

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 Tennessee
(hereinafter "Participating State/Entity")

(Participating State/Entity Contract #52902)

1. Scope: This addendum allows for purchase of the following Computer Equipment/Services: Band 4 – Servers; and, Band 5 Storage 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 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 (See Attachment A).

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 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:

The State of Tennessee Participating Addendum includes Modifications to the Master Agreement as well as additional Terms and Conditions. See Attachments A and B.

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
Fax	
E-mail	kasch@us.ibm.com

Participating Entity

Name	Josh Gaddy, Category Specialist
Address	312 Rosa L. Parks Avenue Nashville, TN 37243
Telephone	615-741-1402
Fax	615-741-0684
E-mail	Josh.gaddy@tn.gov


6. Partner Utilization:

No Partners Allowed - This Participating State/Entity is contracting direct with IBM. Participating State/Entity will place orders with IBM, IBM will fulfill all orders and payment by Participating State/Entity will be made directly to IBM.

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 this Participating Addendum, Tennessee State Constitution, and State law.

8. Orders: Purchase Orders 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: The State of Tennessee	Contractor: International Business Machines Corporation
By:	By: 

Name: Michael F. Perry	Name: Karen Schneider
Title: Chief Procurement Officer	Title: NASPO National Program Manager
Date: 1/11/2017	Date: <i>Jan 10, 2017</i>

Attachment A

State of Tennessee

2015-2020 MN NASPO ValuePoint Computer Equipment

Modifications

Master Award Summary:

Page 3, Section 4. Configuration Dollar Limits:

This section is modified by the State of Tennessee as follows:

The State of Tennessee will not have a maximum single configuration limit for either Servers or Storage.

Page 4, Section 5.a. Software:

This section is modified by the State of Tennessee as follows:

1. Software is restricted to operating systems and commercial off-the-shelf (COTS) software.
5. Any software available under any other Tennessee Statewide Contract is excluded from purchase through this contract except when applicable to initial procurement of equipment.

Page 4, Section 5.b. Services:

This section is modified by the State of Tennessee as follows:

6. The State of Tennessee will only allow manufacturer based services. No reseller professional services will be accepted under this contract.

Attachment B

State of Tennessee

2015-2020 MN NASPO ValuePoint Computer Equipment

Additional Terms and Conditions



Standard Terms and Conditions

1. Limitation of State's Liability. The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Estimated Liability. This limitation of liability is cumulative and not per incident.

2. Limitation of Contractor's Liability In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Estimated Liability amount detailed in Special Terms and Conditions number 10, Page 15 and as may be amended, PROVIDED THAT in no event shall this Section limit the liability of the Contractor for:

- (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights;
- (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.

3. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all amounts finally awarded by a court or settlement for claims, liabilities, losses, and causes of action for which Contractor is legally liable which may arise, accrue, or result to any person, firm, corporation, or other entity (other than the State) which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any authorized person acting for or on its or their behalf relating to this Contract which causes bodily injury to, or damage to the real, tangible, or personal property of the State; or a third party asserting the claim. The Contractor further agrees it shall be liable for the "such a claim" reasonable cost of attorneys for the State that are awarded by a court to enforce the terms of this Contract.

In the event of any such suit or claim, the Contractor shall give the State prompt notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor prompt written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof and the State shall provide all reasonable assistance required by Contractor. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

4. Taxes: Purchases of goods by the State of Tennessee are exempt from Tennessee sales and use tax pursuant to Tenn. Code Ann. 67-6-329(a) (4), and the state is generally exempt from Federal excise tax. Contractors are subject to Tennessee sales and use tax on all materials and supplies used in the performance of a contract, whether such materials and supplies are purchased by the contractor, produced by the contractor, or provided to the contractor by the State, pursuant to Tenn. Code Ann. 67-6-209. The contractor agrees to pay all taxes incurred in the performance of an awarded contract.

State agencies which procure products for the purpose of resale shall register with the Department of Revenue. Upon registration the agency will issue resale certificates to the successful contractor(s) for products procured for resale. The agency is responsible for the collection of the appropriate sales or use tax when the product is sold.

