

STATE OF NEBRASKA CONTRACT AWARD

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

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

CONTRACT NUMBER
14260 OC

PAGE 1 of 2	ORDER DATE 12/29/15
BUSINESS UNIT 9000	BUYER NANCY STORANT (AS)
VENDOR NUMBER: 1313069	
VENDOR ADDRESS: IBM CORPORATION CONTRACT SALES TEAM 7100 HIGHLANDS PKWY SE SMYRNA GA 30082-4859	

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

DECEMBER 15, 2015 THROUGH MARCH 31, 2017

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

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

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

Originally awarded from NASPO Value Point Contract MNWNC-116

Supply and deliver Computer Equipment (Server and Storage), Peripherals and Related Services, FOB Destination, to the State of Nebraska per the following Contract Information and attached Participating Addendum.

IBM Corporation NASPO ValuePoint website: <www.ibm.com/nebraska/naspo>

The IBM Corporation's NASPO ValuePoint website will assist you with contact information, product and service information, product configuration, pricing, how to order, warranty support, etc.

The State Purchasing Bureau encourages agencies to contact the designated Inside Sales Representative/Account Representative to learn more about special promotions, and to obtain volume discount quotes.

The following configuration limits apply to this contract:

Server: \$500,000
Storage: \$500,000

The dollar limits identified above are based on a SINGLE computer configuration. This is NOT a restriction on the purchase of multiple configurations (e.g. an entity could purchase 2 Servers for a total purchase price of \$600,000).

The Purchase Order must include the State of Nebraska NASPO ValuePoint Contract #14260 OC and the IBM Corporation's NASPO ValuePoint Master Agreement Number MNWNC-116.

Leasing is outside the scope of the NASPO ValuePoint Agreement and this contract.

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

(For the File: This RFP and Contract are bid and awarded by the State of Minnesota. All backup bids, etc., are retained by the State of Minnesota, Department of Administration, Materials Management Division.)

(For the File: The NASPO ValuePoint/IBM Corporation Master Price Agreement contract period was effective on April 1, 2015. The

12/29/15
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BUYER KS/14260 OC
MATERIEL ADMINISTRATOR
12-30-15

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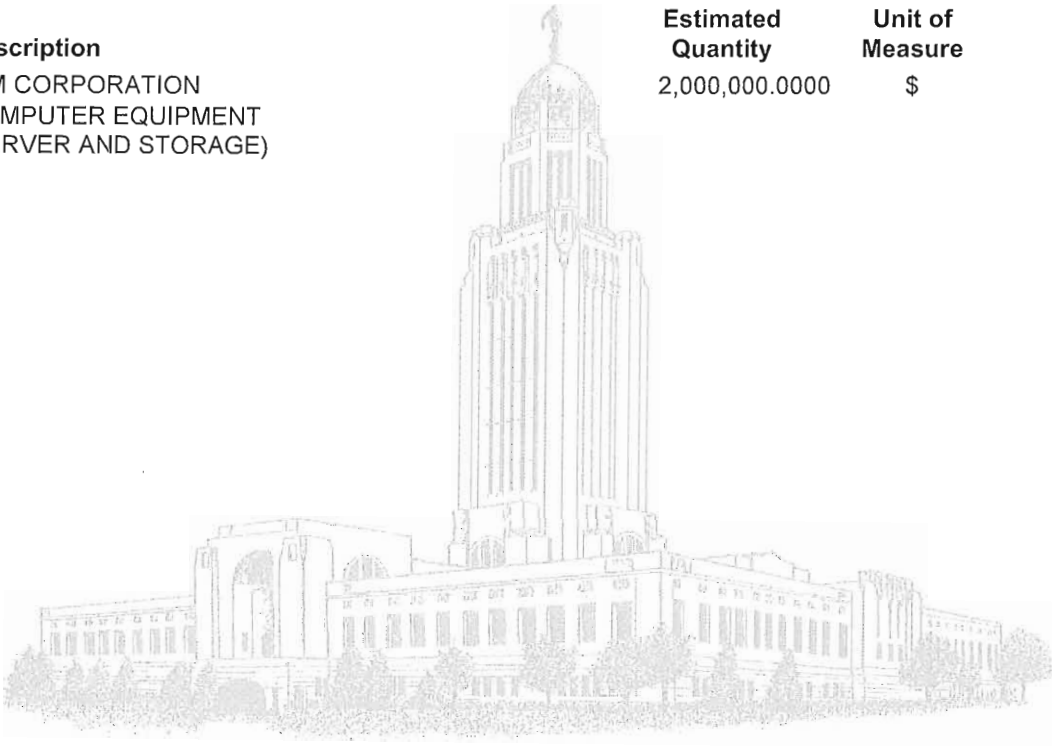
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VENDOR NUMBER: 1313069	

NASPO/ValuePoint/IBM Corporation Participating Addendum became effective on December 15, 2015.

