposed to work in connection with the services related to contract(s) with the State of Missouri for the duration of the contract(s), if awarded in accordance with subsection 2 of section 285.530, RSMo. I also affirm that _____ (Business Entity Name) does not and will not knowingly employ a person who is an unauthorized alien in connection with the contracted services provided under the contract(s) for the duration of the contract(s), if awarded.

In Affirmation thereof, the facts stated above are true and correct. (The undersigned understands that false statements made in this filing are subject to the penalties provided under section 575.040, RSMo.)

David L. Clements

Authorized Representative's Signature

David L. Clements

Printed Name

Technology Sales Leader

Title

4/24/2024

Date

David.Clements@IBM.com

E-Mail Address

43420

E-Verify Company ID Number

Subscribed and sworn to before me this 24th of April, 2024. I am

(DAY)

(MONTH, YEAR)

commissioned as a notary public within the County of Franklin, State of

(NAME OF COUNTY)

Missouri

(NAME OF STATE)

, and my commission expires on 05-09-2025.

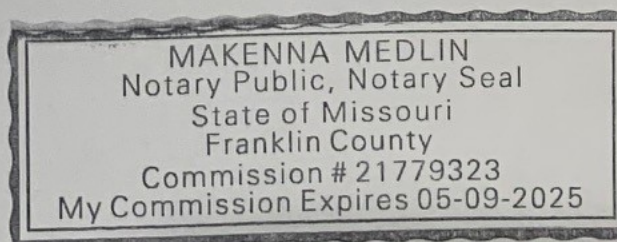
(DATE)

Mahar Medlin

Signature of Notary

04.24.2024

Date



Company ID Number: 43420

without changes to E-Verify, the Department reserves the right to require employers to take mandatory refresher tutorials.

Termination by any party shall terminate the MOU as to all parties. The SSA or DHS may terminate this MOU without prior notice if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established procedures or legal requirements. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each other as they may determine.

Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.

Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

The employer understands that the fact of its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, and responses to inquiries under the Freedom of Information Act (FOIA).

The foregoing constitutes the full agreement on this subject between the SSA, DHS, and the Employer.

The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively.

To be accepted as a participant in E-Verify, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify Operations at 888-464-4218.

Employer IBM Corporation

Name (Please type or print)

Title

Electronically Signed

04/25/2007

Signature

Date

Department of Homeland Security – Verification Division

Company ID Number: 43420

USCIS Verification Division

Name (Please type or print)

Title

Electronically Signed

04/25/2007

Signature

Date

Participating Addendum
for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES
between
State of Missouri
and
International Business Machines Corporation
Contract No. MNNVP - 23012

This Participating Addendum is entered into by the State of Missouri ("Participating Entity") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number 23012, executed by Contractor and the State of Minnesota for Computer Equipment, Peripherals & Related Services ("Master Agreement"):

International Business Machines (IBM) Corporation ("Contractor")
U.S. Contracts
6303 Barfield Rd, NE
Sandy Springs, GA 30328-4233

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

David L Clements
Technology Sales Executive
david.clements@ibm.com
(573) 303-4266

Participating Entity's contact for this Participating Addendum is:

Kelsey Huwe
Procurement Specialist
kelsey.huwe@oa.mo.gov
(573) 522-1308

II. TERM. This Participating Addendum is effective as of the date of the last signature below and will be coterminous with the Master Agreement (terminate, renew or extend), unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.

III. PARTICIPATION AND USAGE. If Contractor becomes aware that an entity's use of this Participating Addendum is not authorized, Contractor will notify NASPO ValuePoint to initiate outreach to the appropriate parties.

The use of specific NASPO ValuePoint cooperative contracts shall only apply to political subdivisions/local governments and universities authorized to use state contracts under the Division of Purchasing's Cooperative Procurement Program for the State of Missouri. A political subdivision/local government is defined as any city, county, district, or other local governing body including state universities, community colleges, and K-12 public schools empowered to expend public funds and enrolled in the state's cooperative procurement purchasing program.

Agencies governed by chapter 34 RSMo are specifically prohibited from using this agreement unless specifically authorized in writing by the State of Missouri's Director of the Division of Purchasing.

Issues of interpretation and eligibility for participation are solely within the authority of the Director of the Division of Purchasing for the State of Missouri.

IV. GOVERNING LAW. The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by, and construed in accordance with, Participating Entity's laws.

V. SCOPE. Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to the Contractor and Participating Entity and Purchasing Entities.

**Participating Addendum Number for
Computer Equipment, Peripherals & Related Services**

Between the State of Missouri and IBM Corporation

- a. **Services.** All services available through the Master Agreement may be offered and sold by Contractor to Purchasing Entities. All services provided will be described in a mutually agreed upon Statement of Work ("SOW") executed by the parties.
- b. **Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors, resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

VI. AMENDMENT. Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum

Any conflict between this Participating Addendum, Missouri cooperative contract, and the Master Agreement will be resolved in favor of the Participating Addendum and Missouri cooperative contract.

VII. ORDERS. Purchasing Entities may place orders under this Participating Addendum by referencing the Participating Addendum Number on an Order. Each Order placed under this Participating Addendum is subject to the pricing and terms set forth herein and in the Master Agreement, including applicable discounts, reporting requirements, and payment of administrative fees to NASPO ValuePoint and Participating Entity, if applicable.

Contractor's standard terms and conditions for select Products and Services available under the Master Agreement are set forth in the hyperlinks found in Exhibit E of the Master Agreement. These terms are intended to be negotiated by Contractor and Participating Entity as part of Exhibit B to this Participating Addendum and shall only become effective once executed and included in this Participating Addendum. Unless such terms are expressly accepted herein, terms in the hyperlinks that derogate the application to a Purchasing Entity of a corresponding term in this Participating Addendum or the Master Agreement shall be deemed void.

VIII. MISSOURI STATEWIDE CONTRACT QUARTERLY ADMINISTRATIVE FEE. The contractor shall pay a one percent (1%) administrative fee to the State of Missouri which shall apply to all payments received by the contractor for all products and services provided under the contract. Payment of the one percent administrative fee shall be non-negotiable.

- a. **Missouri Statewide Contract Quarterly Administrative Fee Report.** The contractor shall pay the administrative fee at the end of each calendar quarter (i.e. March 31, June 30, September 30, December 31). The total administrative fee for a given quarter must equal one percent (1%) of the total payments (minus returns and credits) received by the contractor during the calendar quarter as reported on the contractor's Missouri Statewide Contract Quarterly Administrative Fee Report specified below. The administrative fee must be received by the Division of Purchasing no later than the 15th calendar day of the month immediately following the end of the calendar quarter, unless the 15th is not a business day in which case the next business day thereafter shall be considered the administrative fee deadline.
- b. **Payments.** The contractor's payments shall be made using one of the following acceptable payment methods:
 - i. **Check.** Personal check, company check, cashier's check, or money order made payable to the "Missouri Revolving Information Technology Trust Fund" and sent to the following mailing address: Division of Purchasing, P.O. Box 809, Jefferson City, MO 65102 – 0809 OR Division of Purchasing, 301 West High Street, Room 630, Jefferson City, MO 65101-1517. The contractor's payment by check shall authorize the State of Missouri to process the check electronically. The contractor understands and agrees that any returned check from the contractor may be presented again electronically and may be subject to additional actions and/or handling fees.
 - ii. **Electronic Payment.** Instructions on how to submit payments electronically by automated clearing house (ACH) will be provided upon request by contacting the Division of Purchasing at (573) 751-2387.

**Participating Addendum Number for
Computer Equipment, Peripherals & Related Services**

Between the State of Missouri and IBM Corporation

- c. Check or Transmittal Document.** All payments of the administrative fee shall include the contract number on any check or transmittal document. However, only one contract number must be entered on a check or transmittal document. If submitting an administrative fee payment for more than one contract, then a separate check or electronic payment and associated transmittal document must be submitted by the contractor for each contract.

IX. MISSOURI STATEWIDE CONTRACT QUARTERLY ADMINISTRATIVE FEE REPORT. The contractor shall submit a Missouri Statewide Contract Quarterly Administrative Fee Report to the Division of Purchasing that shall identify the total payments (minus returns and credits) received by the contractor from state agencies, political subdivisions, universities, and governmental entities in other states that were made pursuant to the contract.

- a. Missouri Statewide Contract Quarterly Administrative Fee Report.** The contractor shall prepare and submit the Missouri Statewide Contract Quarterly Administrative Fee Report at the end of each calendar quarter (i.e. March 31, June 30, September 30, December 31) for total payments (minus returns and credits) received by the contractor during the calendar quarter. The Missouri Statewide Contract Quarterly Administrative Fee Report must be received by the Division of Purchasing no later than the 15th calendar day of the month following the reporting quarter entered on the report, unless the 15th is not a business day in which case the next business day thereafter shall be considered the reporting deadline. Even if there has been no usage of the contract during the reporting quarter, the contractor must still submit a report and indicate no payments were received by marking the appropriate box on the report form.

- b. Payments.** The Missouri Statewide Contract Quarterly Administrative Fee Report form may be downloaded from the following Division of Purchasing website: <http://oa.mo.gov/purchasing/vendor-information>. The Missouri Statewide Contract Quarterly Administrative Fee Report must be submitted using one of the following methods:

- i. Mail:
Division of Purchasing,
P.O. Box 809, Jefferson City MO 65102-0809

OR

Division of Purchasing,
301 st High Street, Room 630, Jefferson City, MO 65101-1517
Fax: (573) 526-9815

- ii. Email: ereports@oa.mo.gov

- c. Modifications.** The contractor shall agree that the Division of Purchasing reserves the right to modify the requested format and content of the Missouri Statewide Contract Quarterly Administrative Fee Report by providing thirty (30) calendar days written notice to the contractor. The contractor shall also agree the Division of Purchasing may unilaterally amend the contract, with thirty (30) calendar days notice to the contractor to change the method of payment of the administrative fee, the timing for submission of the Missouri Statewide Contract Quarterly Administrative Fee Report, and/or timing for payment of the administrative fee. The contractor shall understand and agree that if such an amendment is issued by the Division of Purchasing, the contractor shall comply with all contractual terms, as amended.

