

**STATE OF NEW JERSEY  
PARTICIPATING ADDENDUM STANDARD TERMS AND CONDITIONS**

Under  
NASPO ValuePoint, formerly Western States Contracting Alliance ("WSCA")  
Contract for Computer Equipment  
Desktops, Laptops, Tablets, Servers, Storage and Ruggedized Devices  
Including Related Peripherals and Services  
[State of Minnesota Master Contract Number MNWNC-116]

This Participating Addendum is made as of October 1, 2015, or the last date of signature below, whichever is later (the "Effective Date"), by and between, IBM Corporation, whose address is IBM Corporation, 1 New Orchard Road, Armonk NY, 10504-1722 ("Contractor"), and the State of New Jersey, Department of the Treasury, Division of Purchase and Property ("Participating State" or "State") whose address is 33 West State Street, 8th Floor, P.O. Box 039, Trenton, New Jersey 08625, on behalf of the State of New Jersey and all "Authorized Purchasers" (as defined below). For clarification of references throughout this document, the term "State," in any form, refers to the State and any Authorized Purchaser, unless otherwise indicated.

WHEREAS, pursuant to N.J.S.A. 52:34-6.2, the Director (the "Director") of the Division of Purchase and Property, Department of the Treasury (the "Division") "may enter into cooperative purchasing agreements with one or more states for the purchase of goods and services;" and

WHEREAS, the State of Minnesota and Contractor have entered into Master Agreement #MNWIN-116(the "WSCA Master Agreement"), which may be found at the following URL:  
<http://www.naspovaluepoint.org/#/contract-details/52/overview/general>, awarded in accordance with the State of Minnesota Request for Proposal for Computer Equipment; and

WHEREAS, the State of New Jersey participated in the publicly advertised, competitive bidding process with fifteen other states and evaluated the proposals; and

WHEREAS, the Director has determined that entering into a Participating Addendum with Contractor under the WSCA Master Agreement to provide computer equipment is the most cost effective method of procuring these products and services, and that it is in the best interest of the State to enter into a Participating Addendum with Contractor; and

WHEREAS, the parties seek to enter into this Participating Addendum to memorialize the terms of their contractual relationship;

NOW THEREFORE, for good and valuable consideration, receipt of which hereby acknowledged, the parties to this Participating Addendum hereby agree as follows:

1.0 Term and Extension Option; Order of Precedence; Entire Agreement:

1. The term of this Participating Addendum shall be effective from the Effective Date and shall continue for a period ending on the Termination Date of the WSCA Master Agreement or when this Participating Addendum is terminated in accordance with the WSCA Master Agreement or this Participating Addendum, whichever shall occur first. Notwithstanding anything to the contrary contained in the WSCA Master Agreement, the State reserves the right, in its sole discretion, to extend this Participating Addendum upon an extension of the WSCA Master Agreement under the same terms and conditions as stated in this Participating Addendum. Notwithstanding anything to the contrary contained in the WSCA Master Agreement, there shall be no automatic renewals of the Participating Addendum.
2. The order of precedence governing this Participating Addendum is set forth in Exhibit A, General Terms, Conditions & Instructions, Section 2, Conflict of Terms/Order of Precedence of the WSCA Master Agreement.
3. This Participating Addendum and the WSCA Master Agreement, as amended by this Participating Addendum, set forth the entire agreement between the parties and supersede all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. The terms and conditions of this Participating Addendum and the WSCA Master Agreement, as amended by the Participating Addendum, shall prevail and govern in the case of any inconsistent or additional terms added to or incorporated into this Participating Addendum or the WSCA Master Agreement by any subsequent purchase order or otherwise, including, but not limited to a software license agreement or services agreement, including any third party software license agreement.
4. Consistent with Exhibit A, General Terms, Conditions & Instructions, Section 2, Conflict of Terms/Order of Precedence of the WSCA Master Agreement, in the event of any conflict between the terms of this Participating Addendum and the terms of the WSCA Master Agreement or any documents constituting part of the WSCA Master Agreement, the terms of this Participating Addendum shall prevail.
5. References to external documentation; Software License Agreements-
  - a. Any external information incorporated by reference within any of the documents comprising the Agreement, as defined in Section 2.0(1) below, including, without limitation, software license agreements or services agreements, are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.
  - b. Any changes in the information incorporated by reference by any of the documents that comprise the Agreement, including, without limitation, software license agreements or services agreements, are subject to the terms and conditions of this Participating

Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.

