

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 “IBM”)
And
State of Wisconsin
(hereinafter “Participating State”)

Participating State Contract #505ENT-O16-NASPOCOMPUT-09

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1. **Scope.** This Participating Addendum covers the Computer Equipment 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 that is authorized by that state’s statutes to utilize state contracts, and which receives prior written approval of the state’s chief procurement official. Personal use of the Participating Addendum is NOT authorized.

This Participating Addendum authorizes the purchase of equipment and associated Software and Services in all of the following categories as set forth in the Master Agreement:

- Band 4 (Servers)
- Band 5 (Storage)

Link to the NASPO ValuePoint Vendor Page: www.ibm.com/naspo

Each band includes related Peripherals and Services. 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 dollar limits remain the same as the Master Agreement. Restrictions are identified in the Master Agreement with any further restrictions identified within this Participating Addendum.

With respect to any educational discount, the parties agree that the following Authorized Users shall be eligible to receive such discount available under the scope of this Contract: University of Wisconsin System University, College, or Board; Wisconsin public K-12 schools; Wisconsin Technical College System; Wisconsin Department of Public Instruction; Wisconsin Educational Communications Board; Wisconsin School for the Blind and Visually Impaired, Wisconsin School for the Deaf; and any other educational Authorized Purchasing Entity as approved by the Participating State Primary Contact.

The scope of this Participating Addendum does not include the following: trial, demonstration, evaluation equipment and/or related Software; rental; cellular phone equipment; wireless phone or internet services; cloud services; hosting services; or managed print services. There are also Hardware, Software, and Service restrictions in both the Master Agreement and the Participating Addendum.

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This is not a mandatory contract for any Purchasing Entities. The Purchasing Entities may obtain related Deliverables and Services from other sources during the term of this Participating Addendum. The State makes no express or implied warranties whatsoever that any particular quantity or dollar amount of Deliverables or Services will be procured.

2. **Participation.** Use of specific WSCA-NASPO cooperative contracts by state agencies, political subdivisions and other entities authorized by an individual state's statutes to use state contracts ("collectively, "Purchasing Entity") are subject to the prior approval of the respective State Chief Procurement Official. Wisconsin Statutes (s. 16.73, Wis. Stats.) establish authority to allow Wisconsin municipalities to purchase from state contracts. A "municipality" is defined as any county, city, village, town, school district, board of school directors, sewer district, drainage district, vocational, technical and adult education district, or any other public body having the authority to award public contracts (s. 16.70(8), Wis. Stats.). Federally recognized Indian tribes and bands in this state may participate in cooperative purchasing with the state or any municipality under ss. 66.0301(1) and (2), Wis. Stats.

The Contract is not mandatory for the Purchasing Entities. 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

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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 attached Exhibits A and B are incorporated in this Participating Addendum and apply to all transactions under this Participating Addendum.
5. **Primary Contacts.** The primary contact individuals for this Participating Addendum are as follows (or their named successors):

Contractor

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

Participating State

Name	Brenda Derge, CPPO, CPPB
Address	Wisconsin Department of Administration 101 E. Wilson St. P.O. Box 7867 Madison, WI 53707
Telephone	608-266-8613
E-mail	brenda.derge@wisconsin.gov

The contacts listed above can be changed by the parties in writing. Such updates do not require an amendment to this Contract.

6. **Partner/Subcontractor Utilization.** Each state represented by NASPO ValuePoint participating in this Master Agreement independently has the option of utilizing partners. Only partners approved by this Participating State may be

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deployed. The Participating State will approve all Partners prior to addition on the Partner list published for use by Purchasing Entities. The Contractors partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement. Contractor will identify and define the Partner program(s) available. All approved Partners and instructions on how to utilize those Partners will be listed on the Contractor's web site for this State's Participating Addendum. All approved Partners are listed on IBM's NASPO ValuePoint website for this State at: www.ibm.com/naspo.

Information for each approved Partner shall include the following: contact information for quotes, ordering, invoice, and delivery; scope of responsibilities; and online or e-mail information, when applicable.

7. **Terms.** The Participating State is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.
8. **Orders.** Authorization for the purchase of equipment or services within the scope of this Contract shall be made only upon issuance of a Purchase Order or order via eProcurement. The Order will indicate the Contract number and the dollar amount of funds authorized. Contractor or authorized Partner shall notify Purchasing Entity if Order is not accepted by Contractor or authorized Partner as appropriate. The Contractor or authorized Partner shall be authorized to perform up to the amount on the Order or the accepted quotation document. The Purchasing Entity shall not have any legal obligation to pay for goods or services in excess of the amount indicated on the Order or the accepted quotation document. No further obligation for payment shall exist unless:
1) a change Order is sent by the Purchasing Entity and accepted by the Contractor or authorize Partner and/or 2) an additional Order is issued for the purchase of goods and services under this Contract.

Any Order placed by a Purchasing Entity for a Product and/or Service available from this Master Agreement must have the State contract number on the Order in order to be deemed to be a sale under the Contract. There is no minimum Order amount for this Contract. Purchasing Entities will place Orders via eProcurement or send a hard copy Order sent via U.S. mail, fax, or as an attachment in e-mail.