X. MISSOURI STATEWIDE CONTRACT QUARTERLY USAGE REPORT. The contractor shall submit a Missouri Statewide Contract Quarterly Usage Report to the Division of Purchasing which shall provide the Data Element information listed below:

**Participating Addendum Number for
Computer Equipment, Peripherals & Related Services**

Between the State of Missouri and IBM Corporation

Data Element	Description
Contractor Name	Contractor name as it appears on the contract.
Statewide Contract Number	Statewide contract number as listed on the cover page of your contract with the State of Missouri.
Report Contact Name	Name of the person completing the report on behalf of the contractor.
Contact Phone Number	Phone number for the person completing the report.
Contact Email Address	Email address for the person completing the report.
Date Report Submitted	Date the Missouri Statewide Contract Quarterly Usage Report is submitted to Division of Purchasing.
Reporting Quarter	Quarter for which the contractor is reporting purchases on the contract.
Entity Type	Indicate the type of entity by entering "S" for Missouri state agency, "P" for Missouri political subdivision, "U" for Missouri university, or "O" for political subdivision or state entity from another state.
Customer Name	Customer's name. If the customer has multiple locations, please only use the main entity name.
Product or Service Description	Description of product or service purchased.
Purchase Authorization Number/Identifier	Purchase Authorization Number/Identifier supplied by customer to contractor. Enter PO or other authorization number/identifier. If procurement card used, enter "P-Card".
Contract Line Item Number	Line item number on the contract.
Quantity Delivered	Quantity (i.e. excluding returns) of products delivered. Enter a quantity of "1" for a service/project.
Unit Price Charged	Unit Price Charged (i.e. excluding credits) for the product or service purchased.
Extended Price	Quantity Delivered X Unit Price Charged.

- a. **Missouri Statewide Contract Quarterly Usage Report.** The contractor shall prepare and submit the Missouri Statewide Contract Quarterly Usage Report at the end of each calendar quarter (i.e. March 31, June 30, September 30, December 31) for the purchases made under the contract during the calendar quarter. The Missouri Statewide Contract Quarterly Usage Report must be received by the Division of Purchasing no later than the 15th calendar day of the month following the reporting quarter entered on the Missouri Statewide Contract Quarterly Usage Report, unless the 15th is not a business day in which case the next business day thereafter shall be considered the reporting deadline. Even if there has been no usage of the contract during the reporting quarter, the contractor must still submit a report and indicate no purchases were made.
- b. **Submission.** The contractor must submit a Missouri Statewide Contract Quarterly Usage Report electronically either utilizing the "Missouri Statewide Contract Quarterly Usage Report" worksheet which is downloadable from <http://oa.mo.gov/purchasing/vendor-information> or utilizing another format which is Excel-exportable. The contractor must submit the Missouri Statewide Contract Quarterly Usage Report to the following email address: ereports@oa.mo.gov.
- c. **Modifications.** The contractor shall agree that the Division of Purchasing reserves the right to modify the requested format and content of the Missouri Statewide Contract Quarterly Usage Report by providing thirty (30) calendar days' written notice to the contractor. The contractor shall also agree the Division of Purchasing may unilaterally amend the contract, with thirty (30) calendar days' notice to the contractor to change the timing for submission of the Missouri Statewide Contract Quarterly Usage

**Participating Addendum Number for
Computer Equipment, Peripherals & Related Services**

Between the State of Missouri and IBM Corporation

Report. The contractor shall understand and agree that if such an amendment is issued by the Division of Purchasing, the contractor shall comply with all contractual terms, as amended.

XI. ORDER OF PRECEDENCE.

- a. 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 NASPO ValuePoint Master Agreement;
- b. Minnesota NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions);
- c. The Solicitation including all Addendums; and
- d. Contract Vendor's response to the Solicitation.

XII. FEDERAL FUNDING REQUIREMENTS. Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. When applicable, a Purchasing Entity will identify in the Order any alternative or additional requirements related to the use of federal funds. By accepting the Order, Contractor agrees to comply with the requirements set forth therein.

XIII. EXHIBITS. This Participating Addendum, for informational purposes, includes Exhibit A and Exhibit B. The contractor is requested to complete Exhibit A regarding the contractor's economic impact to the State of Missouri.

XIV. ATTACHMENT. This Participating Addendum includes the following attachment:

- a. State of Missouri Cooperative Contract Document.

XV. NOTICE. Any notice required herein shall be sent to the following:

For Contractor:

David L Clements
Technology Sales Executive
david.clements@ibm.com
(573) 303-4266

For Participating Entity:

Kelsey Huwe
Procurement Specialist
kelsey.huwe@oa.mo.gov
(573) 522-1308

XVI. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT. Upon execution, Contractor shall email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. While Participating Entity will maintain the official record of this Participating Addendum, the Parties agree that this Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

CONTRACTOR:

PARTICIPATING ENTITY: State of Missouri

Participating Addendum Number for
Computer Equipment, Peripherals & Related Services

Between the State of Missouri and IBM Corporation



Signature

David L. Clements
Printed Name

Technology Sales Executive
Title

4/22/2024
Date



Signature

Karen S. Boeger
Printed Name

Director, Division of Purchasing
Title

4/26/2024
Date

EXHIBIT A

Missouri Economic Impact: The utilization of Missouri businesses and Missouri employees and other positive economic impact in the provision of the products and/or services under this agreement between the State of Missouri and the contractor is highly desirable for the State of Missouri. Therefore, please provide responses to the following to describe your Missouri economic impact.

1. Provide a description of the company's economic presence within the State of Missouri, including Missouri employee statistics, Missouri business facilities (size, type of facility, location), Missouri subcontractors, etc.

IBM has approximately 225 employees in the state of Missouri.

Our main office IBM has an office at 3212 Emerald Lane; Jefferson City, MO; it has over 100 seats

We have over 15 small facilities that are used for parts and support of customer throughout the state of Missouri

IBM has several employees outside of the state of Missouri that pay state sales tax due to their work in supporting the State of Missouri.

2. Provide a description of the proposed services that will be performed and/or the proposed products that will be provided by Missourians and/or Missouri products under the Missouri Contract.

____ Products are the IBM Power Server Product family, Related software, Support, and services for the IBM Power server platform

3. Provide a description of the economic impact returned to the State of Missouri through tax revenue obligations.

____ Besides our employees that live in the state of Missouri, we have approximately 100 other employees who live in other states who pay some portion of Missouri state tax due to working in Missouri to support the State of Missouri and other customers.

4. List all Missouri certified Minority Business Enterprises (MBE)/Women Business Enterprises (WBE) as defined at Website: <http://oeo.mo.gov> you will use in the provision of products and services under the contract:

____ Huber & Associates, SHI, WWT Inc. _____

5. List all Missouri Organizations for the Blind or any Missouri Sheltered Workshops as listed at Websites <http://dese.mo.gov/special-education/sheltered-workshops/directories>,

Participating Addendum Number for
Computer Equipment, Peripherals & Related Services
Between the State of Missouri and IBM Corporation

<http://www.lhbindustries.com> and <http://www.alphapointe.org> you will use in the provision of products and services under the contract:

_____ Currently not required.

6. List all Missouri Service-Disabled Veteran Business Enterprises (SDVE's) as listed at Websites <http://oa.mo.gov/sites/default/files/sdvelisting.pdf> you will use in the provision of products and services under the contract:

_____ Currently not required. _____

EXHIBIT B
CONTRACTOR TERMS

The following contractor terms and conditions apply to orders pursuant to the Participating Addendum:

- For Software: The International Program License Agreement (IPLA):
<https://www.ibm.com/support/customer/csol/terms/?id=i125-3301&lc=en>
- For Programs, Services, Machines, and Applications: Client Relationship Agreement (CRA):
https://www.ibm.com/support/customer/csol/terms/?id=Z126-6548_FED&cc=us&lc=en
- For Technology Support Services: Technical Services Attachment for Technical Support Services (TSS) Offerings for State and Local Government:
<https://www.ibm.com/support/customer/csol/terms/?ref=Z126-9315-01-11-2021-us-en>
- For Other Eligible Products: International Passport Advantage Agreement (IPAA):
<https://www.ibm.com/support/customer/csol/terms/?ref=Z125-5831-11-02-2023-zz-en>
- For Subscription Licenses: IPAA US State, Local, and Education (SLED) Government Contracts – Attachment for Subscription License:
https://www.ibm.com/support/customer/csol/terms/?ref=Z126-8665_SLED-02-02-2023-us-en
- For Software Maintenance: International Agreement for Acquisition of Software Maintenance (IAASM): <https://www.ibm.com/support/customer/csol/terms/?ref=Z125-6011-04-10-2014-zz-en>

The above-referenced terms are incorporated herein by reference. While the contents of the above-referenced hyperlinks are subject to change, the version in effect at the time of execution of the order shall apply. Material changes to later versions shall not be applicable to the order unless and until the Participating Addendum is formally amended. State regulations or other applicable laws that conflict with a provision contained within the above terms and conditions take precedence over the conflicting term. The above-referenced terms and conditions also apply to orders purchased through an approved reseller. All resellers (along with any downstream distributors) must be approved in writing by the State of Missouri and the contractor. All resellers and Purchasing Entities must identify this Participating Addendum number along with the NASPO Master Agreement number in the order. Orders shall contain the contractor's Statement of Work, Transaction Document, Service Description, and/or Proof of Entitlement that applies to the specific Product and/or Service ordered.

TAXATION DIVISION
PO BOX 3666
JEFFERSON CITY, MO 65105-3666



Missouri
DEPARTMENT OF REVENUE

Telephone: 573-751-9268
Fax: 573-522-1265
E-mail: taxclearance@dor.mo.gov

VENDOR NO TAX DUE

INTERNATIONAL BUSINESS MACHINES CORPORATION
150 KETTLETOWN RD
SOUTHBURY, CT 06488-2685

DATE ISSUED: 02/07/2024
VALID THROUGH: 05/07/2024

MISSOURI TAX ID NUMBER: [REDACTED]
FEDERAL IDENTIFICATION NUMBER: [REDACTED]

The Missouri Department of Revenue certifies that based on the information provided, the above listed taxpayer or vendor and its disclosed affiliates do not sell taxable tangible personal property or provide taxable services in the State of Missouri. The above vendor and its disclosed affiliates are in compliance with Section 34.040.7, RSMo.

This statement is not to be construed as limiting the authority of the Director of Revenue to pursue collection of liabilities resulting from final litigation, default in payment of any installment agreement entered into with the Director of Revenue, any successor liability that may become due in the future, or audits or reviews of the taxpayer's records as provided by law.

This certificate will remain valid until such time as the business activity changes. Please note that any change in or deviation from the operation of this business as originally described will render this letter inapplicable.

TAXATION DIVISION



NASPO ValuePoint Master Agreement No.: 23012

This Contract is between the State of Minnesota, acting through its Commissioner of Administration (“Lead State”) and International Business Machines Corporation whose designated business address is 7100 Highlands Parkway, Smyrna, GA 30082 (“Contractor” or “IBM”). State and Contractor may be referred to jointly as “Parties.”

Recitals

1. The State of Minnesota, Department of Administration, Office of State Procurement, on behalf of the State of Minnesota and NASPO ValuePoint Cooperative Procurement Program (“NASPO ValuePoint”) issued a solicitation to establish Minnesota NASPO ValuePoint Master Agreement(s) (“Contract”) with qualified manufacturers for Computer Equipment (Desktops, Laptops, Tablets, Servers, and Storage, including related Peripherals & Services);
2. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the goods or services requested in the Solicitation; and
3. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract; and
4. All authorized governmental entities in any state or participating US Territory are welcome to use the resulting Master Agreement through NASPO ValuePoint with the approval of the State Chief Procurement Official. Upon final award of the overarching Master Agreement, Contractors 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.