- c. Any reference in Contractor's documents to website URLs that contain additional terms and conditions are subject to the terms and conditions of this Participating Addendum. In the event of a conflict, the terms of this Participating Addendum shall prevail.
6. Amendments - This Participating Addendum may not be amended except in a writing signed by both parties.

## 2.0 Scope of Services:

1. The WSCA Master Agreement, together with its exhibits, as now or hereafter amended, made by the original parties thereto during the term of this Participating Addendum, is incorporated herein as if set forth at length. For the avoidance of doubt, the term "WSCA Master Agreement," as used herein, includes the WSCA Master Agreement, its exhibits, the Solicitation (RFP), and Contractor's response to the Solicitation, as expressly accepted, in writing, into the WSCA Master Agreement, as an exhibit or attachment. All rights and obligations between the parties are governed by the terms of the WSCA Master Agreement, as amended by this Participating Addendum (collectively, the "Agreement").
2. The suite of products and services available under this Participating Addendum to any Authorized Purchaser (as hereinafter defined) are as set forth in the price lines in New Jersey Contract Number 40047. The full suite of product and service offerings available under the WSCA Master Agreement may be procured under this Participating Addendum. However, notwithstanding anything to the contrary contained in the WSCA Master Agreement, the Contractor may not sell Third Party Products (as defined in the RFP) under this Participating Addendum if the Third Party Products were manufactured by another Contractor that has been awarded a Participating Addendum by the State.
3. The Contractor shall deliver a copy of the required summary and detailed sales reports described in Section B27 of the WSCA Master Agreement ("Reports") to the Procurement Specialist and State Contract Manager within ten (10) days of providing the Reports to the Lead State and WSCA-NASPO. The Reports may be limited to Sales made to Authorized Purchasers under this Participating Addendum.

## 3.0 Restrictions:

1. This Participating Addendum incorporates all restrictions provided in Section G of the Minnesota Request for Proposal, Computer Equipment, except for Item G(a)(4). Middleware may accompany the initial purchase of equipment if it is directly related to, and required to operate, the equipment purchased. Middleware may not be purchased after the initial purchase of equipment. This restriction may be waived on a case by case basis in the sole discretion of the Director.

2. Configuration Limits - The following configuration limits apply to all purchases made under this Participating Addendum. The dollar limits are based on a SINGLE computer configuration. This is NOT a restriction on the purchase of multiple configurations.

ITEM	CONFIGURATION
Server	\$750,000
Storage	\$1,000,000
Desktops	\$15,000
Laptops	\$15,000
Tablets	\$10,000
Peripherals	\$50,000
Services	No dollar limit

These configuration limits may be waived on a case by case basis or adjusted via the State's contract Method of Operation in the sole discretion of the Director.

3. Services -

- a. The following services are permitted under this Participating Addendum: installation/de-installation, maintenance, support, training, migration, optimization of products supplied under this Participating Addendum, asset management, recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, and technical support services required for the effective operation of a product.
  - b. Contractor may provide limited professional services associated with the equipment and configuration of the equipment purchased.
  - c. Services purchased under this Participating Addendum must be directly related to equipment purchased under this Participating Addendum.
4. Leasing and rental of equipment is not permitted under this Participating Addendum for State agencies. Authorized Purchasers, as defined in Section 5.0(2)-(5) may finance their purchase, if permitted under law. If financing is through a lease agreement, that agreement is separate from this Participating Addendum and is between the Contractor and the respective Authorized Purchaser only.

4.0 Termination of Contract:

1. For Convenience-

Notwithstanding any provision or language in the WSCA Master Agreement to the contrary, the Director may terminate at any time, in whole or in part, this Participating Addendum or any contract entered into pursuant to this Participating Addendum, for the convenience of the State, upon no less than forty-five (45) days written notice to the Contractor.

The Contractor shall not have the right to terminate this Participating Addendum. Any provisions in the WSCA Master Agreement regarding the Contractor's right to terminate or cancel this Participating Addendum are superseded by and replaced in their entirety by this Section 4.0 of this Participating Addendum.

Termination under this paragraph will not terminate unfulfilled orders placed by Authorized Purchasers prior to the effective date of termination.