Vendor Contact: Karen Schneider
 Phone: 720-397-5563
 Email: kasch@us.ibm.com

(djo 12/29/15)

Line	Description	Estimated Quantity	Unit of Measure	Unit Price
1	IBM CORPORATION COMPUTER EQUIPMENT (SERVER AND STORAGE)	2,000,000.0000	\$	1.0000



BUYER INITIALS

PARTICIPATING ADDENDUM
NASPO ValuePoint COOPERATIVE PURCHASING PROGRAM
Computer Equipment
Administered by the State of Minnesota (hereinafter "Lead State")

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1. Scope: This addendum covers the NASPO ValuePoint Computer Equipment contracts led by the State of Minnesota along with a multi-state sourcing team for use by state agencies and other entities located in the Participating State/Entity that is authorized by that state's statutes to utilize state /entity contracts, and which receives prior written approval of the state's chief procurement official.

The original solicitation contains the requirements and definitions establishing the following Product Bands allowed on the Master Agreement. The Master Agreement identifies the bands awarded to the Contract Vendor. The configuration limits and restrictions for the Master Agreement are provided with revisions identified by the Participating State in this Participating Addendum.

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

3. Order of Precedence:

1. A Participating Entity's Participating Addendum ("PA"); A Participating Entity's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contract Vendor under the Terms of Minnesota NASPO ValuePoint Master Agreement
2. Minnesota NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions)
3. The Solicitation including all Addendums; and
4. Contract Vendor's response to the Solicitation

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the

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Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

4. Participating State Modifications or Additions to Master Agreement:

- a. **CONTRACT PERIOD:** December 15, 2015 through March 31, 2017 with the option to extend the contract up to 36 months upon agreement by both parties.
- b. **COMPLIANCE WITH CIVIL RIGHTS LAWS AND EQUAL OPPORTUNITY EMPLOYMENT / NONDISCRIMINATION**
The contractor shall comply with all applicable local, State and Federal statutes and regulations regarding civil rights laws and equal opportunity employment. The Nebraska Fair Employment Practice Act prohibits contractors of the State of Nebraska, and their subcontractors, from discriminating against any employee or applicant for employment, with respect to hire, tenure, terms, conditions or privileges of employment because of race, color, religion, sex, disability, or national origin (Neb. Rev. Stat. §48-1101 to 48-1125). The contractor guarantees compliance with the Nebraska Fair Employment Practice Act, and breach of this provision shall be regarded as a material breach of contract. The contractor shall insert a similar provision in all subcontracts for services to be covered by any contract resulting from this contract.
- c. **PERMITS, REGULATIONS, LAWS**
The contractor shall procure and pay for all permits, licenses and approvals necessary for the execution of the contract. The contractor shall comply with all applicable local, state, and federal laws, ordinances, rules, orders and regulations that apply to a provider of commercial information technology products and services.
- d. **OWNERSHIP OF INFORMATION AND DATA**
IBM provides consulting, installation, customization and configuration, maintenance, and other services as detailed in an Attachment or Transaction Document. The State will own the copyright in works of authorship that IBM develops for the State under a

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Statement of Work(SOW) (Project Materials). Project Materials exclude works of authorship delivered to the State, but not created, under the SOW, and any modifications or enhancements of such works made under the SOW(Existing Works). Some Existing Works are subject to a separate license agreement (Existing Licensed Works). A Program is an example of an Existing Licensed Work and is subject to the Program terms. IBM grants the State an irrevocable (subject to the State's payment obligations), nonexclusive, worldwide license to use, execute, reproduce, display, perform and prepare derivatives of Existing Works that are not Existing Licensed Works. IBM retains an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute, and prepare derivative works of Project Materials.

