



State of New Mexico General Services Department

Master Agreement Cover Page

Awarded Vendor**0000007737****International Business Machines INV (IBM)****PO Box 676673****Dallas, TX 75267-6673****Contact: Karin Schneider****Email: kasch@us.ibm.com****Telephone No.: (720) 397-5563**Price Agreement Number: **60-000-15-00008BL**Master Agreement Number: **MNWNC-116**Payment Terms: **Net 30**F.O.B.: **Destination**Delivery: **As Requested****Ship To:****All State of New Mexico agencies, commissions,
institutions, political subdivisions and local public
bodies allowed by law.**Procurement Specialist: **Vanessa LeBlanc**Telephone No.: **(505) 827-0266**Email: **Vanessa.LeBlanc@state.nm.us****Invoice:****As Requested****Title: Computer Equipment, Peripherals & Related Services****Term: July 31, 2020 thru July 31, 2021****This Master Agreement is made subject to the "terms and conditions" as indicated on the attached.****NASPO Link: <https://www.naspovaluepoint.org/portfolio/computer-equipment-peripherals-related-services-2015-2020/ibm-corporation/>**

JDL

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

MASTER AGREEMENT
Master Agreement No: MNWNC-116
IBM Corporation
(hereinafter "Contractor")
And
State of New Mexico
(hereinafter "Participating State/Entity")
New Mexico Price Agreement No.: 60-000-15-00008BL

1. **Scope:** This addendum allows for purchase of the following Computer Equipment/Services: **Computer Equipment, Peripherals and Related Services** 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.

Bands awarded to IBM:

Band 4

Band 5

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

| <u>Item</u> | <u>Configuration</u> |
|-------------|---------------------------|
| Server | \$500,000 |
| Storage | \$500,000 |
| Desktops | \$10,000 |
| Laptops | \$10,000 |
| Tablets | \$5,000 |
| Peripherals | \$5,000 |
| Services | Restrictions listed below |

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

4. Order of Precedence:

4.1. 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

4.2. Minnesota NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions)

4.3. The Solicitation including all Addendums; and

4.4. 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 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.

5. Software Licensing:

Stated licensing agreements must be provided upon request.

6. Lease Agreements:

Leasing is not authorized under this addendum.

7. Restrictions:

Services listed below will not be allowed by use of this Participating Addendum:

7.1. Software

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

7.2 Services

- 7.2.1. Purchases exclusively for Professional Services will not be allowed.
- 7.2.2. Services must be related to the procurement of equipment.
- 7.2.3. No additional professional services such as consulting regardless of length of engagement are allowed
- 7.2.4. Wireless phone and internet service is not allowed.
- 7.2.5. Cellular equipment and accessories are not allowed.
- 7.2.6. Managed Print Services is not allowed.
- 7.2.7. Hosting Services are not allowed.
- 7.2.8. Cloud Services including acquisitions structured as managed on-site services are not allowed.
- 7.2.9. Training other than equipment operation training is not allowed.

7.3. Third Party Products

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

7.4. Additional Product/Services

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

7.5. Warranty and Maintenance

- 7.5.1. The Contract Vendor shall ensure warranty service and maintenance for all equipment, including third party products provided.

8. Participating State Modifications or Additions to Master Agreement:

8.1 Incorporation by Reference and Precedence:

If this Agreement has been procured pursuant to a request for proposals, this Agreement is derived from (1) the request for proposal, (including any written clarifications to the request for proposals and any agency response to questions); (2) the Contractor's best and final offer; and (3) the Contractor's response to the request for proposals.

In the event of a dispute under this Agreement, applicable documents will be referred to for the purpose of clarification or for additional detail in the following order of precedence: (1) amendments to the Agreement in reverse chronological order; (2) the Agreement, including the scope of work and all terms and conditions thereof; (3) the request for proposals, including attachments thereto and written responses to questions and written clarifications; (4) the Contractor's best and final offer if such has been made and accepted by the SPA or Procuring Agency or entity; and (5) the Contractor's response to the request for proposals.

8.2 Taxes:

The Contractor shall be reimbursed by the Procuring Agency for applicable New Mexico gross receipts taxes, excluding interest or penalties assessed on the Contractor by any authority resulting from an act, omission or error by Contractor, for which Contractor will be responsible. **PLEASE NOTE NO PROPERTY TAX WILL BE PAID TO THE CONTRACTOR BY THE STATE.** The payment of taxes for any money received under this Agreement shall be the Contractor's sole responsibility and should be reported under the Contractor's Federal and State tax identification number(s).