Accordingly, the Parties agree as follows:

Contract

1. Term of Contract

- a. Effective date. July 1, 2023, or the date the Lead State obtains all required signatures under Minn. Stat. § 16C.05, subd. 2, whichever is later.
- b. Expiration date. June 30, 2025. This Master Agreement may be extended for up to an additional 36 months, in increments as determined by the Lead State, through a duly executed amendment.
- c. If, in the judgment of the Lead State, a follow-on, competitive procurement will be unavoidably delayed beyond the planned date of execution of the follow-on master agreement, this Master Agreement may be extended for a reasonable period of time, not to exceed six months. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

2. **Representations and Warranties**

- a. Under Minn. Stat. §§ 15.061 and 16C.03, subd. 3, and other applicable law the Lead State is empowered to engage such assistance as deemed necessary.
- b. Contractor warrants that it is duly qualified and shall perform its obligations under this Master Agreement in accordance with the commercially reasonable standards of care, skill, and diligence in Contractor’s industry, trade, or profession, and in accordance with the specifications set forth in this Master Agreement, to the satisfaction of the Lead State.
- c. Contractor warrants that it possesses the legal authority to enter into this Master Agreement and that it has taken all actions required by its procedures, by-laws, and applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Master Agreement, or any part thereof, and to bind Contractor to its terms.

3. **Awarded Band(s)**

The solicitation included three product Bands: Band 1, Personal Computing Devices – Windows Operating Systems: Desktops, Laptops, Tablets; and Band 2, Personal Computing Devices – Non-Windows Operating Systems: Desktops, Laptops, Tablets; and Band 3, Servers and Storage. The Contractor is awarded the following Band(s):

Band 3, Servers and Storage

4. **Configuration Dollar Limits**

The following configuration limits apply to the Master Agreement. Participating Entities may define their configuration limits in their Participating Addendum. The Participating Entity’s Chief Procurement Official may increase or decrease the configuration limits, as defined in their Participating Addendum. The Participating Entity will determine with the Contractor how to approve these modifications to the Product and Service Schedule.

The dollar limits identified below are based on a SINGLE computer/system configuration. This is NOT a restriction on the purchase of multiple configurations (e.g., an entity could purchase 10 laptops at \$15,000 each, for a total purchase price of \$150,000).

<u>ITEM</u>	<u>CONFIGURATION</u>
Band One	\$15,000
Band Two	\$15,000
Band Three	\$1,000,000
Peripherals	\$10,000
Services	Addressed in the Participating Addendum

5. **Restrictions**

The following restrictions apply to the Master Agreement. A Participating Entity may set further restrictions of products in their Participating Addendum. The Participating Entity will determine with the Contractor how to approve these modifications to the Entity’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. Any software purchased 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, except for the exceptions allowed under Paragraph 5.a.4.

4. Software such as middleware which is not always installed on the equipment, but is related to storage and server equipment (Band 3) purchased, is allowed and may be procured after the initial purchase of equipment.

b. General 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. Managed Print Services are not allowed.

c. Cloud Services

1. Cloud Services are restricted to Services that function as operating systems and software needed to support or configure hardware purchased under the scope of the contract and is subject to equipment configuration limits.

2. Any Cloud Service purchased must be related to the procurement of equipment.

d. Third-Party Products

1. Third-Party Products can be offered only in the Bands they have been awarded. All third-party products must meet the definition(s) of the Band(s) in which they are being offered.

2. Products manufactured by another Contractor holding a Minnesota NASPO ValuePoint Master Agreement for Computer Equipment cannot be offered unless approved by the Lead State.

e. 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. EPEAT Bronze requirement does not currently apply to storage.

6. Authorized Representative

- a. Master Agreement Administrator. The Master Agreement Administrator designated by NASPO ValuePoint and the State of Minnesota, Department of Administration is Elizabeth Randa, Acquisition Management Specialist.

Elizabeth Randa, Acquisition Management Specialist
Department of Administration
Office of State Procurement
112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
E-mail: elizabeth.randa@state.mn.us
Phone: 651.201.3122

- b. Contractor's Authorized Representative. The Contractor's Authorized Representative is Karen Schneider, Public Sector Program Manager.

Karen Schneider, Public Sector Program Manager
IBM Corporation
US Contracts
6303 Barfield Rd, NE
Sandy Springs, GA 30328-4233
Email: kasch@us.ibm.com
Phone: 720.397.5563

If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify the Lead State.

7. 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. An email 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 to the Master Agreement Administrator.

8. Exhibits

The following Exhibits are attached and incorporated into this Contract. In the event of a conflict between the terms of this Contract and its Exhibits, or between Exhibits, the order of precedence is first the Contract, and then in the following order:

Exhibit A: NASPO ValuePoint Terms and Conditions
Exhibit B: Minnesota Terms and Conditions
Exhibit C: Requirement
Exhibit D: Price Schedule
Exhibit E: Contractor Terms and Conditions

9. Survival of Terms:

The following clauses survive the expiration or cancellation of this Master Agreement: Indemnification; State Audits; Government Data Practices and Intellectual Property; Publicity and Endorsement; Governing Law, Jurisdiction, and Venue; and Data Disclosure. Any other Contract term that states it shall survive, shall survive.

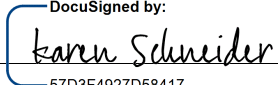
10. Entire Agreement

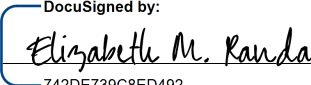
This Contract and any written addenda thereto constitute the entire agreement of the parties to the Master Agreement.

1. International Business Machines Corporation
(Contractor or IBM)

2. State Agency
With delegated authority

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

Print name: Karen Schneider
DocuSigned by:
Signature: 
57D3F4927D58417...
Title: NASPO Program Manager Date: 2/21/2024

Print name: Elizabeth M. Randa
DocuSigned by:
Signature: 
742DE739C8ED492...
Title: Acquisition Management Specialist Date: 2/21/2024

3. Commissioner of Administration
As delegated to The Office of State Procurement

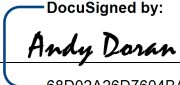
Print name: Andy Doran
DocuSigned by:
Signature: 
68D02A26D7604BA...
Title: IT Acquisitions Supervisor Date: 2/21/2024

Exhibit A: NASPO ValuePoint Master Agreement Terms and Conditions

1. Conflict of Terms/Order of Precedence.

- a. Any order placed under this Master Agreement shall consist of the following documents:
 1. A Participating Entity's Participating Addendum ("PA");
 2. Minnesota NASPO ValuePoint Master Agreement, as negotiated, including all exhibits;
 3. A Purchase Order issued against a PA (terms and conditions set forth in a Purchase Order will not be deemed to modify, diminish, or otherwise derogate the terms and conditions set forth in a Participating Addendum or Minnesota NASPO ValuePoint Master Agreement).
- b. 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. Contractor 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.
- c. Contractor terms and conditions may be incorporated if expressly accepted by the Lead State and attached to the Master Agreement as an Exhibit or Attachment, or by written reference (including reference to information contained in a URL or referenced policy). A written reference, including by URL or policy, is incorporated into the Master Agreement only if the Master Agreement expressly identifies that reference. URL's must be explicitly referenced to be incorporated into the Master Agreement. URL's contained within the URL's that are explicitly referenced are not incorporated into the Master Agreement. Any Contractor term or condition incorporated by URL or written reference applies to this Master Agreement only to the extent such term or condition is not prohibited by applicable law. Any change to information contained in a URL or referenced policy will not affect any financial obligation, place any additional material obligation on an ordering entity, or materially diminish an ordering entity's ability to use the product or service.
- d. A written Master Agreement will constitute the entire agreement of the parties to the Master Agreement. No other terms and conditions shall apply, including terms and conditions listed in the Contractor's response to the RFP issued for this Master Agreement, or terms listed or referenced on the Contractor's website not otherwise incorporated into the Master Agreement, in the Contractor quotation/sales order, or in similar documents subsequently provided by the Contractor.
- e. Additional Agreement with NASPO. Upon request by NASPO ValuePoint, awarded Contractor shall enter into a direct contractual relationship with NASPO ValuePoint related to Contractor's obligations to NASPO ValuePoint under the terms of the Master Agreement, the terms of which shall be the same or similar (and not less favorable) than the terms set forth in the Master Agreement.

2. Definitions.

- a. **Acceptance** is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product unless otherwise agreed to by the parties to the Order.
- b. **Accessory** means a product that enhances the user experience but does not extend the functionality of the computer (e.g., mouse pad or monitor stand). For the purposes of this Contract, accessories are considered peripherals.

- c. **_____ as a Service (_aaS)** refers to any good provided in a subscription-based model that is defined in the industry as “_____ as a Service”. Examples are “Software as a Service”, “Infrastructure as a Service”, and “Storage as a Service”, and shall be defined as set forth in the NIST definitions of those services. _____ as a Service are permitted only when they meet the restrictions found in Paragraph 5.c, above.
- d. **Band** means a category of products. There are three product bands which may be awarded through this Contract. Each product band includes related peripherals and services.
- e. **Components** are the parts that make up a computer configuration.
- f. **Contractor** means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.
- g. **Configuration** means the combination of hardware and software components that make up the total functioning system.
- h. **Customer** (see Purchasing Entity).
- i. **Desktop** means 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. Desktops, including desktop virtualization endpoints such as zero and thin clients, are included in Bands 1 and 2 of this Contract.
- j. **Embedded Software** means one or more software applications which permanently reside on a computing device.
- k. **Energy Star®** is a voluntary energy efficiency program sponsored by the U.S. Environmental Protection Agency. The Energy Star program makes it easy to identify energy efficient computers by labeling products that deliver the same or better performance as comparable models while using less energy and saving money. 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> .
- l. **EPEAT** is a type-1 ecolabel for identifying and purchasing sustainable IT products. EPEAT-registered products must meet sustainability criteria detailed in voluntary consensus-based standards that are free and publicly available on the Green Electronics Council’s website at www.greenelectronicscouncil.org. Products are classified as Bronze, Silver, or Gold based on meeting criteria that address the life cycle of the products. Product life cycle includes material extraction, hazardous substance reduction, end-of-life management, packaging, and corporate sustainability. Only products listed as Active in the online EPEAT Registry are considered to meet the EPEAT criteria.
- m. **FOB Destination** means that 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.
- n. **FOB Inside Delivery** means that shipping charges are included in the price of the item, and that the shipped item becomes the legal property and responsibility of the receiver when it reaches the inside delivery point, which is beyond the front door or loading dock. FOB Inside Delivery is a special shipping arrangement that may include additional fees payable by the Purchasing Entity. FOB Inside Delivery must be annotated on the Purchasing Entity ordering document.