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All valid Orders issued by Purchasing Entities shall include:

1. Participating State Contract number, **#505ENT-O16-NASPOCOMPUT-09**
2. Provide a Contractor Master Agreement number, **#MNWNC-116**
3. List the Bill-to name and address
4. List Ship-to name and address. A physical location is required. No Post Office boxes shall be used in the address.
5. Provide an Order number.
6. Description including the quantity. Part number, if known, may be included.
7. A unit prices with extended price for each line or a total dollar amount authorized.
8. A valid inked or electronic signature
9. The Purchasing Entity's contact information (name, phone number, e-mail)

Contractor will make commercially reasonable efforts to provide Order confirmations to Purchasing Entity or designee within 24-48 hours of receipt during business weekdays unless an Order is missing pertinent information, or 3 business days for new customers. If an Order will take longer than the requested delivery time to arrive, the Contractor or authorized Partner will communicate to the Purchasing Entity or designee the estimated time of arrival for each line item at the time of Order confirmation.

Purchase Cards are not accepted as a method of payment.

Purchasing Entity will make a reasonable effort to provide thirty (30) days prior written notice if funds are non-appropriated. Purchasing Entity reserves the right to cancel an Order, with notice, within 5 business days of receipt of the Order Confirmation if Contractor indicates it is unable to render the Services or provide the Deliverables required by the Order "Ship to" date to meet the business needs of the State. Contractor shall not charge any restocking fee for unopened hardware that is returned within thirty (30) days of delivery.

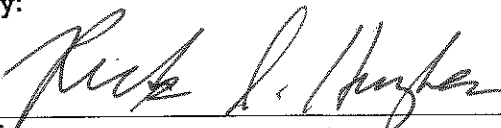
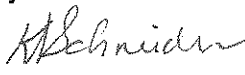
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IN WITNESS WHEREOF, the parties have executed this Addendum as of the date of execution by both parties below.

Participating State: State of Wisconsin	Contractor: International Business Machines Corporation
By: 	By: 
Name: Rick S. Hughes	Name: Karen Schneider
Title: State Bureau of Procurement Director	Title: NASPO ValuePoint National Program Manager
Date: 5/5/2016	Date: 5/3/2016

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Participating State Modifications or Additions to Master Agreement.

1. **Additional Term Definitions.** All terms used and not defined herein shall have the meaning given within the Master Price Agreement and Request for Proposal.

“Confidential Information” means all tangible and intangible information and materials being disclosed in connection with this Participating Addendum, in any form or medium without regard to whether the information is owned by the Purchasing Entity, Participating State or by a third party, which satisfies at least one of the following criteria: (i) Personally Identifiable Information; (ii) Proprietary Information; (iii) non-public information related to the Purchasing Entity’s or Participating State’s employees, customers, technology (including data bases, data processing and communications networking systems), schematics, specifications, and all information or materials derived therefrom or based thereon; or (iv) information expressly designated as confidential in writing by the Purchasing Entity or Participating State. Confidential Information includes all information that is restricted or prohibited from disclosure by state or federal law.

“Contract” means a binding agreement for the procurement of goods and services under the terms and conditions contained within the Participating Addendum, Master Agreement, Solicitation and Addendums, Contract Vendor’s response to the Solicitation, and related Agreements.

“Days” means calendar days unless otherwise specified.

“Deliverables” means all project materials, including Goods, software licenses, data, and documentation created during the rendering of Services hereunder.

“Inspection” means an examination of Deliverables or Services provided under this Contract in order to determine Specifications were met.

“Order” means the accepted Purchasing Entity standard document for Deliverables and Services, including incorporated documents or references subject to Contractor’s review and acceptance. An Order may be an eProcurement Order entered online or Purchase Order sent either hard copy, fax, or via e-mail. Such incorporated documents may include a Statement of Work, negotiated license agreement, or an official quotation.

“Personally Identifiable Information” means an individual’s last name and the individual’s first name or first initial, in combination with and linked to any of the following elements, if that element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable:

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(a) the individual's Social Security number; (b) the individual's driver's license number or state identification number; (c) the number of the individual's financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account; (d) the individual's DNA profile; or (e) the individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.

"Proprietary Information" means information, including a formula, pattern, compilation, program, device, method, technique or process to which all of the following apply: (a) the information derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) the information is the subject of efforts to maintain its secrecy that are reasonable under the circumstances.

"Properly-submitted Invoice" is one that is submitted in accordance with instructions contained on the Purchasing Entity or State's Order, includes a reference to the proper Order number, and is submitted to the proper address for processing.

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

"State" for this Participating Addendum, means the State of Wisconsin.

"Subcontract" means any contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the to fulfill the requirements and performance obligations of this Contract.

"Subcontractor" means any entity that enters into a Subcontract with the Contractor for the purpose of fulfilling the requirements and performance obligations of this Contract. Also referred to as "Reseller" or "Partner."

"Termination for Convenience" means contract cancellation.