5. Unless otherwise stated, all goods called for by a purchase order must be tendered in a single delivery in compliance with the delivery time specified and payment is due only on such tender. Partial shipments and/or back orders will only be accepted with receiving agency's prior written authorization.

6. All products, materials, supplies and equipment offered and furnished must be new, of current manufacturer production.

7. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The contractor agrees that it will be subject to the exclusive jurisdiction of the courts of Tennessee in actions that may arise under this contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Section 9-8-101 through 9-8-407.

8. State and Federal Compliance: The contractor shall comply with all applicable state and federal laws and regulations in the performance of this contract.

9. Prohibition of Illegal Immigrants. The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a. The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment Reference, semi-annually during the Term. If the

Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.
- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State. State shall only have access to specific sections of personnel records relating to immigration status and only while under direct supervision of Contractor personnel.
- d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
- e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.

10. Modifications and Amendments: This Contract may be modified only by a written amendment signed by all parties hereto and approved by both the officials who approved the base contract and, depending upon the specifics of the contract as amended, any additional officials required by Tennessee laws and regulations (said officials may include, but are not limited to, the Chief Procurement Officer, the Commissioner of Human Resources, and the Comptroller of the Treasury).

11. Records: The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

12. Monitoring: The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.

13. HIPAA Compliance: The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Health Information Technology for Economic and Clinical Health (HITECH) Act and any other

relevant laws and regulations regarding privacy (collectively the "Privacy Rules") but only to extent that the Contractor and State mutually agree to a Business Associate Agreement and only where such agreement is expressly required for the performance of this Contract.

- a. Contractor is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements, if required, in the course of this Contract.
- b. Contractor will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
- c. The State and the Contractor will sign documents, including but not limited to business associate agreements, if required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver such information without entering into a business associate agreement or signing another such document.
- d. Removed.

Special Terms and Conditions

1. F.O.B. Destination (Statewide Contract)

All state agencies, local government agencies and authorized non-profit enterprises located within the State of Tennessee.

2. Term of Contract

This Contract shall be effective on date of final signature and extend until March 31, 2017. The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date.

3. Renewal Options

This Contract may be renewed upon satisfactory completion of the Term. If the Master Agreement is renewed by the Lead State, the State reserves the right to execute up to the same number of renewals under the same terms and conditions, at the State's sole option. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.

4. Debarment and Suspension

The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

In response to this requirement, the contractor represents that some customers have chosen to end their contractual relationships with the contractor or characterized their contractual relationship with the contractor as unsatisfactory for a variety of reasons. The contractor is not aware of any related issue that would prevent the contractor from successfully performing under this PA for the State. To the extent any such matter is deemed a reportable event under the SEC regulations, such matters will be identified in IBM's Form 10-K, Form 10-Q, Form 8-K or other required SEC filings. [Public filings] may be checked at: <https://www.sec.gov/edgar/searchedgar/companysearch.html>.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

5. Delivery Time (Days)

All items must be delivered within approximately 30 days after receipt of a purchase order.

6. Vendor Reporting

Usage Report

Upon request, or at a minimum quarterly, the Contractor shall furnish the standard NASPO ValuePoint report delineating the acquisition activity under the Contract within thirty (30) days of the end of the quarter.

7. Department of Revenue Registration

The Contractors shall be registered with the Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this Contract.

8. Insurance Required

The Contractor shall procure and maintain for the duration of the contract, at their own cost and expense insurance against claims for injuries to persons or damages to property including contractual liability which, may arise in connection with the performance of the work performed by the contractor, his agents, representatives, employees or subcontractors under the contract.

The insurance carrier(s) must be licensed to conduct business in the State of Tennessee. The insurance will be evidenced by an original or .pdf format document certificate of insurance. The certificate shall list the State of Tennessee as the certificate holder and must list the company name and address on file with the State. Should any of the policy coverage(s) provided have a major change, expire, or be canceled before the expiration date the Contractor shall fax or email vendor.insurance@tn.gov, a copy of their insurer's cancellation notice within two (2) business days of receipt. The State of Tennessee shall be held harmless for any injuries, claims or judgments against the Contractors.