- o. **Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.
- p. **Laptop** means a personal computer for mobile use. A laptop includes a display, keyboard, point device such as a touchpad, and speakers in a single unit. A laptop can be used away from an outlet using a rechargeable battery. Laptops include notebooks, ultrabooks, netbooks, Zero and thin client devices, and computers with mobile operating systems. Laptops are included in Bands 1 and 2 of this Contract.
- q. **Lead State** means the State centrally administering any resulting Master Agreement(s).
- r. **Mandatory Requirement** is a requirement that the failure to meet results in the rejection of the responder's proposal unless all responders are unable to meet the mandatory requirement. The terms "must" and "shall" identify a mandatory requirement. Any objection to a mandatory requirement should be identified by responders in the Question and Answer period.
- s. **Manufacturer** means a company that, as one of its primary business functions, designs, assembles, owns the trademark/patent for, and markets branded computer equipment.
- t. **Master Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of NASPO ValuePoint, and the Contractor.
- u. **Middleware** means the software "glue" that helps programs and databases (which may be on different computers) work together. The most basic function of middleware is to enable communication between different pieces of software.
- v. **NASPO ValuePoint** is a division of the National Association of State Procurement Officials ("NASPO"), a 501(c)(3) limited liability company. NASPO ValuePoint facilitates administration of the NASPO 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, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and receiving reports as well as other contract administration functions as assigned by the Lead State.
- w. **Option** means an item of equipment or a feature that may be chosen as an addition to or replacement for standard equipment and features.
- x. **Order or Purchase Order** means any purchase order, sales order, contract or other method used by a Purchasing Entity to order the Products. Order or Purchase Order includes a Statement of Work that details the specifics of transactions such as term, charges and a description of, and information about, the product or service (including any related attachments or exhibits).
- y. **Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.
- z. **Participating Entity** means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, or a nonprofit organization under the laws of some states properly authorized to enter into a Participating Addendum, that has executed a Participating Addendum.

aa. **Participating State** means a state that has executed a Participating Addendum.

bb. **Partner** means a company, authorized by the Contractor and approved by the Participating State, to provide marketing, support, or other authorized contract services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Agreement. A Partner may include, but is not limited to, an agent, subcontractor, fulfillment partner, channel partner, business partner, servicing subcontractor, distributor, reseller, etc.

cc. **Peripherals** means any hardware product that can be attached to, added within, or networked with personal computers, servers, or storage. Peripherals extend the functionality of a computer without modifying the core components of the system.

dd. **Per Transaction Multiple Unit Discount** means 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.

ee. **Premium Savings Package(s) (PSP)** are deeply discounted standard configurations available to Purchasing Entities using the Master Agreement. NASPO ValuePoint reserves the right to expand and modify the PSP throughout the life of the contract. For more information see: <https://www.naspovaluepoint.org/portfolio/57/>.

ff. **Product** means any equipment, software (including embedded software), documentation, service, or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

gg. **Purchasing Entity** means a state (including the District of Columbia and U.S. territories), city, county, district, other political subdivision of a state, other domestic public entities, and nonprofit organizations under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order under the terms of the Master Agreement, or any Participating Addendum thereto, and becomes financially committed to the purchase.

hh. **Ruggedized** means equipment specifically designed to operate reliably in harsh usage environments and conditions, such as strong vibrations, extreme temperatures, and wet or dusty conditions. Ruggedized equipment may be proposed under the band that most closely fits the equipment being proposed.

ii. **Server** means computer hardware 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. Servers may be either physical or virtual. Servers, including server appliances, are included in Band 3 of this Contract. Server appliances have their hardware and software preconfigured by the manufacturer, and include embedded networking components such as those found in blade chassis systems.

jj. **Services** are broadly classified as installation or de-installation, maintenance, support, training, migration, and optimization of products offered or supplied under the Master Agreement. These classifications of services may include, but are not limited to: warranty services, maintenance, installation, de-installation, factory integration (software or hardware components), asset management, recycling or disposal, training and certification, pre-implementation design, disaster recovery planning and support, service desk or helpdesk, imaging, and any other directly related technical support service required for the effective operation of a product offered or supplied. Contractors may offer limited professional services related ONLY to the equipment and configuration of the equipment including middleware purchased through the resulting contracts.

EACH PARTICIPATING ENTITY WILL DETERMINE RESTRICTIONS AND NEGOTIATE TERMS FOR SERVICES THROUGH THEIR PARTICIPATING ADDENDUM.

kk. **Software** means, for the purposes of this Contract, commercial operating off the shelf machine-readable object code instructions including microcode, firmware, and operating system software that meet the restrictions specified in Section Paragraph 5.a. "Software" applies to all parts of software and documentation, including new releases, updates, and modifications of software.

ll. **Storage** means hardware or a virtual appliance with the ability to store large amounts of data. Storage, including SAN switching necessary for the proper functioning of storage equipment, is included in Band 3 of this Contract.

mm. **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.

nn. **Tablet** means a mobile computer that provides a touchscreen that acts as the primary means of control. Tablets, including notebooks, ultrabooks, and netbooks with touchscreen capabilities, are included in Bands 1 and 2 of this Contract.

oo. **Takeback Program** means the Contractor's process for accepting the return of equipment or other products at the end of the product's life.

pp. **Thin Client** is a lightweight computer that has been optimized for establishing a remote connection with a server-based computing environment.

qq. **Third Party Product** is a good sold by the Contractor that is manufactured by another company. Third Party Products are intended to enhance or supplement a Contractor's own product line, and are not intended to represent more than a third of any Contractor's total sales under this Master Agreement.

rr. **Upgrade** means the replacement of existing software, hardware, or hardware component with a newer version.

ss. **Warranty** means the Manufacturer's general warranty tied to the product at the time of purchase.

tt. **Wide Area Network (WAN)** is a data network that serves users across a broad geographic area and often uses transmission devices provided by common carriers.

3. **Term of the Master Agreement.**

a. The initial term of this Master Agreement is for 2 years. This Master Agreement may be extended beyond the original contract period for 36 additional months at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

4. **Amendments.**

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without a written amendment to the Master Agreement executed by the Contractor and Lead State as required by law. Master Agreement amendments will be negotiated by the Lead State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work.

5. Participants and Scope.

- a. Reserved.
- b. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.
- c. Use of specific NASPO ValuePoint Master Agreements by state agencies, political subdivisions and other Participating 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.
- d. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases.
- e. NASPO and NASPO ValuePoint are not parties to the Master Agreement.
- f. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.
- g. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.
- h. Resale. "Resale" means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the Master Agreement, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a

Purchasing Entity's laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

6. Individual Customers.

Except to the extent modified by a Participating Addendum, each Purchasing 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 right to recover any costs as such right is defined 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 Contractor will apply the charges and invoice each Purchasing Entity individually.

7. Independent Contractor.

The Contractor is an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as an agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

8. Contracting Personnel.

Contractor must provide adequate contracting personnel to assist states with the completing and processing Participating Addenda. It is preferred that each Contractor be able to provide each Participating Entity with a primary contact person for that Participating Entity.

9. Changes in Contractor Representation.

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change.

10. Contractor Verification.

The Contractor is responsible for delivering products or performing services under the terms and conditions set forth in the Master Agreement. The Contractor must ensure Partners utilized in the performance of this contract adhere to all the terms and conditions. Partners may be utilized by Contractor to market and sell under the contract. Participating Entities will have final determination/approval as to whether a Partner may be approved for that state in the role identified by the Contractor.

11. Contractor Performance Meeting.

An annual performance meeting may be held each year with the NASPO ValuePoint Sourcing Team. Historically performance meetings have been held in Minnesota, but the Lead State may hold the meetings in person or virtually at the Lead State's discretion.

All contractors that are invited to participate must send their Primary Account Representative, unless an exception is granted in writing by the Lead State. It is possible that not all contractors will be invited to participate in a performance meeting.

12. Laws and Regulations.

Any and all Products offered and furnished shall comply fully with all applicable Federal, State, and local laws and regulations, including Minn. Stat. § 181.59 prohibiting discrimination and business registration requirements of the Office of the Minnesota Secretary of State. To the extent any purchase is subject to Federal Acquisition Regulations, as may be required by the terms of a federal grant, a Participating Entity and Contractor may include in their Participating Addendum terms that reflect such a requirement.

13. Price and Rate Guarantee Period.

All minimum discounts must be guaranteed for the initial term of the Master Agreement. Following the initial Master Agreement period, any request for minimum discount adjustment must be for a guarantee period as offered by the Contractor and must be made at least 30 days prior to the effective date. Requests for minimum discount adjustment must include sufficient documentation supporting the request. Any adjustment or amendment to the Master Agreement shall not be effective unless approved by the Lead State. No retroactive adjustments to minimum discounts will be allowed.

14. Premium Savings Package Program.

The Lead State reserves the right to create a Premium Savings Package Program (PSP) as outlined in the Definitions, Paragraph 2.ee of Exhibit A. Participation by Contractor is voluntary. The details and commitments of the PSP will be detailed as a part of any request for Contractor to participate.

15. Services.

Participating Entities must allow services in their Participating Addenda for the approved services to be allowed under that Participating Addendum. The Participating Addendum by each Participating Entity will address service agreement terms and related travel.

16. Ordering.

- a. The Participating Addendum number and the PO numbers shall be clearly shown on appropriate correspondence, including invoices. Each shipment shall be marked and properly identify Purchasing Entity's provided shipping information.
- b. Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.
- c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies or services contemplated by this Master Agreement.
- d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.
- e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.
- f. All Orders pursuant to this Master Agreement, at a minimum, shall include:
 1. The service description or supplies being delivered;
 2. The place and requested time of delivery;
 3. A billing address;
 4. The name, phone number, and address of the Purchasing Entity representative;

5. The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
6. A ceiling amount of the order for services being ordered;
7. The Master Agreement identifier; and
8. Statement of Work, when applicable.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. Provided the Participating Addendum is effective, Orders may be placed pursuant to this Master Agreement and the applicable Participating Addendum provided the delivery date of products is no longer than 120 days past the termination date of the Participating Addendum. Maintenance Orders must be placed prior to the termination date of both agreements. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. Notwithstanding the expiration, cancellation or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration, cancellation or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

17. Trade-In.

Participating Entities must explicitly allow trade-in programs in their Participating Addenda for the approved programs to be allowed under that Participating Addendum. Trade-in value shall not decrease the discounts offered through the Master Agreement.

18. Shipping and Delivery.

a. The prices are the delivered price to any Purchasing Entity for standard shipping. If an order is requested with expedited shipping, the Contractor must provide a firm "not to exceed" price for the expedited shipping on the quote. All deliveries shall be FOB Destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.

b. Specific delivery instructions, including FOB Inside Delivery, will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur and Contractor becomes aware of the damage, Contractor will promptly notify the Purchasing Entity placing the Order.

c. All products must be delivered in the manufacturer's standard package. Costs shall include all packing and crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every

respect for storage and handling of contents. Each shipment shall be marked with the Purchasing Entity's information sufficient for the Purchasing Entity to properly identify the shipment and match the shipment to the applicable order, as outlined in the Participating Addendum of the Purchasing Entity.