2. For cause-

- A. Where the Contractor fails to perform or comply with the Agreement or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate this Participating Addendum, in whole or in part, upon thirty (30) days' notice to the Contractor with an opportunity to respond and cure within the thirty day period.
- B. Where in the reasonable opinion of the Director, the Contractor continues to perform poorly under the Agreement as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the Contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint the Director may terminate this Participating Addendum, in whole or in part, upon thirty (30) days' notice to the Contractor with an opportunity to respond prior to termination.
- C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond.
- D. In the event of termination under this section, the Contractor will be compensated for work performed or goods supplied in accordance with the Agreement, up to the date of termination. Such compensation may be subject to adjustments.
- E. In the event that an Authorized Purchaser violates its obligations under the Agreement, Contractor may refuse to accept or process orders from such Authorized Purchaser immediately upon written notice to the State and such Authorized Purchaser, until such time as Authorized Purchaser submits a plan to correct such violations satisfactory to Contractor, which approval will not be unreasonably withheld. Notwithstanding anything to the contrary, Contractor shall continue to process orders submitted by other Authorized Purchasers.
- F. The following provisions shall survive termination of this Participating Addendum: Section 1.0 Term and Extension Option; Order of Precedence; Entire Agreement; Section 4.0(F) Termination of Contract; Section 6.0 Modified WSCA Master Agreement Terms; Section 9.0 Delivery Guarantees; Section 10.0 Performance Guarantee; Section 11.0 State Laws Requiring Mandatory Compliance by All Contractors (Compliance - Data and Privacy Laws); Section 11.0 State Laws Requiring Mandatory Compliance by All Contractors (Open Public Records Act); Section 14.0 Liabilities (Indemnification); Section 14.0 Liabilities (Limitation of Liability); Section 15.0 Miscellaneous (Confidentiality); Section 15.0 Miscellaneous (Governing Law; Jurisdiction); Section 15.0 Miscellaneous (Maintenance of Records); Section 15.0 Miscellaneous (Software Audits); Section 15.0 Miscellaneous

(Ownership); Section 15.0 Miscellaneous (No Warranties); Section 15.0 Miscellaneous (Data Storage); Section 18.0 Primary Contacts.

#### 5.0 Authorized Purchasers:

"Authorized Purchasers" under this Participating Addendum shall mean the State and the following:

1. State agencies.
2. Quasi-State Agencies - A "Quasi-State Agency" is any agency, commission, board, authority or other such governmental entity which is established and is allocated to a State department or any bi-state governmental entity of which the State of New Jersey is a member, as defined in N.J.S.A. 52:27B-56.1, provided that any sale to any such bi-state governmental entity is for use solely within the State of New Jersey.
3. Political Subdivisions, Volunteer Fire Departments And First Aid Squads, And Independent Institutions Of Higher Education - Counties, municipalities and school districts as defined in N.J.S.A. 52:25-16.1., volunteer fire departments, volunteer first aid squads and rescue squads as defined in N.J.S.A. 52:25-16.2, independent institutions of higher education as defined in N.J.S.A. 52:25-16.5, provided that each purchase by the independent institution of higher education shall have a minimum cost of \$500. The extension to counties, municipalities, school districts, volunteer fire departments, first aid squads and independent institutions of higher education must be under the same terms and conditions, including price, applicable to the State.
4. State Colleges - in accordance with N.J.S.A. 18A:64-60.
5. County Colleges - in accordance with N.J.S.A. 18A:64A- 25.9.

All participants other than the State and State agencies are responsible for the full cost of their purchases.

#### 6.0 Modified WSCA Master Agreement Terms:

1. Section B28, Acceptance And Acceptance Testing, in the Master Agreement is deleted in its entirety and replaced with the following:

##### **28. ACCEPTANCE AND ACCEPTANCE TESTING**

**A. Acceptance.** Purchasing Entity (the entity authorized under the terms of any Participating Addendum to place orders under this Master Agreement) shall determine whether all Products and Services delivered meet the Contractor's published specifications (a.k.a. "Specifications"). No payment shall be made for any Products or Services until the Purchasing Entity has accepted the Products or Services. The Purchasing Entity will make every effort to notify the Contractor within thirty (30) calendar days following delivery of non-acceptance of a Product or completion of Service. In the event that the Contractor has not been notified within 30 calendar days from delivery of Product or completion of Service, the Product and Services will be

deemed accepted on the 31st day after delivery of Product or completion of Services. This clause shall not be applicable, if acceptance testing and corresponding terms have been mutually agreed to by both parties in writing.