"Third Party" means any party who does not have a direct connection with this Contract, but who might be affected by it. A Third Party is a supplier of ancillary goods or support for a product or service who is neither the Contractor, Subcontractor, or the Purchasing Entity.

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2. **Amendments.** The terms of this Participating Addendum, excluding the Master Agreement, shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Participating State and Contractor.
3. **Contract Term.** The term of this Participating Addendum will be effective upon the later date of October 1, 2015 or the final execution by the Participating State and co-terminus with the Master Agreement term unless otherwise cancelled or terminated as set forth in this Participating Addendum by the Participating State.
4. **Vendor Agreement Form.** The Contractor must sign the State of Wisconsin Vendor Agreement, Wisconsin's Cooperative Purchasing Service form (DOA-3333), to allow Entities, as defined on the DOA-3333 form, to purchase through this Participating Addendum. Contractor is responsible for verifying all sales under this Participating Addendum are to Purchasing Entities authorized by this Participating Addendum.
5. **Quotes.**
 - a. Contractor shall respond to Purchasing Entity quote requests commercially reasonable efforts of receiving the request.
 - b. Standard shipping is included. Quotes shall identify any applicable special handling or shipping charges not covered under the Contract. Any shipping costs listed on an invoice that were not identified on the quote will not be paid by the Purchasing Entity.
6. **Pricing.**
 - a. Purchasing Entities will be allowed to negotiate any of the pricing available in the Master Agreement for lower pricing or higher discounts.
 - b. Purchasing Entities may negotiate a lower rate or higher discount for bulk/volume purchases.
 - c. Contractor shall offer such lower pricing or higher discount options available to the Purchasing Entity prior to an order being placed. Such discounts shall not require the Purchasing Entity or the Participating State to provide additional documentation to participate in such pricing.
 - d. Contractor may offer promotions for deeply discounted products based on their inventory and sales. Contract Vendor will be responsible to market such offers and adhere to the terms and conditions regarding advertising and news releases.

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7. **Refund of Credits.** Within sixty (60) Days of the State's request, the Contractor shall pay to the State any credits resulting from an Order that the State determines cannot be applied to future invoices.
8. **Promotional Advertising and News Releases.** Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Participating Addendum shall not be made without prior written approval of the State.
9. **Replacement Parts.** All replacement parts provided under this Participating Addendum are new including any standard commercial warranty provided with such parts. If such parts do not meet this requirement, the Purchasing Entity must approve in writing prior to shipment of such parts for each Order.
10. **Usage/Spend Report.** Contractor shall submit detailed sales data reports quarterly to the State of Wisconsin primary contact or designee. Initiation and e-mail submission of the quarterly reports to the State of Wisconsin is the responsibility of the Contractor without prompting or notification by the State of Wisconsin primary contact or designee. The format for the detailed sales data report shall be in accordance with the Master Agreement reporting. The format shall be provided in Excel, which will list the following information at the minimum: Purchasing Entity, description of items purchased, invoice date, invoice price, and the extended price for each transaction. Such reports shall retain the same format throughout the life of the contract unless mutually agreed upon;

These reports are due 30 days after the end of the quarter. The due dates of each quarterly report are as follows:

First Quarter: January through March, due April 30
Second Quarter: April through June, due July 31
Third Quarter: July through September, due October 31
Fourth Quarter: October through December, due January 31

The Contractor agrees to provide additional reports if requested by the State of Wisconsin in a format and frequency as mutually agreed upon by both parties.

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11. Restrictions.

In addition to the Master Agreement, restrictions for Hardware, Software, Services, and additional products/Services are as follows:

a. Hardware.

- Purchasing Entities that have a mandatory contract such as the State Computer or State Printer contract shall first obtain a written waiver from the mandatory contract prior to using this Participating Addendum to purchase equipment available off that contract; and
- Hardware is subject to equipment configuration dollar limits.

b. Software.

- Purchasing Entities that have a mandatory contract such as the State Microcomputer Software contract for Commercial Off-The-Shelf (COTS) Software shall first obtain a written waiver from the mandatory contract prior to using this Participating Addendum to purchase COTS Software;
- Such COTS Software is subject to equipment configuration dollar limits: and
- Software purchases through this Contract must be pre-loaded or provided as an electronic link with the initial purchase, must be related to the procurement of the equipment, and has the following exceptions:
 1. Software such as middleware which is not installed on the equipment, but is related to storage and server equipment purchased, is allowed and may be procured after the initial purchase of the equipment.
 2. Stand-alone Software purchase, including applications ("Apps"), is not allowed unless otherwise specified in this section.

c. Value-Added Services.