19. **Inspection and Acceptance.**

- a. Where a Participating Addendum, or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.
- b. Contractor shall provide right of access to its records pertaining to the Master Agreement, a Participating Addendum, or an Order to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, via electronic mail or access to a secure cloud location, in order to monitor and evaluate performance, compliance, and quality assurance requirements under this Master Agreement (for the Lead State) or a specific Participating Addendum, or an Order (for the relevant Purchasing Entity). Upon delivery, the Purchasing Entity shall have 30 calendar days to inspect. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.
- c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.
- d. The warranty period shall begin upon Acceptance. 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.
- e. 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 does not preclude a Purchasing Entity from accepting products or services within the acceptance period. This clause shall not be applicable, if acceptance testing and corresponding terms have been mutually agreed to by both parties in writing.
- f. Acceptance Testing. The Purchasing Entity and the Contractor 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.

g. 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 License Agreement, which shall apply to software purchased by a Purchasing Entity to the extent accepted and agreed to by the Purchasing Entity in writing.

20. Title of Product.

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include a license to use any Embedded Software in the Product, as follows:

- a. To the extent that the Software sold under the Master Agreement is Commercial Off-the-Shelf Software, such Software is licensed, not sold, to the Purchasing Entity. The Contractor and its licensors reserve and retain all rights not expressly granted to the Purchasing Entity. No right, title or interest to any trademark, service mark, logo or trade name of Contractor or its licensors is granted to the Purchasing Entity. Licenses to such Software is provided in accordance with the terms of the manufacturer's written End User License Agreement tied to the product at the time of purchase unless otherwise negotiated between Purchasing Entity and the Contractor or the Licensor in a duly executed contract.
- b. Contractor will perform services for the Purchasing Entity, subject to the following section pursuant to a fully executed Statement of Work entered into between the Purchasing Entity and the Contractor.
- c. The Contractor grants the Purchasing Entity a perpetual, non-exclusive, royalty free the license in Contractor's pre-existing intellectual property that is contained in the products, materials, equipment or services, excluding software, that are purchased through this Master Agreement. The Contractor shall be responsible for ensuring that this license is consistent with any third-party rights in the Pre-existing Intellectual Property.
- d. Any and all licensing, maintenance, cloud services, or order specific agreements referenced within the terms and conditions of this Master Agreement are agreed to only to the extent that the terms are not in conflict with the terms of the Participating Addendum or the Participating Entities' applicable laws. In the event of a conflict in the terms and conditions, the conflict shall be resolved as detailed in the Order of Precedence defined herein. Notwithstanding the foregoing, licensing, maintenance, cloud services agreements, or order specific agreements may be further negotiated by the Contractor or, if applicable, the Licensor, and the potential Purchasing Entity, provided the contractual documents are duly executed in writing.

21. Warranty.

The Contractor must ensure warranty service and maintenance for all Contractor-equipment provided. Contractor does not warrant non-Contractor products or non-Contractor services; however, Contractor will facilitate the pass-through of any Manufacturer or Publisher warranty and maintenance of third-party products furnished through the Master Agreement. The Contractor shall provide the warranty service and maintenance for Contractor-equipment and all Contractor-peripherals on the Master Agreement.

22. System Failure or Damage.

In the event of system failure or damage caused by the Contractor or its Product, the Contractor shall use reasonable efforts to restore or assist in restoring the system to operational capacity. The Contractor shall be responsible under this provision to the extent a 'system' is defined at the time of the Order; otherwise the rights of the Purchasing Entity shall be governed by the Warranty.

23. Payment.

Payment after Acceptance 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 Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law.

Payments will be remitted by mail or electronically. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

Prices are exclusive of taxes, duties, and fees, unless otherwise quoted. If a withholding tax is required by law, the tax will be added and identified on the applicable invoice. All applicable taxes, duties, and fees must be identified on the quote.

24. Leasing or Alternative Financing Methods.

Lease purchase and term leases are allowable only for Purchasing Entities whose rules and regulations permit leasing of software. Individual Purchasing Entities may enter into a lease agreement for the products covered in this Master Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process and if the applicable PAs permit leasing. The Participating Addendum by each State will identify whether and how leasing agreement terms will be conducted. No lease agreements will be reviewed or evaluated as part of this RFP evaluation process.

25. Contract Provisions for Orders Utilizing Federal Funds.

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement. Contractor is at all times acting as a contractor and not as a subrecipient, as those terms are defined in 2 CFR Part 200. The Parties agree that this Master Agreement is neither a construction contract nor a contract involving experimental, developmental, or research work, nor is Contractor employing laborers or mechanics.

26. Self Audit.

The Contractor must conduct at a minimum a quarterly self-audit, unless approved by the Lead State. The audit will sample a minimum of one tenth of one percent (.001) of orders with a maximum of 100 audits per quarter conducted. For example: Up to 1,000 sales = 1 audit; 10,000 sales = 10 audits; Up to 100,000 sales = 100 audits. This will be a random sample of orders and invoices and must include documentation of pricing. Summary findings must be reported to Lead State with actions to correct documented findings.

27. Assignment/Subcontracts.

a. Contractor 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 Lead State, except that assignment of Contractor's rights to receive payments or assignment by Contractor in conjunction with the sale of the portion of IBM's business that includes a product or service is not restricted. Contractor shall provide no fewer than 30 days' notice to the Lead State of any assignment of Contractor's rights to receive payments or, except for any time period during which such sale may be confidential, any assignment by Contractor in conjunction with the sale of a portion of IBM's business.

b. The Lead State, or Participating Entity, shall not assign, delegate or otherwise transfer all or any part of this Master Agreement without prior written consent from Contractor, except for assignment or delegation to a Participating Entity State agency or eligible Purchasing Entity. The Lead State reserves the right to assign any rights

or duties, including written assignment of contract administration duties to NASPO ValuePoint and other third parties, however any such assignment shall also require prior written consent from Contractor.

28. Insurance.

- a. Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in the Lead State and in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance 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.
- b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:
 1. Commercial General Liability covering premises liability, products and completed operations, contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$2 million general aggregate;
 2. Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity of any expiration, cancellation or nonrenewal of such policy within five (5) business days.

- c. Prior to commencement of performance, Contractor shall provide to the Participating Entity a certificate of insurance showing the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating Entity as an additional insured, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating Entity as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.
- d. During the term of this Master Agreement, the Lead State and Participating Entities may request Contractor provide evidence of coverage that meets the requirements of this Section. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.
- e. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

29. Administrative Fees.

- a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable.
- b. The NASPO ValuePoint Administrative Fee in this section shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

c. Additionally, some states may require an additional fee be paid directly to the state only 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 Purchasing Entity may allow the Contractor to adjust the Master Agreement pricing to account for these additional fees for purchases made by Purchasing Entities within the jurisdiction of the Participating Entity. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee.

30. NASPO ValuePoint Reports

a. Sales Data Reporting. In accordance with this section, Contractor shall report to NASPO ValuePoint all Orders under this Master Agreement for which Contractor has invoiced the ordering entity or individual, including Orders invoiced to Participating Entity or Purchasing Entity employees for personal use if such use is permitted by this Master Agreement and the applicable Participating Addendum ("Sales Data"). Timely and complete reporting of Sales Data is a material requirement of this Master Agreement. Reporting requirements, including those related to the format, contents, frequency, or delivery of reports, may be updated by NASPO ValuePoint with reasonable notice to Contractor and without amendment to this Master Agreement. NASPO ValuePoint shall have exclusive ownership of any media on which reports are submitted and shall have a perpetual, irrevocable, non-exclusive, royalty free, and transferable right to display, modify, copy, and otherwise use reports, data, and information provided under this section.

b. Summary Sales Data. "Summary Sales Data" is Sales Data reported as cumulative totals by state. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Summary Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. If Contractor has no reportable Sales Data for the quarter, Contractor shall submit a zero-sales report.

c. Detailed Sales Data. "Detailed Sales Data" is Sales Data that includes for each Order all information required by the Solicitation or by NASPO ValuePoint, including customer information, Order information, and line-item details. Contractor shall, using the reporting tool or template provided by NASPO ValuePoint, report Detailed Sales Data to NASPO ValuePoint for each calendar quarter no later than thirty (30) days following the end of the quarter. Detailed Sales Data shall be reported in the format provided in the Solicitation or provided by NASPO ValuePoint. The total sales volume of reported Detailed Sales Data shall be consistent with the total sales volume of reported Summary Sales Data.

d. Reserved.

e. Executive Summary. Contractor shall, upon request by NASPO ValuePoint, provide NASPO ValuePoint with an executive summary that includes but is not limited to a list of states with an active Participating Addendum, states with which Contractor is in negotiations, and any Participating Addendum roll-out or implementation activities and issues. NASPO ValuePoint and Contractor will determine the format and content of the executive summary.

31. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review.

a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.

b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the Participating Entity. Plans will include time frames to launch the

agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the Participating Entity.

- c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.
- d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.
- e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, cancel the Master Agreement pursuant to Paragraph 42 of Exhibit A, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if contractor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Cancellation based on nonuse or under-utilization will not occur sooner than two years after award of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to cancel the Master Agreement pursuant to Paragraph 42 of Exhibit A or to terminate for default pursuant to Paragraph 44 of Exhibit A.
- g. Contractor agrees to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in any Cooperative Purchasing Agreements with substantially similar terms and conditions and offering substantially similar products and services that (i) may materially affect the promotion of this Master Agreements or (ii) whose terms provide for adjustments to future rates or pricing based on rates, pricing in, or Orders from this Master Agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions. For the purposes of this paragraph, Cooperative Purchasing Agreement shall mean a cooperative purchasing program facilitating public procurement solicitations and agreements using a lead agency model. This does not include contracts with any federal agency or any federal contract.

32. Right to Publish.

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the public release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

33. Records Administration and Audit.

- a. 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.
- b. 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 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 six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder. Audits are limited to not more than one audit on an annual basis, and in no event shall any audit include the confidential financial information of the Contractor, except to the extent such information is required to verify Contractor's compliance with this Master Agreement, in which case Contractor may require execution of a non-disclosure agreement prior to granting access to such confidential information.

c. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any 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.

d. The rights and obligations herein 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 to review compliance with those obligations.

34. Indemnification

a. General Indemnity. Contractor shall indemnify the Indemnified Party by defending (to the extent permitted by a state's Attorney General) the Indemnified Party from any claims or causes of action (and paying all related damages and settlement payments, including attorney's fees, that a court finally awards or are included in a settlement approved by Contractor) for bodily injury (including death) and damage to real or tangible personal property brought by a third party to the extent arising from Contractor's intentional, willful, or negligent acts or omissions and actions. The Indemnified Party will promptly (i) notify Contractor in writing of the claim, (ii) supply information requested by Contractor and (iii) allow Contractor to control, and reasonably cooperate in, the defense and settlement, including mitigation efforts.