Contractor and any and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall require all subcontractors to hold the Procuring Agency harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal and/or state and local laws and regulations and any other costs, including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.

8.2 **Retainage.**
Reserved

8.3 **Performance Bond.**
Reserved

8.4 **Term:**

THIS AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL APPROVED IN WRITING BY THE STATE PURCHASING AGENT, IF REQUIRED. This Agreement shall begin on date approved by the State Purchasing Agent, if the State Purchasing Agent has signed this Agreement, and end on **July 31, 2021**. The agency reserves the right to renew the contract on an annual basis by mutual Agreement not exceed a total of 8 years in accordance with NMSA 1978 §13-1-150.

8.5 **Termination:**

Defaults & Remedies are covered in Master Agreement Section B, #9, page 10.

8.6 **Appropriations:**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Procuring Agency to the Contractor. The Procuring Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Procuring Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or to agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

8.7 Status of Contractor:

The Contractor and its agents and employees are independent contractors performing professional or general services for the Procuring Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

8.8 Conflict of Interest; Governmental Conduct Act:

A. The Contractor agrees that it presently has no interest and, during the term of this Agreement, shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement.

B. The Contractor further agrees that it has complied with, and, during the term of this Agreement, will continue to comply with, and that this Agreement complies with all applicable provisions of the Governmental Conduct Act, Chapter 10, Article 16 NMSA 1978. Without in any way limiting the generality of the foregoing, the Contractor specifically agrees that:

- 1) in accordance with NMSA 1978, § 10-16-4.3, the Contractor does not employ, has not employed, and will not employ during the term of this Agreement any Procuring Agency employee while such employee was or is employed by the Procuring Agency and participating directly or indirectly in the Procuring Agency's contracting process;
- 2) this Agreement complies with NMSA 1978, § 10-16-7(A) because (i) the Contractor is not a public officer or employee of the State; (ii) the Contractor is not a member of the family of a public officer or employee of the State; (iii) the Contractor is not a business in which a public officer or employee or the family of a public officer or employee has a substantial interest; or (iv) if the Contractor is a public officer or employee of the State, a member of the family of a public officer or employee of the State, or a business in which a public officer or employee of the State or the family of a public officer or employee of the State has a substantial interest, public notice was given as required by NMSA 1978, § 10-16-7(A) and this Agreement was awarded pursuant to a competitive process;
- 3) in accordance with NMSA 1978, § 10-16-8(A), (i) the Contractor is not, and has not been represented by, a person who has been a public officer or employee of the State within the preceding year and whose official act directly resulted in this Agreement and (ii) the Contractor is not, and has not been assisted in any way regarding this transaction by, a former public officer or employee of the State whose official act, while in State employment, directly resulted in the Procuring Agency's making this Agreement;
- 4) this Agreement complies with NMSA 1978, § 10-16-9(A) because (i) the Contractor is not a legislator; (ii) the Contractor is not a member of a legislator's family; (iii) the Contractor is not a business in which a legislator or a legislator's family has a substantial interest; or (iv) if the Contractor is a legislator, a member

of a legislator's family, or a business in which a legislator or a legislator's family has a substantial interest, disclosure has been made as required by NMSA 1978, § 10-16-7(A), this Agreement is not a sole source or small purchase contract, and this Agreement was awarded in accordance with the provisions of the Procurement Code;

5) in accordance with NMSA 1978, § 10-16-13, the Contractor has not directly participated in the preparation of specifications, qualifications or evaluation criteria for this Agreement or any procurement related to this Agreement; and
6) in accordance with NMSA 1978, § 10-16-3 and § 10-16-13.3, the Contractor has not contributed, and during the term of this Agreement shall not contribute, anything of value to a public officer or employee of the Procuring Agency.

C. Contractor shall provide immediate written notice to the Procuring Agency if, at any time during the term of this Agreement, Contractor learns that Contractor's statements in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances. If it is later determined that Contractor's statements in paragraphs A and B of this Clause were erroneous on the effective date of this Agreement or have become erroneous by reason of new or changed circumstances, in addition to other remedies available to the Procuring Agency and notwithstanding anything in the Agreement to the contrary, the Procuring Agency may immediately terminate the Agreement.