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

e. **INDEPENDENT CONTRACTOR**

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

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

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State including without limit, tenure rights, medical and hospital care, sick and vacation leave, severance pay or retirement benefits.

f. **CONTRACTOR RESPONSIBILITY**

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

If the contractor intends to utilize any subcontractors' services, the subcontractors' level of effort, tasks and time allocation must be clearly defined in the contract. Following execution of the contract, the contractor shall proceed diligently with all services and shall perform such services with qualified personnel in accordance with the contract.

g. **CONTRACTOR PERSONNEL**

The contractor represents that all persons assigned to the project shall be employees of the contractor or specified subcontractors, and shall be fully qualified to perform the work required herein. Personnel employed by the contractor to fulfill the terms of the contract shall remain under the sole direction and control of the contractor. The contractor shall include a similar provision in any contract with any subcontractor selected to perform work on the project.

Replacement of key personnel, if approved by the State, shall be with personnel of equal or greater ability and qualifications.

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

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

- 1) any and all employment taxes and/or other payroll withholding;
- 2) any and all vehicles used by the contractor's employees, including all insurance required by state law;

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- 3) damages incurred by contractor's employees within the scope of their duties under the contract subject to the Limitation of Liability provisions herein;
- 4) maintaining workers' compensation and health insurance and submitting any reports on such insurance to the extent required by governing State law; and
- 5) determining the hours to be worked and the duties to be performed by the contractor's employees.

h. INSURANCE

Coverage and limits shall be excluded from any Contract Vendor's liability limit and obligations under this Master Agreement, such that claims made against and paid under said coverage shall not be considered or aggregated toward contractors liability limit(s) contained in Exhibit A, WSCA-NASPO Master Agreement Terms and Conditions, Section C17

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions

i. STATE OF NEBRASKA PERSONNEL RECRUITMENT PROHIBITION

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

j. CONFLICT OF INTEREST

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

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

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

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k. **ERRORS AND OMISSIONS**

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

l. **ASSIGNMENT BY THE STATE**

The State shall have the right to assign or transfer the contract or any of its interests herein to any agency, board, commission, or political subdivision of the State of Nebraska. Any such assignment shall have the prior written consent of the Contractor which shall not be unreasonably withheld. There shall be no charge to the State for any assignment hereunder.

m. **ASSIGNMENT BY THE CONTRACTOR**

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

GOVERNING LAW

The contract shall be governed in all respects by the laws and statutes of the State of Nebraska. Any legal proceedings against the State of Nebraska regarding this contract shall be brought in the State of Nebraska administrative or judicial forums as defined by State law. The contractor must be in compliance with all Nebraska statutory and regulatory law that apply to a provider of commercial information technology products and services..

n. **ADVERTISING**

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

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o. STATE PROPERTY

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

p. SITE RULES AND REGULATIONS

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

q. EARLY TERMINATION

The contract may be terminated as follows:

- 1) The State and the contractor, by mutual written agreement, may terminate the contract at any time.

The State, in its sole discretion, may terminate the contract for any reason upon 30 days written notice to the contractor. Such termination shall not relieve the contractor of warranty or other service obligations incurred under the terms of the contract. In the event of cancellation the contractor shall be entitled to payment, determined on a pro rata basis, for products or services satisfactorily performed or provided.

- 2) The State may terminate the contract immediately for any of the following reasons:
 - a) if directed to do so by statute;

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- b) contractor has made an assignment for the benefit of creditors, has admitted in writing its inability to pay debts as they mature, or has ceased operating in the normal course of business;
 - c) a trustee or receiver of the contractor or of any substantial part of the contractor's assets has been appointed by a court;
 - d) fraud, misappropriation, embezzlement, malfeasance, misfeasance, or illegal conduct pertaining to performance under the contract by its contractor, its employees, officers, directors or shareholders;
 - e) an involuntary proceeding has been commenced by any party against the contractor under any one of the chapters of Title 11 of the United States Code and (i) the proceeding has been pending for at least sixty (60) days; or (ii) the contractor has consented, either expressly or by operation of law, to the entry of an order for relief; or (iii) the contractor has been decreed or adjudged a debtor;
 - f) a voluntary petition has been filed by the contractor under any of the chapters of Title 11 of the United States Code;
 - g) contractor intentionally discloses confidential information;
 - h) contractor has or announces it will discontinue support of the deliverable;
 - i) second or subsequent documented "vendor performance report" form deemed acceptable by the State Purchasing Bureau.
- r. **FUNDING OUT CLAUSE OR LOSS OF APPROPRIATIONS**
The State may terminate the contract, in whole or in part, in the event funding is no longer available. The State's obligation to pay amounts due for fiscal years following the current fiscal year is contingent upon legislative appropriation of funds for the contract. Should said funds not be appropriated, the State may terminate the contract with respect to those payments for the fiscal years for which such funds are not appropriated. The State will give the contractor written notice thirty (30) days prior to the effective date of any termination, and advise the contractor of the location (address and room number) of any related equipment. All obligations of the State to make payments after the termination date will cease and all interest of the State in any related equipment will terminate. The contractor shall be entitled to receive just and equitable compensation for any authorized work which has been satisfactorily