- Acquisition of such Services shall be subject to this Participating Addendum and the Master Agreement and to other additional terms that may be required by the Purchasing Entity as mutually agreed between the parties. Services shall be described in a Statement of Work (SOW). Such Statement of Work shall include specific terms detailing the Services such as, but not limited to: the time for performance, the payment amounts, payment contingencies, acceptance provisions, testing or other

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verification against specifications;

- Services are broadly classed as installation, de-installation, maintenance, support, minimal operation training, migration, training, and optimization of products offered or supplied under the Master Agreement. These types of services are directly related technical support service required for the effective operation of a product offered or supplied;
 - Services must be related to the equipment purchase or equipment already purchased and owned by the Purchasing Entity. Additional professional Services, including general consulting, regardless of length of engagement, are not allowed;
 - Purchasing Entities that have a mandatory contract for Information Technology (IT) staffing Services shall first obtain a written waiver from the mandatory contract prior to using this Participating Addendum to purchase any value-added Services that can be purchased from such mandatory contracts;
 - All travel expenses, if applicable, shall be reimbursed under the same conditions and rates as noted in the current published State of Wisconsin Pocket Travel Guide published by the Office of State Employment Relations.
 - When the Purchasing Entity Order requires a background check prior to providing services, Contractor shall be responsible for meeting any reasonable background check requirements. Such background check requirements and the payment of the background checks shall be agreed to in writing between the Purchasing Entity and the Contractor. Purchasing Entity shall have the sole discretion to allow or deny access to any individual providing Contract Services after conducting a background check.
- d. Additional Product/Services.**
- The EPEAT Bronze requirement is not waived, unless otherwise agreed in writing between the Contractor and Purchasing Entity;
 - Rental equipment is not authorized under this Participating Addendum;
 - Hardware and software required to solely support wide area network (WAN) operation and management are not allowed; and

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- **Leasing.** Purchasing Entity may finance their purchases through a lease agreement. Financing lease agreements pursuant to this Contract by a Purchasing Entity requires separate procurement authority as permitted by that Purchasing Entity's procurement laws and regulations. The competitive process for finance lease agreements was not conducted with this solicitation. As a result, this Contract does not provide procurement authority for such financing lease agreements. Upon procurement authority obtained by the Purchasing Entity, financing lease agreements may be entered into for goods and Services within Contract scope. Any such agreement must be entered into prior to the Contract expiration between the Contractor and the Purchasing Entity. Each Purchasing Entity is responsible for all aspects of the financing lease agreement such as any required competition, negotiations, equipment schedule, and signature on any financial leasing document.

12. Trade-in Program.

The Purchasing Entity shall follow all required surplus property disposal procedures and policies. Use of the current or subsequently awarded contract for disposal shall be used when applicable. If required disposal procedures allow and if the Trade-In Program offer savings or disposal not offered elsewhere for the Purchasing Entity, such Program may be utilized. When using the Contractor Trade-in Program, Contractor and Purchasing Entity shall negotiate the trade-in value.

The Trade-in or Recycle programs are outlined at the IBM web page for this Participating Addendum.

- 13. Software License Agreement.** The Software License Agreement and/or End User License Agreement (EULA) terms available under this Participating Addendum were not reviewed at the time of the Participating Addendum signing. Unless otherwise negotiated between parties, Software is provided subject to the terms and conditions of the license applicable to such IBM standard commercial Software Products. IBM Rationale: consistent with the terms in the Master Agreement.

- 14. Website Ordering.** The Participating State may inherit the NASPO Contractor website or require Contractor to provide a hosted or punchout site for use on an e-procurement system. Contractor will work with Wisconsin where needed for implementation. Contract pricing for only the scope of this Participating Addendum will be available on the website.

- 15. Services performed in United States.** Pursuant to s. 16.705(1r), Wis. Stats., Services must be performed within the United States. Exceptions can be found in s. 16.705(1r)

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and include (a) Contractual services that are not available to be performed within the United States, (b) Contractual services if the payment for any part of the contractual services is made from federal moneys. (c) The renewal, modification, or extension of any contract in effect on March 18, 2010. (d) Contractual services purchased by the Board of Regents of the University of Wisconsin System with moneys appropriated under s. 20.285 (1) (j), (ja), (jm), (u), or (w) or (5) (j).

Notwithstanding the foregoing, in order to enforce this Section 15 and s. 16.705(lr), Wis. Stats., as applicable, the Wisconsin Purchasing Entity must have provided notice to Contractor, no later than at the time of execution of the Order, that payment of the contractual services, or any part thereof, is not made from federal moneys.

For Purchasing Entities not subject to this Statute, this requirement may be waived.

16. **State Tax Exemption.** The State is exempt from payment of Wisconsin sales or use tax on all purchases. The Contractor shall be responsible for paying all applicable taxes. In the event taxes are due and tax-exempt status is not provided by the Purchasing Entity upon request within a reasonable time, the Purchasing Entity shall pay all applicable local sales or use taxes, duties and other imposts, if any, due on account of purchases hereunder. The Purchasing Entity shall provide the tax-exempt status to the Contractor.

17. **Delivery.**

- a. Contractor shall not make partial shipments of any product on a single Order unless prior authorization is obtained by the Purchasing Entity.
- b. In those situations in which the "delivery to" address has no receiving dock or agents, the Contractor must be able to deliver to the location specified on the Order without additional cost.
- c. If there is a special case where an inside delivery fee must be charged and is clearly specified on the Purchasing Entity's Order, the Contractor will notify the Purchasing Entity prior to accepting the Order for the Purchasing Entity to determine if the additional cost will require a change to the Order placed.
- d. Section 14 of the Master Agreement is changed to, "Delivery of the ordered product shall be completed within thirty (30) calendar days after acceptance of an order, unless otherwise agreed to by the parties.