"Indemnified Party" means NASPO, NASPO ValuePoint, the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees.

The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the Indemnified Party's sole negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the Indemnified Party's failure to fulfill its obligation under this Contract.

b. Intellectual Property Indemnification. Notwithstanding Paragraph 34.a of Exhibit A, the Contractor shall indemnify the Indemnified Party by defending (to the extent permitted by the Attorney General) the Indemnified Party, at the Contractor's expense, from any action or claim (and paying all related damages and settlement payments, including attorney's fees, that a court finally awards or are included in a settlement approved by contractor) brought against the Indemnified Party by a third party to the extent that it is based on a claim that all or part of a Contractor-product infringes upon a patent or copyright of others, provided that the Indemnified Party promptly (i) notifies Contractor in writing of the claim, (ii) supplies information requested by Contractor, and (iii) allows Contractor to control, and reasonably cooperates in, the defense and settlement, including mitigation efforts. If such a claim or action arises, or in the Contractor's or the Indemnified Party's opinion is likely to arise, the Contractor may, at its discretion, either to (i) enable the Indemnified Party to continue to use the product, (ii) replace the product with one that is at least functionally equivalent or (iii) modify the allegedly infringing works or documents as necessary and appropriate to remedy the infringement claim. This intellectual property section states Contractor's entire obligation to Indemnified Party and Indemnified Party's exclusive remedy regarding any third party intellectual property claims.

Notwithstanding the foregoing, Contractor will not be liable under this section to the extent the infringement was caused by: 1) Contractor modification of the infringing material where such modification is made specifically for the Indemnified Party, and where the Indemnified Party has set forth the specific manner in which the modifications shall be made; 2) Indemnified Party modification of the infringing material; 3) Use of the Deliverables or the System in a manner not contemplated by this Contract or as otherwise authorized by the Contractor in writing; 4) use of the Deliverables or the System in combination, operation, or use with other products in a manner other than as contemplated by the Contract or otherwise authorized by the Contractor in writing.

35. Limitations of Liability

- a. The Parties agree that neither Party shall be liable, regardless of the form of action, for consequential, incidental, indirect, exemplary, or special damages, or lost profits, business, value, revenue, goodwill, or anticipated savings.
- b. Contractor's liability is limited to the greater of (i) the aggregate annual value amount of all fees paid to the Contractor by the Purchasing Entity under this Master Agreement; and (ii) \$5,000,000. This limit on liability does not apply to claims for bodily injury or death or to the intellectual property infringement set forth in Section 34(b). These limitations apply collectively to Contractor, its affiliates, contractors, and suppliers.
- c. Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system, or method is:
 1. provided by the Contractor or the Contractor's subsidiaries or affiliates;
 2. specified by the Contractor to work with the Product; or
 3. reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or
 4. It would be reasonably expected to use the Product in combination with such product, system or method.

36. Reserved

37. Assignment of Antitrust Rights.

Unless prohibited by the relevant state's statute to the contrary, Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor 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 in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

38. Debarment.

The Contractor certifies that neither Contractor nor its principals are presently debarred, suspended, declared ineligible, voluntarily excluded, from participation in this transaction (contract) by any governmental department or agency, or to the best of Contractor's knowledge is proposed for debarment. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

39. Governing Law and Venue.

- a. The construction and effect of the Master Agreement after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.
- b. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.
- c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

40. Confidentiality, Non-Disclosure, and Injunctive Relief.

- a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential, is otherwise identified as confidential, or would by its nature be clearly recognizable as confidential to a prudent person with no special knowledge or skill obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.
- b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least reasonable care to avoid disclosure of the information to unauthorized persons or entities, and shall not 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 what is necessary to the performance of Orders placed under this Master Agreement or as otherwise authorized by the Purchasing Entity. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State without undue delay if Contractor learns that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall reasonably cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor 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 Purchasing Entity's request, Contractor shall, to the extent feasible, turn over to Purchasing Entity or destroy all documents, papers, and other matter in Contractor's

possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. **Injunctive Relief.** Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, may cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing 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. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. **Purchasing Entity Law.** These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to the cooperative's Confidential Information, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to Paragraph 33 of Exhibit A. To the extent permitted by law, Contractor shall notify the Lead State of the identity of any entity seeking access to the Confidential Information described in this subsection.

41. Public Information.

This Master Agreement and all related documents are subject to disclosure pursuant to the Lead State's public information laws.

42. Cancellation.

Unless otherwise set forth in this Master Agreement, this Master Agreement may be canceled by either party upon 60 days written notice prior to the effective date of the cancellation. Further, any Participating Entity may cancel its participation upon 30 days written notice, unless otherwise stated in the 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 Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Cancellation of the Master Agreement due to Contractor default may be immediate if defaults cannot be reasonably cured as set forth in Paragraph 44 of Exhibit A.

43. Force Majeure.

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, restrictions imposed by a public health agency which unforeseeably and substantially inhibit Contractor's ability to deliver Product or other deliverables under this Master Agreement, other acts of God, or war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

44. Defaults and Remedies.

a. The occurrence of any of the following events shall be an event of default under this Master Agreement:

1. Nonperformance of material contractual requirements; or

2. A material breach of any term or condition of this Master Agreement; or
3. Any representation or warranty by Contractor in response to the RFP or in this Master Agreement that proves to be knowingly or intentionally untrue or materially misleading; or
4. Institution of proceedings under any bankruptcy, insolvency, court-ordered reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
5. Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of at least 30 calendar days in which Contractor 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.

c. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

1. Exercise any remedy provided by law; and
2. Terminate this Master Agreement and any related contracts or portions thereof; and
3. Suspend Contractor from being able to respond to future bid solicitations; and
4. Suspend Contractor's performance; and
5. Withhold payment until the default is remedied.

d. Unless otherwise specified in the Participating Addendum, 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 shall 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. Remedies available to a Purchasing Entity shall be subject to the Limitation of Liability provisions in this Master Agreement.

45. Waiver of Breach.

Failure of the Lead State, 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, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order 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, Participating Addendum, or Purchase Order.

46. 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 or electronic 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:

Elizabeth Randa, Acquisition Management Specialist
112 Administration Bldg.
50 Sherburne Avenue St. Paul, MN 55155
elizabeth.randa@state.mn.us

All notices to Contractor shall be addressed as follows:

Karen Schneider
International Business Machines Corp.
c/o US Contracts
6303 Barfield Rd, NE
Sandy Springs, GA 30328-4233
kasch@us.ibm.com

47. No Waiver of Sovereign Immunity.

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

Exhibit B: Minnesota Terms and Conditions

1. Change Requests.

The Lead State reserves the right to request, during the term of the Master Agreement, changes to the products offered within the Band(s). Products introduced during the term of the Master Agreement shall go through a formal review process. The process for updating the products offered within a Band is outlined in Paragraph 2 of Exhibit B. The Contractor shall evaluate and recommend products for which agencies have an expressed need. The Lead State shall require the Contractor 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 Contractor 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 Contractor. No products or services will be added to the Master Agreement without the Lead State's prior approval.

2. Product and Service Schedule (PSS).

- a. Creating the Product and Service Schedule (PSS). Contractor will use the attached sample PSS to create and maintain a complete listing of all products and services offered under the Master Agreement. The PSS must conform to the contracted minimum discounts. Contractor may create and maintain a separate PSS for a Participating Entity based on the requirements and restrictions of the Participating Entity.

Contractors are encouraged to provide remote learning bundles for K-12 Education. These bundles can be included in the response to the PSS.

- b. Maintaining the PSS.

1. In General. Throughout the term of the Master Agreement, on a monthly basis, Contractor may update the PSS to make model changes, add new products or services, or remove obsolete or discontinued products or services. Any updates to the PSS must conform to the Master Agreement requirements, including the scope of the Master Agreement and contracted minimum discounts.

2. Process. Contractor must provide notification to the Lead State of any changes to their PSS using the attached Action Request Form (ARF).

- a) The Lead State does not need to approve Contractor's request to make model changes, add their own manufactured products, or remove discontinued or obsolete products or services, and Contractor does not need the Lead State's approval prior to posting an updated PSS.
- b) The Lead State must approve Contractor's request to add new third party manufacturers to Contractor's PSS. If the proposed third-party manufacturer holds a NASPO Master Agreement for Computer Equipment, Contractor must obtain written authorization from that manufacturer. Contractor must have the Lead State's approval prior to posting the updated PSS.
- c) Contractor must maintain a historic record of all past PSSs under this Master Agreement that will be provided to Participating Entities upon request.

d) Pursuant to the audit provisions of the Master Agreement, upon the request of NASPO ValuePoint, the Lead State, or a Participating Entity, Contractor must provide an historic version of any Baseline Price List.

3. Purchase Orders.

There will be no minimum order requirements or charges to process an individual purchase order. The Participating Addendum number and the PO number will appear on appropriate documentation (i.e., invoices, packing slips, etc.). The Ordering Entity's purchase order constitutes a binding contract.

4. Risk of Loss or Damage.

The Purchasing Entity is relieved of all risks of loss or damage to the goods or equipment during periods of transportation, and installation by the Contractor and in the possession of the Contractor or their authorized agent. Responsibility and liability for loss or damage shall remain with the Contractor up to final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. Customer must report any loss or damage in writing to Contractor 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.

5. Payment Card Industry Data Security Standard and Cardholder Information Security.

Contractor 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, Contractor'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 Contractor'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. Contractor 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 Purchasing Entity shall be provided with full cooperation and access to conduct a thorough security review of Contractor's operations, systems, records, procedures, rules, and practices in the event of a security intrusion in order to validate compliance with PCIDSS.

6. Foreign Outsourcing of Work.

Upon request, the Contractor is required to provide information regarding the location of where Purchasing Entity data or Purchasing Entity Confidential Information is stored or processed under the Master Agreement or applicable Participating Addendum.

7. State Audits (Minn. Stat. § 16C.05, subd. 5).

The books, records, documents, and accounting procedures and practices of the Contractor or other party, that are relevant to the Master Agreement or transaction are subject to examination by the contracting agency and either the Lead State's Legislative Auditor or State Auditor as appropriate for a minimum of six years after the end of the Master Agreement or transaction, to the extent necessary to confirm Contractor's compliance with the terms of this Master Agreement. The Lead State reserves the right to authorize delegate(s) to audit this Master Agreement and transactions. The Lead State and the contracting agency shall each have a confidentiality agreement in place with each of its

delegate(s), the terms of which are substantially similar the confidentiality provisions in this Master Agreement.