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completed as of the termination date. In no event shall the contractor be paid for a loss of anticipated profit.

s. **BREACH BY CONTRACTOR**

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

t. **FORCE MAJEURE**

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

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u. **PRODUCT DELIVERY**

The contractor agrees to use commercially reasonable efforts to deliver Products to the State of Nebraska within fourteen (14) to twenty-one (21) days after receipt of a valid Purchase Order, or otherwise in accordance with the schedule contained in the Purchase Order as mutually agreed between the parties.

v. **PROHIBITION AGAINST ADVANCE PAYMENT**

Payments shall not be made until contractual deliverable(s) are received and accepted per WSCA-NASPO Exhibit A, Master Agreement Terms and Conditions B.28. .

w. **PAYMENT**

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

x. **INVOICES**

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

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y. **AUDIT REQUIREMENTS**

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

In addition to, and in no way in limitation of any obligation in the contract, the contractor shall agree that it shall return to the State all payments made under the contract for which an exception has been taken or which has been disallowed because of such an exception as a result of an audit.

z. **TAXES**

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

aa. **INSPECTION AND APPROVAL**

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

bb. **LEASE AGREEMENTS**

No Leasing is authorized under this Addendum.

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- cc. **SEVERABILITY**
If any term or condition of the contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and conditions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.
- dd. **CONFIDENTIALITY**
Parties will not disclose confidential information without a separate, signed confidentiality agreement. If confidential information is exchanged in connection with this Agreement, the applicable confidentiality agreement is incorporated into, and subject to, this Participating Addendum.
- ee. **LIMITATION OF LIABILITY AND INDEMNIFICATION**
- 1) **Items for Which IBM May Be Liable**
The Contractor shall indemnify, keep and save harmless the State of Nebraska, its officials, and employees against suits or claims (and all related damages, settlement payments, attorneys' fees, costs, expenses, losses or liabilities) by a third party that a court finally awards against the State or are included in a settlement approved in advance by Contractor which are attributable to bodily injury or death, or to injury to or destruction of tangible personal property arising out of or in connection with the services acquired hereunder. Contractor shall be given timely written notice of any suit or claim, and State shall allow Contractor to control to the extent approved by the Nebraska Attorney General's Office, which will not be unreasonably withheld and State shall reasonably cooperate with Contractor in the defense and any related settlement negotiations." If the Nebraska Attorney General's Office does not give such approval, IBM has no obligation to defend the State of Nebraska as set forth above.

Circumstances may arise where, because of a default on IBM's part or other liability, Customer is entitled to recover damages from IBM. Regardless of the

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basis on which Customer is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract), IBM's entire liability for all claims in the aggregate for actual, direct damages will not exceed the amount of \$2,000,000.

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

- a) payments referred to in the Intellectual Property Protection section above; and
 - b) damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.
 - c) contractors intentional misconduct or claims sounding in tort
- 2) **Items for Which IBM Is Not Liable**
Except as expressly required by law without the possibility of contractual waiver, under no circumstances is IBM, its subcontractors, or Program developers liable for any of the following even if informed of their possibility:
- a) loss of, or damage to, data;
 - b) special, incidental, exemplary, or indirect damages or for any economic consequential damages; or
 - c) lost profits, business, revenue, goodwill, or anticipated savings.
- This clause shall not be construed to bar any legal remedies the Contract Vendor may have with the State's failure to fulfill its obligations pursuant to the Master Agreement.

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

- 3) **Third Party Claims**

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

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

4) Remedies

If such a Third Party claim is made or appears likely to be made, Customer agrees to permit IBM, in IBM's discretion, either to i) enable Customer to continue to use the Product, ii) modify it, or iii) replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, then on IBM's written request, Customer agrees to promptly return the Product to IBM and discontinue its use. IBM will then give Customer a credit equal to:

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

5) Claims for Which IBM is Not Responsible

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

- a) anything provided by Customer or a third party on Customer's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by Customer or a third party on Customer's behalf;

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

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

6) **PERSONNEL**

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

ff. **NEBRASKA TECHNOLOGY ACCESS STANDARDS**

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

gg. **ANTITRUST**

The contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this contract resulting from

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antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

- hh. **PERFORMANCE** The acceptance of late performance with or without objection or reservation by the State shall not waive any rights of the State nor constitute a waiver of the requirement of timely performance of any obligations on the part of the contractor remaining to be performed.