Certificates for liability coverages shall name the State of Tennessee Central Procurement Office as an additional insured. The following Insurance Coverages are required:

Workers' Compensation Insurance: a certificate shall be provided which indicates the contractor provides workers' compensation coverage in compliance with the state laws of Tennessee., and

Employer's Liability with the following limits:

- E.L. Each Accident \$1,000,000
- E.L. Disease- Each Employee \$1,000,000
- E.L. Disease - Policy Limit \$1,000,000

General Liability and Property Damage Insurance: Comprehensive General Liability Insurance, including but not limited to, bodily injury, property damage, contractual liability, products liability, with combined single limits of \$1,000,000 per occurrence with a minimum aggregate of \$2,000,000.

The Contractor shall provide the Central Procurement Office with an original certificate of insurance or .pdf format document as proof of insurance coverage, as stated above, naming the State of Tennessee, Central Procurement Office as additional insured, within ten (10)

business days after request. If the certificate of insurance is in .pdf format, it must be received directly from the insurance company.

Failure to maintain insurance coverage for the duration of the contract period may result in cancellation of the contract. In the event that the insurance policy on file in the Central Procurement Office expires or is canceled, the Contractors will be required to cease work until proof of insurance is presented.

9. Purchase Order Release (Statewide)

Orders for products or services that are included on statewide contracts shall be prepared by agencies on departmental purchase orders and forwarded directly to the vendor/contractor. These purchase orders, when received by the vendor/contractor, serve as authorization for shipment of product(s) or start of service.

Local government agencies or authorized corporations, where applicable, will issue their purchase order releases directly to the vendor/contractor.

Billing Instructions:

The vendor/contractor shall invoice the state only after product has been received by the user agency or upon completion of the service described in the purchase order/contract, unless otherwise authorized in writing by the user agency and as required below prior to any payment.

The contractor shall submit an invoice, with all necessary supporting documentation, to the state agency billing address. Such invoice shall clearly and accurately detail the following required information as used by the contractor:

1. Invoice/reference number; (assigned by the contractor);
2. Invoice date;
3. Contract and/or purchase order number; (assigned by the state);
4. Account name;
5. Procuring state agency and division name;
6. Account/customer number (uniquely assigned by the vendor/contractor) if used by contractor;
7. To the above-referenced account name;
8. Contractor name;
9. Contractor contact (name, phone, and/or fax for the person to contact with billing questions);
10. Contractor remittance address;
11. Description of delivered product(s) or service;
12. Total amount due for delivered product(s) or service.

The vendor/contractor understands and agrees that the invoice shall;

- Include only charges for service described in contract or Purchase Order and in accordance with payment terms and conditions set forth in the contract or purchase order;
- Not include any future work but will only be submitted for completed service, unless otherwise authorized in writing by the user agency; and
- Not include sales tax or shipping charges (unless otherwise stipulated in the contract or purchase order).

Payment: The Contractor agrees that timeframe for payment (and any discounts) begins when the state is in receipt of a correct invoice meeting the minimum requirements above. It shall be the responsibility of the "bill to" agency to make payment in accordance with the Prompt Payment Act of 1985. Any questions concerning payment should be addressed to the "bill to" agency and not to the Central Procurement Office.

10. Estimated Liability

The total purchases of any goods or services under the Contract are not known. The State estimates the purchases during the Term shall be Seven Million Five Hundred Thousand dollars per year (\$7,500,000) ("Estimated Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.