D. All terms defined in the Governmental Conduct Act have the same meaning in this Agreement.

8.9 Amendment:

A. This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

8.10 Merger:

This Agreement incorporates all the Agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, Agreements and understandings have been merged into this written Agreement. No prior Agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

8.11 Penalties for violation of law:

The Procurement Code, NMSA 1978 §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for violation of the statute. In addition, the New Mexico criminal statutes impose felony penalties for illegal acts, including bribes, gratuities and kickbacks.

8.12 Equal Opportunity Compliance:

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico pertaining to equal

employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

8.13 Workers Compensation:

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Procuring Agency.

8.14 Applicable Law:

The laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1 (C). By execution of this Agreement, Contractor acknowledges and agrees to the jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

8.15 Records and Financial Audit:

This is covered in Master Agreement Section B, #26, page 12.

8.16 Invalid Term or Condition:

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

8.17 Enforcement of Agreement:

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

8.18 Non-Collusion:

In signing this Agreement, the Contractor certifies the Contractor has not, either directly or indirectly, entered into action in restraint of free competitive bidding in connection with this offer submitted to the State Purchasing Agent or agency or entity.

8.19 Notices:

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Procuring Agency:

Mark Hayden, State Purchasing Agent
State Purchasing Division
1100 St. Francis Dr., Room 2016
Santa Fe, NM87505

To the Contractor:

Karen A. Schneider
US Contracts,
7100 Highlands Pkwy
Smyrna, GA
30082-4859 720-397-5563
kasch@us.ibm.com

8.20 Succession:

This Agreement shall extend to and be binding upon the successors and assigns of the parties.

8.21 Headings:

Any and all headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement. Numbered or lettered provisions, sections and subsections contained herein, refer only to provisions, sections and subsections of this Agreement unless otherwise expressly stated.

8.22 Default/Breach:

In case of Default and/or Breach by the Contractor, the Procuring Agency and the State of New Mexico may procure the goods or Services from another source and hold the Contractor responsible for any resulting excess costs and/or damages, subject to the limitation of liability in Section C, #17 on page 20 of the Master Agreement. The Procuring Agency and the State of New Mexico may also seek all other remedies under the terms of this Agreement and under law or equity.

8.23 Equitable Remedies:

Contractor acknowledges that its failure to comply with any provision of this Agreement may cause the Procuring Agency irreparable harm and that a remedy at law for such a failure may be an inadequate remedy for the Procuring Agency, and the Contractor consents to the Procuring Agency's seeking from a court of competent jurisdiction, specific performance, or injunction, or any other equitable relief in order to enforce such compliance. Procuring Agency's rights to seek equitable relief pursuant to this Agreement shall be in addition to,

and not in lieu of, any other remedy that Procuring Agency may have under applicable law, including, but not limited to, monetary damages.

8.24 Health Coverage:

IBM offers health insurance to all regular employees but it does not track or provide data on which employees have elected coverage.

8.25 Indemnification:

Items for Which IBM May Be Liable

The Contractor shall indemnify, keep and save harmless the State of New Mexico, 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 New Mexico 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 New Mexico Attorney General's Office does not give such approval, IBM has no obligation to defend the State of New Mexico as set forth above.

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

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

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

Items for Which IBM Is Not Liable

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

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

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

Third Party Claims

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

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

Remedies

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

Customer agrees to promptly return the Product to IBM and discontinue its use. IBM will then give Customer a credit equal to:

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

Claims for Which IBM is Not Responsible

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

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

This Intellectual Property section states IBM's entire obligation and Customer's exclusive

remedy regarding any third party intellectual property claims.

8.26 Default and Force Majeure:

The Contractor shall not be liable for any excess costs if failure to perform the order arises out of causes beyond the control and without the fault or negligence of the Contractor; such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or Federal Government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless the State shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit the Contractor to meet the required delivery scheduled. The rights and remedies of the State provided in this Clause shall not be exclusive and are in addition to any other rights now being provided by law or under this Agreement.

8.27 Assignment:

This is covered in Master Agreement, Section B, #5, page 8.

8.28 Subcontracting:

This is covered in Master Agreement, Section B, #5, page 8. For purposes of clarity, Partner Utilization as defined in Section 10 within this document are not considered subcontractors.

8.29 Inspection of Plant:

Reserved

8.30 Commercial Warranty:

This is covered in the Master Agreement Section B, #32, page 14.

8.31 Condition of Proposed Items:

Where tangible personal property is a part of this Agreement, all proposed items are to be NEW or otherwise carry with them IBM's standard new product warranty, and of most current production, unless otherwise specified.