18. **Prompt Payment.** The State shall pay the Contractor's Properly-submitted Invoices within thirty (30) Days of receipt, provided that the Deliverables or Services to be provided to the State have been delivered, rendered, or installed, and accepted as specified in the this Contract or Order document. If the State fails to pay a Properly-submitted Invoice within thirty (30) Days of receipt, it shall pay a late payment penalty as provided in §16.528, Wis. Stats. However, if the State declares a good faith

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dispute in regard to an invoice pursuant to §16.528 (3)(e), Wis. Stats., it may pay any undisputed portion of said invoice, and will be exempt from the prompt payment requirement for the disputed portion. Contractor may discontinue performance with any Purchasing Entity of Purchasing Entity fails to pay any undisputed sum due.

19. **Substitution.** Contractor will not substitute equipment, products, or Services specified by the Purchasing Entity in an Order. If equipment, products, or Services cannot be supplied and delivered as specified, Contractor shall promptly inform the Purchasing Entity in writing and the Purchasing Entity will be offered the choice of terminating the Order, accepting back order status, or consulting with the Contractor sales representative about selecting alternative goods or Services.
20. **Product Recalls.** In the event Contractor recalls a Contractor branded product, Contractor agrees to use diligent efforts to provide written notice to the Participating State's Primary Contact within twenty (20) business days from the date of Contractor's written public announcement of such recall. Such written notice shall identify the Contractor branded product being recalled, the reason for the recall (if applicable), and the process for replacing the recalled Contractor branded product. When such recalled equipment or products that are not Contractor branded products, Contractor agrees to notify the Participating State's Primary Contact within a reasonable time after Contractor's receipt of the Third Party manufacturer's written recall notice to Contractor, if applicable.
21. **Rush Orders.** Upon request of the Purchasing Entity, Contractor will provide expedited delivery of in-stock equipment in accordance with the Order. Any additional shipping incurred costs above and beyond the already included shipping costs as a result of a rush request shall be quoted and accepted by the Purchasing Entity prior to shipment.
22. **Insurance.** Section B.17 of the Master Agreement shall include the following:
 - a. The Contract Vendor is responsible for payment of Contractor contract premiums and deductibles on all insurance policies.
 - b. The Master Agreement paragraph beginning with "Prior to commencement of the work..." shall be stricken and replaced with "Prior to commencement of the work, Contractor Vendor shall provide to the Participating State a certificate of insurance confirming the Contract Vendor's general liability insurance policy that (i) names the Participating State as an additional insured, (ii) provides that no cancellation, non-renewal, or expiration of the coverage contained in such policy shall have effect unless the named Participating State has been given at least thirty (30) calendar days written notice, and (ii) provides the Contract Vendor's liability insurance policy shall

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be primary, with any liability insurance of the Participating State, Purchasing Entity and noncontributory.”

- c. The Master Agreement paragraph beginning with “Contractor Vendor shall furnish...” shall be stricken and replaced with, “Contract Vendor shall furnish to Participating State copies of all required insurance certificates within thirty (30) calendar days of the Participating Addendum’s effective date and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after renewal date. These certificates of insurance must expressly indicate compliance with each and every insurance requirement specified in this section. Failure to provide evidence of coverage may, at the Lead State Master Agreement Administrator’s sole option, result in this Master Agreement’s termination.”

23. Indemnification and Limitation of Liability. The entire first paragraph in Section C.17 of the Master Agreement for purposes of orders under this Participating Addendum shall apply as follows be:

- a. “The Contractor shall indemnify, keep, and save harmless the State of Wisconsin, its officers, agents, and employees against all suits, actions, 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 it is consistent with applicable law and approved by the Wisconsin Department of Justice Office, which will not be unreasonably withheld and State shall reasonably cooperate with Contractor in the defense and any related settlement negotiations.”

24. Termination of Participating Addendum.

- a. **Termination for Convenience; Cancellation.** The Cancellation terms and conditions remain as stated in the Master Agreement. Additional terms include:
 1. The Participating State reserves the right to cancel this Contract in whole or in part without penalty, if the Contractor:
 - Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity; or
 - Makes an assignment for the benefit of creditors; or