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

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

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

- 1) The Contractor must complete the United States Citizenship Attestation Form, available on the Department of Administrative Services website at www.das.state.ne.us.

- 2) If the Contractor indicates on such attestation form that he or she is a qualified alien, the Contractor agrees to provide the US Citizenship and Immigration Services documentation required to verify the Contractor's lawful presence in

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the United States using the Systematic Alien Verification for Entitlements (SAVE) Program.

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

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

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

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

- 1) Purchase order number;

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- 2) Description;
- 3) Quantity; and
- 4) Price.

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

<u>Period End</u>	<u>Report Due</u>
December 31	January 31
March 31	April 30
June 30	July 31
September 30	October 31

nn. **ADMINISTRATIVE FEE /REBATE**

The Contractor agrees to provide a quarterly administrative fee in the form of a check. The fee will be payable to the State for an amount equal to one percent (1%) the net sales (net of any returns, credits, or adjustments under this Addendum for the period. The Contractor's NASPO ValuePoint pricing to the State shall not be adjusted to offset for the equivalent fee amount. Payments shall be made in accordance with following schedule:

<u>Period End</u>	<u>Fee Due</u>
December 31	February 28
March 31	May 31
June 30	August 31
September 30	November 31

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

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oo. **ADMINISTRATIVE FEE/REBATE REMITTANCE LOCATION**

All Administrative Fees/Rebates will be sent to the following address:

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

pp. **CONTRACT MONITORING**

The Contractor is obligated under the NASPO ValuePoint Master Price Agreement to furnish audit information to the Lead State to confirm if the Purchasing Entity paid the Product and Service Schedule (PSS) discount price or lower in accordance with Exhibit B – Pricing Schedule. Contractor agrees to provide similar information to demonstrate compliance for State of Nebraska purchases under this addendum to determine whether the objectives of the contract have been met upon request of the State of Nebraska. Such requests shall not exceed four (4) per calendar year unless requests are mutually agreed to by both parties.

qq. **WARRANTY**

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

IMPORTANT NOTICE: Pursuant to § 84-602, all State contracts in effect as of January 1, 2014 will be posted to a public website beginning July 1, 2014. Any non-proprietary, non-copyrighted information or other information not specifically excluded by § 84-712.05 **WILL BE POSTED FOR PUBLIC VIEWING.**

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5. Primary Contacts: The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

Name	Karen A. Schneider
Address	4660 La Jolla Village Drive Ste.300 San Diego, CA 92122
Telephone	720-397-5563
E-mail	kasch@us.ibm.com

Participating Entity

Name	Nancy Storant
Address	Nebraska Administrative Services Purchasing Bureau 1526 K Street, Suite 130 Lincoln, NE 68508
Telephone	402-471-0974
Fax	402-471-2089
E-mail	nancy.storant@nebraska.gov

6. Partner Utilization: Each state represented by NASPO ValuePoint participating in this Master Agreement independently has the option of utilizing partners. Only partners approved by this Participating State may be deployed. The Participating State will define the process to add and remove partners. The Contractor will identify and define the partner program(s) available. Approved partners will be listed along with instructions on how to utilize those partners will be listed on the Contractor's web site for this Participating Addendum. The Contractor's partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. Any approved partners will be listed on the Contractor's State/Entity's website.

7. Terms. The Participating State/Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

8. Orders: Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement must have the Contract number on the Purchase Order in order to be deemed to be a sale under (and governed by the prices and

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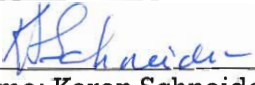
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other terms and conditions of) the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

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

Participating State:	Contractor:
By: 	By: 
Name: Marilyn Bottrell	Name: Karen Schneider
Title: Materiel Administrator	Title: NASPO ValuePoint Program Manager
Date: 12-30-15	Date: Dec 17, 2015

For questions on executing a participating addendum, please contact:
NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org

[Please email fully executed PDF copy of this document to PA@naspovaluepoint.org to support documentation of participation and posting in appropriate data bases]