**B. Acceptance Testing.** The Purchasing Entity (the entity authorized under the terms of any Participating Addendum to place orders under this Master Agreement) and the Contract Vendor shall determine if Acceptance Testing is applicable and/or required for the purchase. The terms in regards to acceptance testing will be negotiated, in writing, as mutually agreed. If Acceptance Testing is NOT applicable, the terms regarding Acceptance in the Contract shall prevail.

#### **7.0 Authorized Resellers and Subcontractors:**

Contractor has the right to utilize Authorized Resellers, as fulfillment agents under this Participating Addendum, e.g., for direct order taking, processing, fulfillment, invoicing, receiving payment, or provisioning. As used herein, the term "Authorized Reseller" shall include authorized partners, or similar authorized agents used by Contractor to provide the products and services described in the preceding sentence, as such terms are defined in the Solicitation (RFP) and the WSCA Master Agreement. However, this Participating Addendum may not be subcontracted or assigned by the Contractor, in whole or in part, without the prior written consent of the Director, which shall not be unreasonably withheld. Such consent, if granted, shall not relieve the Contractor of any responsibilities under this Participating Addendum. For the avoidance of doubt, the Contractor shall be responsible for obtaining all required forms from each Authorized Reseller or subcontractor and submit the required forms to the State. The State will not accept forms directly from an Authorized Reseller and/or subcontractor.

Contractor and the State agree to the minimum of 2 and maximum of 17 Authorized Resellers under this Participating Addendum.

Authorized Resellers may be added upon a ten (10) business days' prior written notice to the State during the term of this Participating Addendum, but under no circumstance shall the total number of Authorized Resellers exceed the aforementioned maximum.

The Contractor and the State each reserve the right to remove an Authorized Reseller at its discretion for cause, for not meeting established vendor criteria under this Participating Addendum, or where the addition, or continued use, of the entity would violate any state or federal law or regulation. The Contractor's web site for this Participating Addendum will reflect all currently authorized Resellers and Partners.

The name, address and contact information for Contractor-approved Authorized Resellers shall be separately set forth at the Contractor's website, as amended by Contractor during the term of this Participating Addendum, including any applicable technical certifications or general limitations (e.g., geographic) or Contractor qualifying criteria as applicable (qualifying criteria).

For the avoidance of doubt, Contractor may also utilize a direct pay model.

Contractors may also utilize Partners, as defined in the RFP, which do not receive purchase orders, submit invoices, or receive payment. If utilized by Contractor and approved by the State, Partners are subject to the same requirements as a subcontractor as described in this Participating Addendum.

#### 8.0 Ordering and Compensation:

Pricing shall be in accordance with the terms set forth in the WSCA Master Agreement, as amended by this Participating Addendum.

The State of New Jersey Contract number and the WSCA Master Agreement number ("40047, MNWIN-116") MUST be shown on all Purchase Orders issued against this Participating Addendum.

All orders and payments will be issued to either the Contractor or the Authorized Resellers as identified on Contractor's web site for this Participating Addendum and selected by the State and shall be in accordance with the terms set forth in the WSCA Master Agreement, as amended by this Section 8.0 of this Participating Addendum.

In the event of a manufacturer's, Contractor's, or Authorized Reseller's price decrease, the State shall receive the full benefit of such price reduction on any subsequent new orders during the period that the applicable price reduction is in effect. Contractor will notify the State of any price reduction by posting the revised pricing on the Contractor's website. Failure to report price reductions may result in cancellation of this Participating Addendum for cause.

The State of New Jersey's obligation to make payment under the Agreement is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State of New Jersey for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency which is an Authorized Purchaser by the New Jersey State Legislature and made available through receipt of revenues. Notwithstanding the foregoing, the parties agree that performance under this contract is contingent upon the appropriation of funds.

Contractors or Authorized Resellers may be paid by the State through the Procurement card (p-card) at the time the original order is placed. P-card transactions do not require the submission of either a contractor invoice or a State payment voucher. Purchasing transactions utilizing the p-card will usually result in payment to the Contractor or the Authorized Resellers in three (3) days. The Contractor and the Authorized Reseller should take note that there will be a transaction processing fee for each p-card transaction. To participate, the Contractor or Authorized Reseller must be capable of accepting the applicable credit card.

Payments shall be made to the Authorized Resellers or Contractors pursuant to the provisions of the New Jersey Prompt Payment Act, N.J.S.A. 52:32-33 et seq. The Act requires state agencies to pay for goods and services within sixty (60) days of the state agency's receipt of a properly executed State Payment Voucher. Interest will be paid on delinquent accounts at a rate established by the New Jersey State Treasurer (the "State Treasurer"). Interest will not be paid until it exceeds \$5.00 per properly executed invoice.