11. Prerequisite Documentation

The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation. At the State's option, it may make payments to Contractor by automated clearing house ("ACH") or the State Purchasing Card ("P-Card").

a. The Contractor shall complete, sign, and present to the State:

- (1) An "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- (2) An "Authorization to Receive Payments by Purchasing Card Form" provided by the State. By doing so, the Contractor agrees that payments to the Contractor under this Contract may be made using the State P-Card and Contractor will provide level III data reporting information.

b. The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

12. Intellectual Property

The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims or suits which may be brought against the State concerning or arising out of any claim of an alleged patent, copyright, trade secret or other intellectual property infringement. In any such claim or action brought against the State, the Contractor shall satisfy and indemnify the State for the amount of any settlement or final judgment, and the Contractor shall be responsible for all legal or other fees or expenses incurred by the State arising from any such claim. The State shall give the Contractor notice of any such claim or suit, however, the failure of the State to give such notice shall only relieve Contractor of its obligations under this Section to the extent Contractor can demonstrate actual prejudice arising from the State's failure to give

notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State of Tennessee in any legal matter, as provided in Tenn. Code Ann. § 8-6-106.

IBM has no responsibility for claims based on non-IBM programs, items not provided by IBM, or any violation of law or third party rights, to the extent, caused by State's materials, designs, specifications, or use of a non-current version or release of a Program when an infringement claim could have been avoided by using a current version or release.

13. Damages

If state property is damaged, stolen or lost as a result of vendor/contractor negligence and that property has to be repaired or replaced by the state, the expense for such work or replacement will be deducted from the monies due under this contract and paid by Contractor. In addition to the foregoing, the State reserves the right to pursue claims for damages through any and all legal remedies available to the State.

14. Travel Compensation

The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.

15. Subcontracting

The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without obtaining the prior written approval of the Central Procurement Office. Notwithstanding any use of approved subcontractors/resellers, the Contractor shall be the prime contractor and shall be responsible for all work provided and the Contractor shall be responsible for any agreements with the resellers or subcontractors. The State of Tennessee shall not agree to and shall not be responsible for any terms and conditions with a subcontractor/reseller.

16. Purchases by Local Government and Authorized Non-Profit Agencies (SWC)

Authorized Users: Local Governments, Private Non-Profit Institutions of Higher Education and Eligible Non-Profit Agencies

The purpose of this Participation Addendum is to establish a source or sources of supply for all state agencies, local governmental units within the geographic limits of the State of Tennessee, any private nonprofit institution of higher education chartered in Tennessee, and any corporation which is exempted from taxation under 26 U.S.C. Section 501(c)(3) as amended and which contracts with the Department of Mental Health and Mental Retardation to provide services to the public (T.C.A. 33-2-401et seq.).

Purchases by local governmental units, private institutions of higher education, and authorized corporations are encouraged but are optional with those agencies, private institutions of higher education, and corporations.

17. Bill of Materials

Establishing a Bill of Materials (BOM) shall be developed by Finance and Administration (F&A), Strategic Technology Solutions (STS) and the Contractor. No Partner can take part in this process.

The BOM must list the NASPO ValuePoint current manufacturer catalog part number.

18. Contract User Agency

This is a Restricted Statewide Contract to Finance and Administration (F&A), Strategic Technology Solutions (STS). All agency purchase orders will be submitted by Strategic Technology Solutions, Business Unit 31701. Agency purchase orders from any other business unit will not be accepted by the contract vendor. Purchases by local governmental units, private institutions of higher education, and authorized corporations do not have to follow these restrictions.

19. Security Policy

The Contractor shall be bound by the Finance and Administration, Strategic Technology Solutions (STS) security policy. Please see the link below:

http://www.tn.gov/assets/entities/finance/oir/attachments/PUBLIC-Enterprise-Information-Security-Policies-v2.0_1.pdf

20. Hardware, Software, Updates, Etc.

Hardware and/or software maintenance/upgrade maintenance and maintenance renewals thereof must include all new version updates, hardware and/or software corrections, or enhancement (including patches/fixes) to the state agency’s embedded hardware and/or software at no additional cost to the State over and beyond the payment for annual maintenance. All new updates, hardware and/or software corrections, or enhancements (including patches/ fixes), support releases and/or documentation deemed necessary by the State of Tennessee and/or recommended by hardware and/or software manufacturer must be sent within twenty (20) working days from the manufacturer's date of release.