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- Fails to maintain the confidentiality of the Purchasing Entity's or Participating State's information that is considered to be Confidential Information, or
 - Performs in a manner that threatens the health or safety of a Purchasing Entity or Participating State employee, citizen, or customer.
2. The State reserves the right to cancel this Contract in whole or in part without penalty, with 30 days' notice, if the Contractor:
- Fails to follow the sales and use tax certification requirements of s. 77.66 of the Wisconsin Statutes; or
 - Incurs a delinquent Wisconsin tax liability; or
 - Fails to submit a non-discrimination or affirmative action plan as required herein; or
 - Fails to follow the non-discrimination or affirmative action requirements of subch. II, Chapter 111 of the Wisconsin Statutes (Wisconsin's Fair Employment Law); or
 - Contractor has not satisfied a certified or verifiable delinquent payment owed to the State, or to any state or local unit of government; or
 - Becomes a state or federally debarred contractor.
- b. **Termination for Cause.** The Cancellation terms and conditions remain as stated in the Master Agreement. In addition to the rights reserved in the Contract, the Participating State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Participating State shall provide thirty (30) days' prior written notice of the termination and the reasons for it to the Contractor, with a thirty (30) day allowance for Contractor to cure or provide an acceptable plan to cure. Absent Contractor's cure, the State may terminate the Contract or applicable Order. Upon termination under this Section, all goods, materials, documents, data, and reports prepared by the Contractor with payment tendered to Contractor under the Contract shall become the property of and be delivered to the Purchasing Entity on demand.
25. **Nonappropriation of Funds.** The Contractor acknowledges that the Purchasing Entity cannot contract for the payment of funds not yet appropriated. If funding is reduced due to an order by the Legislature or the Governor, or is required by State law, or if federal funding (when applicable) is not provided, the Purchasing Entity may terminate this contract or proportionately reduce the services and purchase

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obligations from the State upon thirty (30) days written notice. In the case that funds are not appropriated or are reduced, the Purchasing Entity will reimburse Contractor for products delivered or services performed through the date of cancellation or reduction, and the Purchasing Entity will not be liable for any future commitments, penalties, or liquidated damages.

26. **State Payment Offsets for Contractor's Delinquency.** The State shall offset payments made to the Contractor under this Contract in an amount necessary to satisfy a certified or verifiable delinquent payment owed to the State, or to any state or local unit of government. The State also reserves the right to cancel this Contract if the delinquency is not satisfied by the offset or other means during the term of the Contract.
27. **Post Contract Obligations.** Upon the termination of this Contract for any reason, or upon Contract expiration, each party shall be released from all obligations to the other party arising after the date of termination or expiration, except for those that by their terms survive such termination or expiration.
28. **Contractor Compliance and Responsibility for Actions.** The Contractor shall at all times comply with and observe all applicable federal, state, and local laws, ordinances, and regulations that are in effect during the term of this Contract that affect the Contractor's work or obligations hereunder. The Contractor shall be solely responsible for its actions and those of its employees, or Subcontractors. Neither the Contractor nor any of the foregoing parties has authority to act or speak on behalf of the State.
29. **Nondiscrimination and Affirmative Action.** The Contractor shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, national origin, developmental disability as defined in § 51.01(5), Wis. Stats., or sexual orientation as defined in § 11.32(13m), Wis. Stats. This provision shall include, but is not limited to, employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Except with respect to sexual orientation, the Contractor shall take affirmative action to ensure equal employment opportunities.

Unless exempted by workforce size (50 or fewer employees) or Contract amount (\$50,000 or less), the Contractor must submit a written affirmative action plan to the State.

The Contractor shall post a notice provided by the State, setting forth the provisions of the State's nondiscrimination laws, in its workplace, website or conspicuous places in Order that the Contractor's employees and applicants for employment are able to read it.

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Failure to comply with the conditions of this provision may result in the following consequences:

- termination of this Contract as provided in Section 6, Contract Cancellation herein,
- designation of the Contractor as "ineligible" for future consideration as a responsible, qualified bidder or proposer for State contracts, or
- withholding of a payment due under the Contract until the Contractor is in compliance

Instructions for Contractors regarding Affirmative Action Requirements can be found at <http://vendornet.state.wi.us/Vendornet/doaforms/DOA-3021P.pdf>

30. **Governing Law; Venue.** This Participating Addendum and its amendments and exhibits thereto, shall be governed by Wisconsin Law. Venue for all legal proceedings arising out of the Participating Addendum, or breach thereof, shall be in the State court with competent jurisdiction in Dane County, Wisconsin. In the event that any provision of this Participating Addendum is contrary to Wisconsin law, such provision shall be null and void. The Contractor shall at all times comply with and observe all applicable federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this Participating Addendum and which in any manner affect the work or its conduct that apply to a provider of commercial IT products and services.
- a. The Master Agreement, Section B.12 last sentence is stricken and replaced with, "Subject to and without waiver of the State's right to assert sovereign immunity as applicable, the venue for any dispute may be in any federal court located in Dane County, Wisconsin."
31. **Records, Recordkeeping and Record Retention.** Pursuant to §19.36 (3) of the Wisconsin Statutes, all records of the Contractor that are produced or collected under this Contract are subject to disclosure pursuant to a public records request. The Contractor shall establish and maintain adequate records of all documentation developed or compiled and expenditures incurred under this Contract to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. All expenditure records shall be kept in accordance with Generally Accepted Accounting Procedures (GAAP). All procedures shall be in accordance with federal, State and local laws or ordinances. The Contractor, following final payment and the end of the contract, shall retain all records produced or collected under this Contract for six (6) years. The record retention shall be longer if the particular records are the subject of an audit, needed for a legal action, an open records request has been made.