8.32 Release:

Reserved.

8.33 Confidentiality:

Confidentiality is covered in Master Agreement Section B, #7, page 9.

8.34 Inspection:

This is covered in Master Agreement Section B, #28, page 13.

8.35 Inspection of Services:

This is covered in Master Agreement Section B, #28, page 13.

8.36 Insurance:

If the services contemplated under this Agreement will be performed on or in State facilities or property, Contractor shall maintain in force during the entire term of this Agreement, the following insurance coverage(s).

- A. Workers Compensation (including accident and disease coverage) at the statutory limit.

Employers liability: \$100,000.

- B. Comprehensive general liability (including endorsements providing broad form property damage, personal injury coverage and contractual assumption of liability for all liability the Contractor has assumed under this Agreement). Limits shall not be less than the following:

- a. Bodily injury: \$1,000,000 per person /\$1,000,000 per occurrence.
- b. Property damage or combined single limit coverage: \$1,000,000.
- c. Automobile liability (including non-owned automobile coverage): \$1,000,000.

- C. Contractor shall maintain the above insurance for the term of this Agreement and name the State of New Mexico, General Services Department or other party to this Agreement as an additional insured to its Commercial General Liability and Automobile Liability policies. Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions. A Certificate of Insurance form will be furnished by Contractor. Such certificate shall specifically state for its Commercial General Liability and Automobile Coverage policies that the coverage provided under the policy is primary over any other valid and collectible insurance and provide a waiver of subrogation.

8.37 New Mexico Administration Reporting and Fees:

All contracts and Purchase Orders arising out of this agreement shall be deemed to include an Administrative Fee assessment at the rate of **percent (1.00 %)** for the gross total sales and other revenues (including commissions and fees charged). This assessment shall apply to all New Mexico state agencies and local public bodies. "**Gross total sales**" means any invoiced amount less any applicable state and local taxes.

For reporting purposes: list payments received for the issued invoice during the applicable quarter by state agency, local public body and invoice number. The Quarters are as follows.

| <u>Quarter:</u> | <u>Period End:</u> | <u>Report Due:</u> |
|-----------------|--------------------|--------------------|
| First | September 30 | October 31 |
| Second | December 31 | January 31 |
| Third | March 31 | April 30 |
| Fourth | June 30 | July 31 |

Even if contractor experiences zero sales during the quarter, a report is still required. This will also apply if the contract starts partial within a Quarter. Reports and Administrative Fee shall be due no later than thirty (30) days following the end of the quarter. Only submit one payment and one report for each quarter, do not combine payments or reports.

Payment shall be made by check payable to the "State Purchasing Division." This contract number **60-000-15-00008BL** must be included on all payments and Quarterly Sales Reports.

Remit Checks to: State Purchasing Division
1100 St. Francis Drive, Room 2016
PO Box 6850
Santa Fe, NM 87505
Attn: Compliance Officer

Sample Reports can be found at:

<http://www.generalservices.state.nm.us/statepurchasing/resourcesandinformation.aspx#Vendors>

Email completed reports to: GSD.QuarterlyUsageR@state.nm.us

For questions regarding the Administrative Fees and Quarterly Sales Reports contact the Compliance Officer at (505) 827-0472.

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

Contractor

| | |
|-----------|----------------------------------------------------------|
| Name | Karen A. Schneider |
| Address | US Contracts, 7100 Highlands Pkwy, Smyrna, GA 30082-4859 |
| Telephone | 720-397-5563 |
| E-mail | kasch@us.ibm.com |

Participating Entity

| | |
|-----------|-------------------------------------------------|
| Name | Vanessa LeBlanc – GSD State Purchasing Division |
| Address | 1100 St. Francis Drive, Santa Fe, NM 87505 |
| Telephone | (505) 827-0472 |
| E-mail | Vanessa.LeBlanc@state.nm.us |


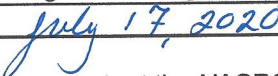
8.39. Partner Utilization: Each state represented by NASPO ValuePoint participating in this Master Agreement independently have the option of utilizing partners. Only partners approved by this Participating State may be deployed. The participating State will define the process to add partners.. The Contractors partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. Approved partners are: QCM Technologies, Inc, Sirius Computer Solutions, Triadic Enterprises, Inc, Vertical Var LLC.

8.40. 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.

8.4.1. 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 State Contract number on the Purchase Order in order to be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order.