The Lead State's or any third-party's access to Contractor's books and records, or those of its subcontractors, shall not include access to personnel, profit, or internal cost data. In addition, the parties shall mutually agree to what documents and records the Lead State or any third-party shall gain access prior to the Lead State or any third-party accessing such records and/or data.

The Lead State or any third-party shall each have such access up to one time in a twelve-month period. The Lead State or any third-party shall bear all costs associated with all audit activity. Such audit activity shall be conducted in a manner that is not disruptive to the Contractor's normal business activities.

8. Certification of Nondiscrimination (in accordance with Minn. Stat. § 16C.053).

If the value of this Contract, including all extensions, is \$50,000 or more, Contractor certifies it does not engage in and has no present plans to engage in discrimination against Israel, or against persons or entities doing business in Israel, when making decisions related to the operation of the contractor's business. For purposes of this section, "discrimination" includes but is not limited to engaging in refusals to deal, terminating business activities, or other actions that are intended to limit commercial relations with Israel, or persons or entities doing business in Israel, when such actions are taken in a manner that in any way discriminates on the basis of nationality or national origin and is not based on a valid business reason.

9. Human Rights/Affirmative Action.

The Lead State requires affirmative action compliance by its Contractors in accordance with Minn. Stat. § 363A.36 and Minn. R. 5000.3400 to 5000.3600.

- a. Covered Contracts and Contractors. If the Contract exceeds \$100,000 and the Contractor 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, then the Contractor must comply with the requirements of Minn. Stat. § 363A.36 and Minn. R. 5000.3400-5000.3600.
- b. 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 contractor'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.
- c. Disabled Workers. Minn. R. 5000.3550 provides the Contractor must comply with the following affirmative action requirements for disabled workers.

AFFIRMATIVE ACTION FOR DISABLED WORKERS

- (a) The Contractor 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 Contractor 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 Contractor 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 Contractor'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 Contractor 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 Contractor'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 Contractor must notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Contractor 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.

d. Consequences. The consequences of a Contractor'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.

e. Certification. The Contractor 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.

10. Equal Pay Certification.

If required by Minn. Stat. §363A.44, the Contractor must have a current Equal Pay Certificate prior to Contract execution. If Contractor's Equal Pay Certificate expires during the term of this Contract, Contractor must promptly re-apply for an Equal Pay Certificate with the Minnesota Department of Human Rights and notify the State's Authorized Representative once the Contractor has received the renewed Equal Pay Certificate. If Contractor claims to be exempt, the Lead State may require Contractor to verify its exempt status.

11. Reserved.

12. Nonvisual Access Standards.

Pursuant to Minn. Stat. § 16C.145, the Contractor 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.

13. Accessibility Standards.

Contractor acknowledges and is fully aware that the Lead State (Executive branch state agencies) has developed IT Accessibility Standard effective September 1, 2010. The standard entails, in part, the Web Content Accessibility Guidelines (WCAG) and Section 508 which can be viewed at: <https://mn.gov/mnit/government/policies/accessibility/>.

The Standards apply to web sites, software applications, electronic reports and output documentation, training delivered in electronic formats (including, but not limited to, documents, videos, and webinars), among others. As upgrades are made to the software, products, or subscriptions available through this Contract, the Contractor agrees to develop functionality which supports accessibility. If any issues arise due to nonconformance with the above-mentioned accessibility Standards, the Contractor agrees to provide alternative solutions upon request at no additional charge to the State.

Accessibility Conformance Reports (ACRs formerly known as VPATs) will be publicly available for the Contractor's offerings. The reports should record the accessibility of an offering in the manner recommended by the Information Technology Industry Council (ITI). It includes the following standards: US Section 508 of the Rehabilitation Act, the European standards as defined by EN 301 549, and WCAG.

For each offering created and maintained by the Contractor, Contractor will make a publicly available ACR upon General Availability of the offering. The ACR will record that offering's current accessibility status. If a new version of an offering addresses creates any modification in the offering's accessibility status, a new ACR will be created and linked to that new offering version. Details around what has changed between versions will be available in the public change logs of an offering. Up to two previous versions of an offering will be supported.

If items around an offering's accessibility are found to be intentionally misrepresented in the ACR or the Contractor fails to provide alternative solutions upon request for offerings it creates and maintains, this may be cause for contract cancellation or for the Lead State to consider the contract in default.

14. Conflict Minerals.

Contractor agrees to provide information upon request regarding adherence to the Conflict Minerals section of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Section 1502). See: <http://beta.congress.gov/111/bills/hr4173/111hr4173enr.pdf#page=838>, <http://www.sec.gov/news/press/2012/2012-163.htm>

15. Hazardous Substances.

To the extent that the goods to be supplied by the Contractor contain or may create hazardous substances, harmful physical agents or infectious agents as set forth in applicable state and federal laws and regulations, the Contractor must provide Material Safety Data Sheets as appropriate.

16. Copyrighted Material Waiver.

The Lead State reserves the right to use, reproduce and publish proposals in response to this Master Agreement in any manner necessary for State agencies and local units of government to access the responses, including but not limited to photocopying, State Intranet/Internet postings, broadcast faxing, and direct mailing. In the event that 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 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 per section 33.b. above.

17. Publicity.

The Contractor shall make no representations of the State's opinion or position as to the quality or effectiveness of the products or services that are the subject of the Master Agreement without the prior written consent of the State's Assistant Director or designee of Office of State Procurement. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

18. 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.

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

The Contractor 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 Lead State's Department of Administration's Office of State Procurement that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the Lead State may, at its discretion, cancel the Master Agreement. In the event the Contractor 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 Lead 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," "Contractor," "Master Agreement", "Master Agreement Administrator" and "Contract Administrator" modified appropriately to preserve the State's rights.

20. 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 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 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.

21. Government Data Practices.

For this Master Agreement, a Minnesota Participating Addendum, and any Order under the Minnesota Participating Addendum, the Contractor 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 Contractor and all data provided to the Lead State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained, or disseminated by the Contractor 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 Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the Lead State. The Lead State will give the Contractor 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 Contractor or the Lead State.

The Contractor agrees to indemnify, save, and hold the Lead State, 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 Contractor subcontracts any or all of the work to be performed under the Master Agreement, the Contractor shall retain responsibility under the terms of this article for such work.

22. Survivability.

Certain rights and duties of the Lead State and Contractor will survive the expiration or cancellation of the RFP and resulting Master Agreement. These rights and duties include but are not limited to paragraphs: Indemnification; Limitations of Liability; State Audits; Government Data Practices; Governing Law and Venue; Publicity; and Administrative Fees.

23. Severability.

If any provision of the Master Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, then both the Lead State and the Contractor 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.

Exhibit C: Requirements

1. Contractor Verification.

Contractor must be a manufacturer of a Product in the Band(s) it is awarded a Master Agreement. "Re-branding" a product that is manufactured by another company does not meet this requirement. If the Contractor ceases production, sells or assigns their manufacturing to another vendor, or otherwise no longer manufactures a product during the life of the Master Agreement the Lead State reserves the right to terminate the Contractor's Master Agreement.

2. Warranty and Maintenance.

Contractor must ensure warranty service and maintenance for all equipment, including third party products provided. The Contractor must facilitate the Manufacturer or Publisher warranty and maintenance of third party products furnished through the Master Agreement. The Contractor shall provide the warranty service and maintenance for equipment and all peripherals on the Master Agreement.

3. Website.

Contractor must develop and maintain a URL to a web site specific to the awarded Master Agreement. Contractor's Master Agreement website must offer twenty-four (24) hours per day, seven (7) days per week availability, except for regularly scheduled maintenance times. The website must be separate from the Contractor's commercially available (i.e., public) on-line catalog and ordering systems. No other items or pricing may be shown on the website without written approval from the Lead State

a. Mandatory Specifications:

- Designated Baseline Price List(s) (e.g., MSRP, List, or Education)
- Product and Service Schedule (PSS)
- Product specifications, pricing,
- Service options and service agreements available on the contract. Please refer to Paragraph 5.
- Contact information for order placement, service concerns (warranty and maintenance), problem reporting, and billing concerns
- Sales representatives for participating entities
- Links to environmental certification, including but not limited to take-back/recycling programs, EPEAT, Energy Star, etc.

b. Desirable Specifications:

- Purchase order tracking
- Information on accessibility and accessible products
- Signed Master Agreement
- Online ordering capability with the ability to remember multiple ship to locations (if applicable to product)
- List of approved partners, if applicable

Within 30 calendar days of the notice of intent to award a Master Agreement, Contractor 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 Contractor will have 15 calendar days to provide revisions to the Lead State. After the Lead State approves the website, Contractor may not make material changes to the website without notifying the Lead State through the ARF process and receiving written approval of the changes.

4. **Environmental Certifications.**

Contractor must include environmental or supply chain responsibility certifications and registrations for products sold through this Contract on their website. Contractor must provide these certifications and registrations for specific products to Participating Entities upon request.

5. **EPEAT Registration.**

Contractor agrees that applicable products offered that have EPEAT Standards provided under the Master Agreement must have achieved a minimum EPEAT Bronze registration. This requirement does not apply to Band 3.

Contractor may propose the addition of a product that has not yet achieved a minimum EPEAT Bronze registration. The Lead State, in its sole discretion may require Contractor to provide the following documentation to support the addition of the proposed product:

- A letter from the Green Electronics Council (GEC) on GEC's letterhead confirming that the verification process is underway; or
- A copy of Contractor's GEC contract, Conformity Assurance Board (CAB) contract, and a letter from Contractor's CAB stating that the relevant product has been registered with the CAB and that verification is underway.

The Lead State reserves the right to reject the inclusion of such product, or if approved, require Contractor to remove the product at a later date if the product does not achieve a minimum EPEAT Bronze registration. The Contractor must remove any products that subsequently exit the verification process without achieving EPEAT Bronze or greater from the Master Agreement.

6. **Third-Party Products.**

Some products offered may be manufactured by a third party. Contractor, however, must provide or facilitate the warranty service and maintenance for all Third-Party Products on the Master Agreement either directly or pass-through from the manufacturer. Contractor may not offer products manufactured by another Contractor holding a Minnesota NASPO ValuePoint Master Agreement for Computer Equipment without approval from the Lead State. Warranty for third-party products must be provided by the Contractor. Warranty documents for products manufactured by a third party are preferred to be delivered to the Participating Entity with the products. Contractor can only offer Third-Party Products in a Band they have been awarded.

Third-Party Products are intended to enhance or supplement a Contractor's own product line, and are not intended to represent more than a third of Contractor's total sales under this Master Agreement. The Lead State may limit the sale of Third-Party Products through the Master Agreement during the life of the Master Agreement should Third-Party Product sales be determined to consistently exceed one third of the total sales under this Master Agreement. Such limitation may take the form of any action the Lead State so chooses, up to and including non-renewal or cancellation of the Master Agreement.