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32. **Examination of Records.** The State shall at any time during normal business hours, upon reasonable notice, have access to and the right to examine, audit, excerpt, transcribe, and copy any of the Contractor's records and computer data storage media involving transactions directly pertinent to this Contract. If the material is on computer data storage media, the Contractor shall provide copies of the data storage media or a computer printout of such if the State so requests. Any charges for copies of books, documents, papers, records, computer data storage media or computer printouts provided by the Contractor shall not exceed the actual cost to the Contractor. This provision shall survive the termination, cancellation, or expiration of this Contract. Contractor shall permit the Participating State, a Purchasing entity, or any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this contract, Orders, and related transactions placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years. The right shall be longer if the particular records are the subject of an audit, needed for legal action, or an open records request has been made. In no event shall any audit include Contractor's proprietary confidential information unless it is required by applicable local, state, or federal law for such records as determined by the Participating State or Purchasing Entity.
33. **Survivability.** The Master Agreement, Section C.33 shall change the term of two (2) years to a term of six (6) years after the expiration of termination of the Master Agreement unless obligations contained in the clauses referred to in this section are required to be maintained longer pursuant to Participating Entity's laws.
34. **Warranty.** See Master Agreement Section B, #32, page 14. Entities may also locate standard warranty provisions by searching on www.ibm.com.

In the event a Third Party Product manufacturer fails to honor its standard product warranty, Contractor's sole responsibility will be to use is commercially reasonable efforts to provide only those services as defined in the Third Party Product manufacturer's instrument for the Third Party Product at issue during the life of the manufacturer's original warranty and subject to all terms, conditions and exclusions in that instrument.

35. **Disclosure.** If a state public official (as defined in §19.42 (14) of the Wisconsin Statutes) or an organization in which a state public official holds at least a 10% interest is or becomes a party to this Agreement, it shall be voidable by the State unless appropriate disclosure is made to the State of Wisconsin Government Accountability Board, 212 East Washington Avenue, Madison, Wisconsin 53703 (Telephone 608-266-8005).

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36. **Liens, Claims and Encumbrances.** The Contractor warrants and represents that all Deliverables ordered hereunder are free and clear of all liens, claims or encumbrances of any kind.
37. **Warranty of Items Offered.** See Master Agreement Section B.32 on page 14.
38. **Receipt of Goods.** See Master Agreement Section B.28 on page 13.
39. **Performance.** IBM Warranty for services See Master Agreement Section B.32 on page 14.
40. **Acceptance/Acceptance Testing.** In addition to the Master Agreement, Section 28, the Contractor shall not require the Purchasing Entity to sign or electronically accept additional terms and conditions for acceptance or acceptance testing other than as referenced in the Master Agreement except under a custom Statement of Work that has been mutually agreed to by both parties in writing or as otherwise specified and agreed to within the applicable Order. Such additional terms and conditions for acceptance or acceptance testing shall be consistent and complementary with the terms and conditions of the Contract.
41. **Installation.** If the Contractor is providing installation with the product purchase, Contractor site guidelines required for equipment installation shall be provided the Purchasing Entity prior to Order. Ideally, such site guidelines will be provided at the time of the written quote. In the event such installation requirements were provided by the Contractor to the Purchasing Entity after an Order was placed, the Purchasing Entity has the option to cancel or write a change Order without penalty or additional fees.
42. **Severability.** If any provision of this Contract is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall remain valid and in full force and effect. The invalid provision shall be replaced by a valid provision that comes closest in intent to the invalid provision.
43. **Antitrust Assignment.** By entering into this Contract, the Contractor conveys, sells, assigns and transfers to the Purchasing Entity all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating specifically to that proportionate amount of the particular Deliverables or Services purchased or acquired by the Purchasing Entity under this Contract.
44. **Notice and Change of Contact Information.** Any notice required or permitted to be given hereunder shall be deemed to have been given on the date of delivery or ten (10) Business Days after mailing by postal service, certified or registered mail-receipt requested. In the event the Contractor moves or updates contact information, the Contractor shall inform the Participating State Primary Contact of such changes in writing within a reasonable period and not to exceed thirty (30) business days. The

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Purchasing Entity shall not be held responsible for payments on Orders delayed due to the Contractor's failure to provide such notice.

45. **Assignment of Contract.** The Contractor shall provide prior written notice to the Participating State Primary Contact before assigning this Contract to another party. The Participating State reserves the right to withhold approval of any such assignment. The terms and conditions of this Contract as well as any rights obligations and liabilities associated with such shall survive any and all assignments, mergers, or acquisitions by a Third Party until cancelled in writing by both parties.
46. **Severability.** If any provision of this Contract is found by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the Contract shall remain valid and in full force and effect. The invalid provision shall be replaced by a valid provision that comes closest in intent to the invalid provision.
47. **Contract Dispute Resolution.** In the event of any dispute or disagreement between the parties under this Contract, whether with respect to the interpretation of any provision of this Contract, or with respect to the performance of either party hereto, each party shall appoint a representative to meet for the purpose of endeavoring to resolve such dispute or negotiate for an adjustment to such provision. No legal action of any kind, except for the seeking of equitable relief in the case of the public's health, safety or welfare, may begin in regard to the dispute until this dispute resolution procedure has been handled between both parties, and either of the representatives in good faith concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely.
48. **Performance While Dispute is Pending.** Notwithstanding the existence of a dispute, the parties shall continue without delay to carry out all of their responsibilities under the Agreement that is not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under the Agreement, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.
49. **Other Documents.** The parties to this Participating Addendum understand and agree that standard forms or templates may be used for various purposes, including but not limited to, purchase orders, invoices, quotes, 'Website Terms and/or Conditions' or 'click to accept' agreement(s), some of which may contain boilerplate or standard terms and conditions ("Other Documents"). However, any use of Other Documents are not a part of this Contract and are deemed to be for administrative convenience only and the terms therein are of no effect, have no force of law and do not modify the terms of this Participating Addendum.