Cash discounts and other payment terms included as part of the Agreement are not affected by the Prompt Payment Act.

Contractor and Authorized Resellers are encouraged to offer cash discounts based on expedited payment by the State. The State will make efforts to take advantage of discounts, but discounts will not be considered in determining the lowest quote.

Discount periods shall be calculated starting from the next business day after the recipient has accepted the goods or services received a properly signed and executed State Payment Voucher form and, when required, a properly executed performance security, whichever is latest.

The date on the check issued by the State in payment of that Voucher shall be deemed the date of the State's response to that Voucher.

#### 9.0 Delivery Guarantees:

Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the WSCA Master Agreement, as amended by this Participating Addendum.

The Contractor shall be responsible for the delivery of new or "like-new" products to the State under this Participating Addendum and in accordance with good commercial practice. "Like-new" products will be identified as "like-new" and will be furnished at a price discounted from the price of the equivalent new product unless the "like-new" product is warranted as new, in which case it need only be identified as "like-new."

Products delivered must be strictly in accordance with the WSCA Master Agreement, as amended by this Participating Addendum.

In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the WSCA Master Agreement, the State shall be authorized to obtain the product or service from any available source.

#### 10.0 Performance Guarantee:

The Contractor hereby certifies that:

1. The equipment offered is standard, new or "like-new" equipment, with available parts regularly used for the type of equipment offered; that such parts are all in production; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice. In the event that a warranty claim occurs during the warranty period as set forth in the WSCA Master Agreement, warranty hardware replacement may consist of "like-new" parts.
2. All equipment supplied under this Participating Addendum and operated by electrical current is UL listed where applicable.

3. The Contractor and/or Authorized Reseller shall render prompt warranty service without charge, regardless of geographic location within the continental United States.
4. Sufficient quantities of parts necessary for proper service to equipment will be maintained at distribution points and service headquarters.
5. Trained and/or Contractor-certified technicians and/or engineers are regularly employed to make necessary repairs to equipment as detailed in Contractor's support program documentation contained in the WSCA Master Agreement, within the time accepted as industry practice.
6. Contractor represents that it has made commercially reasonable efforts to prevent, at the time of delivery and installation of the software provided pursuant to this Participating Addendum, its product from containing what are commonly defined as viruses, backdoors, worms, spyware, malware and other malicious code that will hamper performance of the software, collect unlawful personally identifiable information on users, or prevent the software from performing as required under this Participating Addendum.
7. All services rendered under this Participating Addendum shall be performed in strict and full accordance with the specifications stated in the WSCA Master Agreement, as amended by this Participating Addendum. A services agreement shall not be considered complete until final approval by the State is rendered in accordance with its terms.

#### **11.0 State Laws Requiring Mandatory Compliance by All Contractors:**

##### **1. State Law Requiring Mandatory Compliance by All Contractors-**

The statutes, laws or codes cited are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

##### **2. Ownership Disclosure-**

Pursuant to N.J.S.A. 52:25-24.2, contracts for any work, goods or services cannot be issued to any corporation or partnership unless prior to or at the time of the bid submission, the bidder disclosed the names and addresses of all of its owners holding 10% or more of the corporation or partnership's stock or interest during the term of the Contract. The Contractor has the continuing obligation to notify the Division of any change in its ownership affecting 10% or more of its ownership as soon as such change has been completed.

##### **3. Business Registration-**

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue.

The Contractor and any subcontractor providing goods or performing services under this Participating Addendum, and each of their affiliates, must comply with P.L. 2004, c. 57, which requires the Contractor and its subcontractor to collect and remit applicable State sales and use tax to the New Jersey Division of Taxation on the sale of all goods and services in the State of New Jersey subject to the provisions of the "Sales and Use Tax Act," P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.)

#### **4. Anti-discrimination-**

All parties to any contract with the State of New Jersey agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A.10:5-1 et seq. and N.J.S.A.10:5-31 through 10:5-38, and all rules and regulations issued there under.

#### **5. Additional Affirmative Action Requirements-**

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of the Agreement, the Contractor must agree as follows:

1. The Contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: 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. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
2. The Contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;
3. The Contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows;

1. The Contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.
2. The Contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.
3. The Contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.
4. In conforming with the targeted employment goals, the Contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

#### **6. New Jersey Prevailing Wage Act-**

Pursuant to the New Jersey Prevailing Wage Act (N.J.S.A. 34: 11-56.26 et seq.), Contractor guarantees that it has not been suspended or debarred by the Commissioner, New Jersey Department of Labor and Workforce Development, for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; Contractor also guarantees that it will comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required and to the extent applicable to this Participating Addendum.