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

| | |
|-------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| Participating State: State of New Mexico | Contractor: International Business Machines Corp |
| By: Valerie Paulk <small>*This agreement was signed on behalf of the State Purchasing Agent.</small> | By:  |
| Name: Mark Hayden | Name: Karen Schneider |
| Title: State Purchasing Agent | Title: NASPO Program Manager |
| Date: 8/4/2020 | Date:  |

For questions on executing a participating addendum, please contact the NASPO ValuePoint cooperative contracts coordination team at ccc@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.]

Certificate Of Completion

| | |
|--------------------------------------------------------------------------|-----------------------------|
| Envelope Id: 5A478CCA20A44EEA9EDB8CD0AE348186 | Status: Completed |
| Subject: Please DocuSign: 60-000-15-00008BL IBM - Computer Equipment.pdf | |
| Source Envelope: | |
| Document Pages: 15 | Signatures: 1 |
| Certificate Pages: 5 | Initials: 1 |
| AutoNav: Enabled | Envelope Originator: |
| Envelopeld Stamping: Enabled | Vanessa LeBlanc |
| Time Zone: (UTC-07:00) Mountain Time (US & Canada) | 13 Bataan Blvd |
| | Santa Fe, NM 87508 |
| | Vanessa.LeBlanc@state.nm.us |
| | IP Address: 174.56.0.198 |

Record Tracking

| | | |
|--------------------------------------|-----------------------------------------|--------------------|
| Status: Original | Holder: Vanessa LeBlanc | Location: DocuSign |
| 8/4/2020 8:36:52 AM | Vanessa.LeBlanc@state.nm.us | |
| Security Appliance Status: Connected | Pool: StateLocal | |
| Storage Appliance Status: Connected | Pool: Carahsoft OBO State of New Mexico | Location: DocuSign |
| | GSD-SPD | |

Signer Events

| Signature | Timestamp |
|--------------------------------------------------------|-----------------------------|
| Travis Dutton-Leyda | Sent: 8/4/2020 8:43:37 AM |
| Travis.Dutton-Leyda@state.nm.us | Resent: 8/4/2020 3:14:34 PM |
| IT & Construction Bureau Chief | Viewed: 8/4/2020 3:18:32 PM |
| New Mexico General Services, State Purchasing Division | Signed: 8/4/2020 3:20:19 PM |
| Security Level: Email, Account Authentication (None) | |

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

| | |
|------------------------------------------------------|-----------------------------|
| Valerie Paulk | Sent: 8/4/2020 8:43:37 AM |
| valerie.paulk@state.nm.us | Viewed: 8/4/2020 8:49:59 AM |
| New Mexico General Services | Signed: 8/4/2020 9:43:57 AM |
| Security Level: Email, Account Authentication (None) | |
| Signature Adoption: Pre-selected Style | |
| Using IP Address: 164.64.62.10 | |

Electronic Record and Signature Disclosure:
Accepted: 5/29/2020 9:40:59 AM
ID: f12ca6d0-7cba-4de4-b58f-8180244887ff

In Person Signer Events

| Signature | Timestamp |
|------------------------|-----------|
| Editor Delivery Events | Status |

| Status | Timestamp |
|-----------------------|-----------|
| Agent Delivery Events | Status |

| Status | Timestamp |
|------------------------------|-----------|
| Intermediary Delivery Events | Status |

| Status | Timestamp |
|---------------------------|-----------|
| Certified Delivery Events | Status |

| Status | Timestamp |
|--------------------|-----------|
| Carbon Copy Events | Status |

| Signature | Timestamp |
|----------------|-----------|
| Witness Events | Status |

| Signature | Timestamp |
|---------------|-----------|
| Notary Events | Status |

| Envelope Summary Events | Status | Timestamps |
|--------------------------------------------|------------------|---------------------|
| Envelope Sent | Hashed/Encrypted | 8/4/2020 3:14:34 PM |
| Certified Delivered | Security Checked | 8/4/2020 3:18:32 PM |
| Signing Complete | Security Checked | 8/4/2020 3:20:19 PM |
| Completed | Security Checked | 8/4/2020 3:20:19 PM |
| Payment Events | Status | Timestamps |
| Electronic Record and Signature Disclosure | | |

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

A. ELECTRONIC RECORD AND SIGNATURE DISCLOSURE (ERSD)

From time to time, New Mexico General Services Department (GSD), on behalf of the State of New Mexico (SONM), may be required by law to provide you with certain written notices or disclosures. Stated below are the terms and conditions for GSD's providing you such notices and disclosures electronically through the DocuSign system. Please read this information carefully. If you are able to access this information electronically and agree to **this Electronic Record and Signature Disclosure (ERSD)**, please confirm your agreement by selecting the check-box next to "I agree to use electronic records and signatures" before clicking "CONTINUE" within the DocuSign system.