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50. **Rendering of Services.** The Contractor shall render Services with all due skill, care, and diligence, in accordance with accepted industry practices and legal requirements.

If the Purchasing Entity notifies the Contractor that any part of the Services rendered are inadequate or in any way differ from the Contract requirements for any reason other than as a result of the Purchasing Entity's Default or negligence, and Contractor agrees, the Contractor shall at its own expense re-schedule and perform the work correctly within such reasonable time as agreed upon between the Purchasing Entity and Contractor. This remedy shall be in addition to any other remedies available to the State or Purchasing Entity by law or in equity.

51. **Nonvisual Access Standards and Accessibility Standards.** Contractor's VPATs identify how Contractor products comply with the Nonvisual Access and Accessibility Standards.
52. **Hazardous Substances.** Entities may research hazardous substances by searching on www.ibm.com.
53. **Standard of Care.** The Services of Contractor and its Subcontractors shall be performed in accordance with the commercially reasonable standard of care exercised by members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.

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Hardware and Software Support
1-800-IBM-SERV

The IBM support organization's goal is to enable customer satisfaction by:

- Responding to your calls within targeted guidelines
- Providing ongoing communication regarding your problem status through problem resolution
- Taking ownership of your call for support
- Providing a defined escalation process when management assistance is needed
- Maintaining our commitment to continuous improvement of our service processes

IBM support gives the Purchasing Entity the ability to contact IBM and ask installation and usage related questions as well as make defect inquiries about eligible products.

The support options include voice (1-800-IBM-SERV) or electronic access (<http://www.ibm.com/support>) to a team of technical specialists.

For all eligible products, IBM can help with:

- **General Support:**
 - Usage and installation questions
 - Product compatibility and interoperability questions
 - Interpretation of product documentation
 - Diagnostic information reviews to help isolate the cause of a problem
 - Configuration samples
 - IBM and multivendor database searches
 - Planning information for software fixes
- **Defect Support**
- **Electronic Support:**
 - Submit problems and get answers electronically
 - View screens remotely
 - Submit documents electronically
 - View open problems that have been submitted
 - Search IBM's question and answer database

Before contacting support, gather the following information about the problem and have it on hand when discussing the situation with a specialist:

- Define the problem
- Gather background information
- Gather relevant diagnostic information

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- Determine the business impact to assign a severity level
 - Severity 1
Critical business impact. This indicates the Purchasing Entity is unable to use the program resulting in a critical impact on operations. This condition requires an immediate solution

 - Severity 2
Significant business impact. This indicates the problem is usable, but is severely limited

 - Severity 3
Some business impact. This indicates the program is usable with less significant features which are not critical to operations are unavailable

 - Severity 4
Minimal business impact. This indicates the problem causes little impact on operations or that a reasonable circumvention to the problem has been implemented

When contacting IBM support to report an IBM software problem or update/gain status on a problem, the request will be routed to a technical specialist.

For onsite support, IBM will attempt to diagnose and resolve the problem remotely before sending a technician onsite. Onsite response times vary dependent on purchased warranty and maintenance coverage options.

IBM will use commercially reasonable efforts to respond by telephone to hardware and software service calls within two business hours during normal Central Time business hours, and within two hours during off-shift hours for critical problems. The IBM support initial response may result in resolution of request, or it will form the basis for determining what additional actions may be required to achieve technical resolution of the request.

Whether the contact with IBM support is via telephone or electronically, once logged, a unique problem management record (PMR) or Incident/Support case is created. The PMR, Incident or Support Case is routed to a resolution team for handling. The Purchasing Entity may be transferred directly to the resolution team or the issue will be placed in a queue for call back. In either case, the next person IBM contact will be a specialist in the appropriate resolution team.

At the resolution team level, the Purchasing Entity call is researched, resolved, or escalated as appropriate. Due to the level of specialization required to maintain superior technical expertise at the team level, it is sometimes necessary to involve more than one

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support team in resolving a particular software problem. This is easily handled, as the IBM support teams are all networked together and work as one to resolve whatever problems or issues arise.

If at any point in the service process, the Purchasing Entity's expectations are not met by IBM, ask to speak with a Duty Manager or by calling the local IBM customer service executive. Escalations to an IBM manager will receive prompt attention and management focus. The Duty Manager or customer service executive will work with our technical staff to meet the Purchasing Entity's expectations and appropriately handle the request.