21. Disaster Recovery Language

The Contractor is required to make the State aware of the manufacturer’s security alert notifications communications methods, i.e. RSS, Email notifications, etc. in order that the state is immediately notified of any security issue as defined below:

Risk	Definition of Impact
Low (L)	Loss of confidentiality, integrity, availability is likely to have a limited adverse effect on the state agency or individuals associated with the state agency (employees, customers).
Medium (M)	Loss of confidentiality, integrity, availability is likely to have a serious adverse effect on the state agency or individuals associated with the state agency (employees, customers).
High (H)	Loss of confidentiality, integrity, availability is likely to have a catastrophic adverse effect on the state agency or individuals associated with the state agency (employees, customers).

The Contractor shall provide a copy of the hardware and/or software manufacturer’s established hardware and/or software product development policy which specifically prohibits any intentional behaviors or product features which are designed to allow unauthorized device or network access, exposure of sensitive device information, or a bypass of security features or restrictions.

These include, but are not limited to:

- Undisclosed device access methods, trap-door, Trojan horse, time-bomb or "backdoors"

- Any virus or other harmful code or instrumentality that will cause the software to cease to operate or fail to conform to its specifications
- Hardcoded or undocumented account credentials
- Covert communication channels
- Undocumented traffic diversion

22. Emergency Response Plans/Preparedness

In a declared state of emergency where the State’s hardware and/or software used in critical applications are at risk, Contractor may be asked to supply the State with the commodities and/or services under this NASPO Server and Storage Statewide Contract on a priority basis. The Contractor will work with the State, immediately following contract award, to define a written Continuity of Operations Plan (COOP) that describes responsibilities of the State and the Contractor in the event of a catastrophic emergency. The COOP will identify critical hardware and/or software for application restoration, delivery times, and a list of Respondent emergency contact and escalation information including name(s), position(s)/title(s), phone, email and cell phone numbers. This document will include the timeframes listed below which are based upon the scope and severity of the event:

- Local event: 24 hours
- Regional event: 36 hours
- Southeast US: 48 hours
- National event: 72 hours

23. Software License Warranty.

Contractor grants a license to the State to use all software provided under this Contract in the course of the State’s business and purposes.

24. Software Support and Maintenance Warranty.

Contractor shall provide to the State all software upgrades, modifications, bug fixes, or other improvements in its software that it makes generally available to its customers.

25. Extraneous Terms and Conditions

Contractor shall fill all orders submitted by the State under this Contract. No purchase order, invoice, or other documents associated with any sales, orders, or supply of any good or service under this Contract shall contain any terms or conditions other than as set forth in the Contract. Any such extraneous terms and conditions shall be void, invalid and unenforceable against the State. Any refusal by Contractor to supply any goods or services under this Contract conditioned upon the State submitting to any extraneous terms and conditions shall be a material breach of the Contract and constitute an act of bad faith by Contractor.

26. Warranty

Contractor represents and warrants that the term of the warranty (“Warranty Period”) shall be the greater of: 12 months after the provision and acceptance by the State of goods or services provided by Contractor; or (b) any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. During the Warranty Period, any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a “Defect” and shall be considered “Defective.” If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect at no additional charge.

Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

27. Conflicts of Interest. The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

28. Trade-In of equipment

The Contractor agrees that the State, at its sole discretion, can trade-in its existing equipment toward the purchase of new equipment and receive a reduction in the price of new equipment.

29. Administrative Fee

The Contractor shall pay the State an Administrative Fee of one (1) and one half (0.5) percent (1.5% or 0.015) in accordance with the Terms and Conditions of the Master Agreement no later than 60 days following the end of each calendar quarter. The State's Administrative Fee shall be submitted quarterly and is based on sales of products and services (less any charges for taxes or shipping).