B. Obtaining paper copies

At any time up to twenty (20) calendar days following your use of DocuSign to electronically sign a document, you may request a paper copy of any record provided or made available electronically to you by GSD. You will have the ability to download and print documents SONM sends you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a twenty (20) calendar day period after such documents are first sent to you. Following the twenty (20) day period, if you want GSD to send you paper copies of any such documents from GSD's office, you will be charged a \$1.00 per-page fee plus postage. You may request delivery of such paper copies from GSD by following the procedure stated in Section H, below.

C. Withdrawing your consent

If you decide to receive notices and disclosures from GSD electronically, you may at any time change your mind and inform GSD you want to receive required notices and disclosures only in paper format. The procedure concerning how you may inform GSD of your decision to receive future notices and disclosures in paper format as well as withdraw your consent to receive notices and disclosures electronically is stated in Section D, immediately below.

D. Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed with which GSD will be able to complete certain steps in specific transactions and deliver paper copies to you. GSD will need: (1) to send the required notices or disclosures to you in paper format; and (2) wait until GSD receives your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from SONM or to electronically sign documents generated and sent to you from SONM.

E. All notices and disclosures will be sent to you electronically

Unless you inform GSD otherwise according to these procedures, GSD will electronically provide you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements and other documents that are required to be provided or made available to you during the course of your electronic signature relationship with SONM. To reduce the possibility of inadvertent non-receipt, GSD prefers to provide all required notices and disclosures by the same method and to the same email or physical address that you furnish to GSD. Thus, you may receive the disclosures and notices electronically or in paper form. If you do not agree with this procedure, please inform GSD according to the procedures stated in Section I, below. Please also refer to Section D, immediately above, which states the consequences resulting from your declination of electronic delivery of notices and disclosures.

F. How to contact GSD:

You may inform General Services Department (GSD) of any changes you select regarding State Purchasing Division's (SPD) electronic communications with you, to request paper copies of certain information from SPD, and to withdraw your prior consent to receive notices and disclosures electronically by emailing your request(s) to SPD at: GSD.SPInfo@state.nm.us

G. To advise SPD of your new email address

To inform SPD of a change in the email address to which SPD sends you notices and disclosures electronically, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of such request you must include your previous and new email addresses.

H. To request paper copies from SPD

To request delivery of paper copies of electronic notices and disclosures that DocuSign and/or SPD have previously provided to you, you must send an email to SPD at GSD.SPInfo@state.nm.us and in the body of your email request state your email address, full name, mailing address, and telephone number. SPD will charge you a \$1.00 per page copy fee plus postage.

I. To withdraw your consent with SPD

To inform SPD that you no longer wish to receive notices and disclosures in electronic format you may:

(1) Decline to sign a document from within a signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may:

(2) Send SPD an email to GSD.SPDinfo@state.nm.us and in the body of your request state your email address, full name, mailing address, and telephone number.

J. Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current DocuSign system requirements may be found at:

<https://support.docusign.com/guides/signer-guide-signing-system-requirements>

K. Acknowledging your access and consent to receive and sign documents electronically

To confirm that you are able to electronically access the information contained in this Electronic Record and Signature Disclosure (ERSD), please confirm that you have: (1) read this ERSD, and either: (2) you are able to print on paper or electronically save this ERSD for your future reference and access; or (3) you are able to email this ERSD to an email address where you will be able to print this ERSD on paper and/or save this ERSD for your future reference and access. Further, if you consent to receiving notices and disclosures from DocuSign and/or SPD exclusively in electronic format, then select the check-box next to “I agree to use electronic records and signatures,” before you click “CONTINUE” within the DocuSign system.

By selecting the check-box next to “I agree to use electronic records and signatures,” you confirm that:

- You have read this Electronic Record and Signature Disclosure (ERSD); and
- You can print this ERSD on paper, or you can save and/ or send this ERSD to a location where you can print this ERSD, for your future reference and access; and
- Until or unless you notify SPD as stated in this ERSD, you consent to exclusively receive through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by SPD during the course of your electronic signature relationship with SPD.