7. **Partner Utilization.**

If utilizing partners, the Contractor is responsible for the partners providing products and, if applicable, services, as well as warranty service and maintenance for equipment the partner provides. Participating Entities have the option of utilizing partners. Contractor must provide a Participating Entity a copy of its plan for partner utilization upon request. Contractor must make available a list of approved partners for each Participating Entity. Participating Entities must approve specific Partners as outlined within the relevant Participating Addendum, and only partners approved by the Participating Entity may be deployed. The Participating Entity and Contractor will define the process to add and remove partners in the Participating Addendum.

8. **2019 National Defense Authorization Act, Section 889(f)(3).**

Under the 2019 National Defense Authorization Act, Section 889(f)(3), the US military is prohibited from purchasing video surveillance and telecommunications equipment from certain Chinese-owned technology firms. While US states

are not subject to this act, there is increasing concern for the security of state data. Contractor certifies for the term of this Master Agreement that it complies with Section 889 of the National Defense Authorization Act, as amended.

Contractor certifies for the term of this Agreement that (1) the purchase of any Product is not prohibited under law, regulation, or policy by the United States federal government, a U.S. State or territory, or a local governmental entity; (2) Contractor is not owned in part or whole by a foreign government or foreign government entity; and (3) That Contractor's delivery of products and services under this Master Agreement are not subject to Chinese law, including the China Internet Security Law, effective June 2017 (or later), as passed by the Chinese Communist Party, through the Standing Committee of the National People's Congress.

Exhibit D: Pricing Schedule

Attached and incorporated into this Master Agreement as Exhibit D is the Pricing Schedule.

*NASPO ValuePoint Computer Equipment (2023-2028)***CONTROL SET****Master Agreement:** 23012**Contractor Name:** IBM**Awarded Bands:**

☐	Band 1: Personal Computing Devices (Windows)
☐	Band 2: Personal Computing Devices (Non-Windows)
☒	Band 3: Servers and Storage

Band	Category Code	Category Description	Discount off Baseline List
3	3B	Band 3 - Minimum Discount	15.0%
3	3B-1	IBM System Z	0.75%
3	3B-2	Non-discountable	0.0%
3	3B-3	IBM Middleware (perpetual license software) for government	15.0%
3	3B-4	IBM System Z OTC	0.0%
3	3B-5	IBM System Z MLC	0.0%
3	3B-6	IBM Middleware, non-discountable	0.0%
3	3T	Third Party Product Minimum Discount	5.0%
	S1	Hardware Maintenance	Custom per configuration
	S2	Distributed Subscription Software - Middleware	3.0%
	S3	Virtual Server	varies based on build
	S4	Virtual Storage	varies based on build
	S5	Labor Rate Card	Hourly (labor only)

Exhibit D: Price Schedule

Discount Structure

Master Agreement: 23012
Contractor Name: IBM
Baseline Price List: Posted on Contractor's dedicated NASPO ValuePoint website

Band 3: Servers and Storage			
Band	Category Code	Category Description	Discount off Baseline List
3	3B	Band 3 - Minimum Discount	15.0%
3	3B-1	IBM System Z	0.75%
3	3B-2	Non-discountable	0.0%
3	3B-3	IBM Middleware (perpetual license software) for government	15.0%
3	3B-4	IBM System Z OTC	0.0%
3	3B-5	IBM System Z MLC	0.0%
3	3B-6	IBM Middleware, non-discountable	0.0%
3	3T	Third Party Product Minimum Discount	5.0%

Exhibit D: Price Schedule**Volume-Based Discounts**

Master Agreement: 23012
Contractor Name: IBM

All Awarded Bands**1. Per Transaction Multiple Unit Discount(s)**

Contractor provides a contractual volume discount program as follows based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity, or multiple entities conducting a cooperative purchase.

IBM treats each customer solution as a unique transaction and therefore does not offer a set multiple unit discount. IBM competitively discounts our products and therefore can and does offer deeper than NASPO entitled discounts depending on any number of factors including configuration and competition.

2. Cumulative Discount(s)

Contractor provides a cumulative volume discount as follows based on dollars resulting from the cumulative purchases by all purchases made by Purchasing Entities for the duration of the Master Agreement.

IBM treats each customer solution as a unique transaction and therefore does not offer cumulative volume discounts. However, as stated above, IBM competitively discounts our products and therefore can and does offer deeper than NASPO entitled discounts depending on any number of factors including configuration, competition and volumes.

3. Other Discount(s)

Additional discount(s) available.

An example of other discounts would be an IBM promotion for a specific product(s) for a prescribed period of time.

[illegible]

Exhibit D: Price Schedule

Lease Rates

Master Agreement: 23012
Contractor Name: IBM

All Awarded Bands

Optional: Lease Rates

Participating Addendum may identify if and how leasing agreement terms will be conducted. Lease rates are variable, based upon award.

Exhibit D: Price Schedule

Prompt Payment Discount

Master Agreement: 23012
Contractor Name: IBM

All Awarded Bands

		in 30
		in 15, Net 30
		in 10, Net 30
X		Net 30
	Other (specify):	

Exhibit E: Contractor Terms and Conditions

Attached by reference as Exhibit E are the following Contractor document(s):

Contractor Software License: Customer's rights to use the software delivered by Contractor are governed by the terms of the Contractor's software license agreement. Unless different terms have been agreed between the parties, the International Program License Agreement ("IPLA"): <https://www.ibm.com/support/customer/csol/terms/?id=i125-3301&lc=en> shall apply.

Other Contractor Terms: Other Contractor terms utilized for purchases under this Master Agreement are for information purpose only and are set forth below. The hyperlinks shall be contained within Contractor's Model Participating Addendum for presentation to each individual Participating Entity. These, together with the state law provisions applicable to each Participating Entity, are intended to be negotiated by Contractor and Participating Entity as part of the Participating Addendum and will only become effective once executed and included in a Participating Addendum.

- Client Relationship Agreement (CRA): https://www.ibm.com/support/customer/csol/terms/?id=Z126-6548_FED&cc=us&lc=en. The CRA applies to orders for Programs, Cloud and other Services, Machines, and Applications (collectively IBM Products) and third-party products and services (Non-IBM Products) Customer purchases from Contractor or Contractor's business partner (reseller or distributor).
- Technical Services Attachment for Technical Support Services (TSS) Offerings for State and Local Government: <https://www.ibm.com/support/customer/csol/terms/?ref=Z126-9315-01-11-2021-us-en>. The TSA for TSS Offerings for S&L is required for state and local government entities to order Technology Support Services from Contractor or Contractor's business partner (reseller or distributor). This Attachment, when combined with the CRA (or equivalent) master agreement, and the relevant Transaction Document ("TD"), make up the terms and conditions applicable to Contractor's provision of TSS services to the Customer.
- International Passport Advantage Agreement (IPAA). <https://www.ibm.com/support/customer/csol/terms/?ref=Z125-5831-11-02-2023-zz-en>. Customer's rights to use Eligible Products ("EP") acquired from Contractor or Contractor's business partner (reseller or distributor) are governed by the terms of the applicable license agreement. Details regarding EPs are provided in Attachments, and Transaction Documents ("TD") such as Terms of Use, Service Descriptions, quotes, and Proofs of Entitlement ("PoE").
- IPAA US State, Local, and Education (SLED) Government Contracts – Attachment for Subscription License. https://www.ibm.com/support/customer/csol/terms/?ref=Z126-8665_SLED-02-02-2023-us-en. This Attachment governs the license of Software Contractor makes available on a Subscription License basis that Customer acquires from Contractor or Contractor's business partner (distributor or reseller) under a state or local government contract with Contractor.
- International Agreement for Acquisition of Software Maintenance (IAASM) <https://www.ibm.com/support/customer/csol/terms/?ref=Z125-6011-04-10-2014-zz-en>. This Agreement governs software maintenance that Customer acquires from Contractor or Contractor's business partner (distributor or reseller).

NASPO ValuePoint Computer Equipment (2023-2028)

CONTROL SET

Master Agreement: 23012

Contractor Name: IBM

Awarded Bands:

	Band 1: Personal Computing Devices (Windows)
	Band 2: Personal Computing Devices (Non-Windows)
X	Band 3: Servers and Storage

Band	Category Code	Category Description	Discount off Baseline List
3	3B	Band 3 - Minimum Discount	15.0%
3	3B-1	IBM System Z	0.75%
3	3B-2	Non-discountable	0.0%
3	3B-3	IBM Middleware (perpetual license software) for government	15.0%
3	3B-4	IBM System Z OTC	0.0%
3	3B-5	IBM System Z MLC	0.0%
3	3B-6	IBM Middleware, non-discountable	0.0%
3	3T	Third Party Product Minimum Discount	5.0%
	S1	Hardware Maintenance	Custom per configuration
	S2	Distributed Subscription Software - Middleware	3.0%
	S3	Virtual Server	varies based on build
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	S5	Labor Rate Card	Hourly (labor only)

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3	3B-4	IBM System Z OTC	0.0%
3	3B-5	IBM System Z MLC	0.0%
3	3B-6	IBM Middleware, non-discountable	0.0%
3	3T	Third Party Product Minimum Discount	5.0%

Exhibit D: Price Schedule

Volume-Based Discounts

Master Agreement: 23012
Contractor Name: IBM

All Awarded Bands

1. Per Transaction Multiple Unit Discount(s)

Contractor provides a contractual volume discount program as follows based on dollars in a single purchase order or combination of purchase orders submitted at one time by a Purchasing Entity, or multiple entities conducting a cooperative purchase.

IBM treats each customer solution as an unique transaction and therefore does not offer a set multiple unit discount. IBM competitively discounts our products and therefore can and does offer deeper than NASPO entitled discounts depending on any number of factors including configuration and competition.

2. Cumulative Discount(s)

Contractor provides a cumulative volume discount as follows based on dollars resulting from the cumulative purchases by all purchases made by Purchasing Entities for the duration of the Master Agreement.

IBM treats each customer solution as an unique transaction and therefore does not offer cumulative volume discounts. However, as stated above, IBM competitively discounts our products and therefore can and does offer deeper than NASPO entitled discounts depending on any number of factors including configuration, competition and volumes.

3. Other Discount(s)

Additional discount(s) available.

An example of other discounts would be an IBM promotion for a specific product(s) for a prescribed period of time.

Services

Contractor Name: IBM

Travel for Services will be negotiated with each Participating Entity in the Participating Addendum.

[illegible]

Exhibit D: Price Schedule

Lease Rates

Master Agreement: 23012

Contractor Name: IBM

All Awarded Bands

Optional: Lease Rates

Participating Addendum may identify if and how leasing agreement terms will be conducted. Lease rates are variable, based upon award.

Exhibit D: Price Schedule

Prompt Payment Discount

Master Agreement: 23012

Contractor Name: IBM

All Awarded Bands

☐	☐	in 30
☐	☐	in 15, Net 30
☐	☐	in 10, Net 30
☒		Net 30
☐	Other (specify):	