Period End	Admin Fee Due
March 31	May 31
June 30	August 31
September 30	November 30
December 31	February 28

The administrative fee **shall** be submitted to the following address:

Ron Plumb, Director of Financial Management
Department of General Services
W.R. Snodgrass TN. Tower 24th Floor
312 Rosa L. Parks Avenue
Nashville, TN 37243

30. Prohibited Advertising or Marketing

The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

31. Semi-Annual Reviews – Via Phone Conference

The Contractor shall meet with State representatives semi-annually via a phone conference. Contractor agrees that the meetings will be held no less frequently than semi-annually, throughout the life of this Participating Addendum. Contractor agrees that the first meeting will be held within thirty (30) days of the date that the Participating Addendum is fully executed. The meetings will be used to answer questions, review contractor's/partner's performance, and discuss current and future projects.

32. Iran Divestment Act.

The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to Tenn. Code Ann. § 12-12-106.

**STATE OF TENNESSEE
DEPARTMENT OF GENERAL SERVICES
CENTRAL PROCUREMENT OFFICE**

EFFORTS TO ACHIEVE DIVERSITY BUSINESS ENTERPRISE PARTICIPATION

The Governor's Office of Diversity Business Enterprise (Go-DBE) is the state's central point of contact to attract and assist minority-owned, woman-owned, Tennessee service-disabled veteran owned, and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)

Businesses that are a continuing, independent, for profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

Service-Disabled Veteran Business Enterprise (SDVBE)

"Tennessee service disabled veteran owned business" means a service-disabled veteran owned business that is a continuing, independent, for profit business located in the state of Tennessee that performs a commercially useful function with at least a twenty percent (20%) disability that is service-connected meaning that such disability was incurred or aggravated in the line of duty in the active military, naval or air service.

Small Business Enterprise (SBE)

"Tennessee small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis".

For additional program eligibility information visit,
http://www.tn.gov/businessopp/program_elig.html.

DIVERSITY INSTRUCTIONS

As part of this process, the Respondent should complete the Diversity Utilization Plan, which begins on the following page. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at: <http://www.tn.gov/businessopp/regdivcomp.html> or by calling Go-DBE toll free at 866-894-5026.

**RESPONDENT'S
DIVERSITY UTILAZATION PLAN**

Respondent's Company Name:		
Solicitation Event Name:		Event Number:
Respondent's Contact Name:	Phone: ()	Email:
Does the Respondent qualify as the diversity business enterprise? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, which designation does the Respondent qualify? <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> SDVBE <input type="checkbox"/> SBE		
Certifying Agency:		

Estimated level of participation by diversity businesses if awarded a contract:

Diversity Business Information (List all subcontractors, joint-ventures, and suppliers)	Percent of Contract	Estimated Amount	MBE/WBE/SDVBE / SBE Designation	Currently Certified (Yes or No)
Business Name:				
Contact Name:				
Contact Phone:				
Business Name:				
Contact Name:				
Contact Phone:				

If awarded a contract, we confirm our commitment to make reasonable business efforts to meet or exceed the commitment to diversity as represented in our Diversity Utilization Plan. We shall assist the State in monitoring our performance of this commitment by providing, as requested, a quarterly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, and Tennessee service-disabled veterans. Such reports shall be provided to the State of Tennessee Governor's Office of Diversity Business Enterprise in form and substance as required by said office. We further agree to request in writing and receive prior approval from the Central Procurement Office for any changes to the use of the above listed diversity businesses.

Authorized Signature: _____

Date:

Printed Name and Title of Respondent Signatory (above)

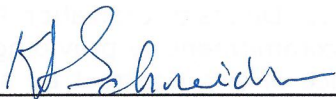
ATTACHMENT C

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

If the attestation applies to more than one contract, modify this row accordingly. SUBJECT CONTRACT NUMBER:	52902
CONTRACTOR LEGAL ENTITY NAME:	International Business Machines, Corp
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	13-0871985

If the attestation applies to more than one contract, modify the following paragraph accordingly.

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.



CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. Attach evidence documenting the individual's authority to contractually bind the Contractor, unless the signatory is the Contractor's chief executive or president.

Karen Schneider – NASPO Nat'l Pgm Mgr

PRINTED NAME AND TITLE OF SIGNATORY

Jan 10, 2017

DATE OF ATTESTATION