#### **7. Americans with Disabilities Act-**

The Contractor and its Authorized Resellers agree to abide by the provisions of the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq.

#### **8. MacBride Principles-**

Contractor must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

#### **9. Pay to Play Prohibitions-**

Pursuant to N.J.S.A. 19:44A-20.13 et seq (L.2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for Contractor to:

1. Make or solicit a contribution in violation of the statute;
2. Knowingly conceal or misrepresent a contribution given or received;
3. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
4. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor, or to any State or county party committee;
5. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
6. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
7. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
8. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

**10. Political Contribution Disclosure-**

Contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (L. 2005, c. 271, §3 as amended) if in a calendar year the Contractor receives one or more contracts valued at \$50,000.00 or more. It is the Contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888) 313-3532 or on the internet at <http://www.elec.state.nj.us/>.

**11. Standards Prohibiting Conflict of Interest-**

The following prohibitions on Contractor activities shall apply to all contracts and purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988). As used below, "vendor" means any person, firm, corporation, or other entity which provides or offers or proposes to provide goods or services to or perform any contract for any State agency. As used below, "State agency" means any of the principal departments in the Executive Branch of the State Government, and any division, board, bureau, office, commission or other instrumentality within or created by such department, the Legislature of the State and any office, board, bureau or commission within or created by the Legislative Branch, and, to the extent consistent with law, any interstate agency to which New Jersey is a party and any independent State authority, commission, instrumentality or agency. A county or municipality shall not be deemed an agency or instrumentality of the State.

1. No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b and e, in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i of any such officer or employee, or partnership, firm or corporation with which they are employed or associated or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g.
2. The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the Attorney General and the Executive Commission on Ethical Standards.
3. No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee or having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he is employed or associated or in which he has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding the present or proposed relationship does not present the potential, actuality or appearance, of a conflict of interest.
4. No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee.
5. No vendor shall cause or influence, or attempt to cause or influence, any State officer or employees or special State officer or employee to use, or attempt to use, his official position to secure unwarranted privileges or advantages for the vendor or any other person.
6. The provisions cited in this paragraph shall not be construed to prohibit a State officer or employee or special State officer or employee from receiving gifts from or contracting with the Contractor under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines in the Executive Commission on Ethical Standards may promulgate under the provisions contained herein.

12. *Set-Off for State Tax Notice-*

Please be advised that, pursuant to P.L. 1995, c. 159, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within thirty (30) days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

#### **13. Compliance Laws-**

The Contractor agrees to comply with all local, State and federal laws, rules and regulations applicable to this Participating Addendum and to the goods delivered and/or services performed hereunder.

#### **14. Compliance State Laws-**

It is agreed and understood that any contracts and/or orders placed under this Participating Addendum shall be governed and construed and the rights and obligations of the parties hereto and of the Authorized Purchasers shall be determined in accordance with the laws of the State of New Jersey, including without limitation, by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, et seq., the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1, et seq., without reference to conflict of laws principles, and any and all litigation arising therefrom or related thereto shall be filed in the appropriate Division of the New Jersey Superior Court.

#### **15. Compliance - Data and Privacy Laws -**

The Contractor agrees to comply with all State and Federal data and privacy laws, rules and regulations applicable to Contractor under the Agreement.

#### **16. Open Public Records Act-**

All documents and information submitted by Contractor to the State under this Participating Addendum are considered public information, notwithstanding any disclaimers to the contrary submitted by a Contractor, except as may be exempted from public disclosure by the New Jersey Open Public Records Act, N.J.S.A. 47:1A-1 et seq., and the common law.

#### **17. Prohibited Investment in Iran -**

Pursuant to N.J.S.A. 52:32-55 et seq., the Contractor must utilize the Disclosure of Investment Activities in Iran form to certify that neither the Contractor, nor one of its parents, subsidiaries, and/or affiliates (as defined in N.J.S.A. 52:32-56(e)(3)), is listed on the Department of the Treasury's List of Persons or Entities Engaging in Prohibited Investment Activities in Iran and that neither the Contractor, nor one of its parents, subsidiaries, and/or affiliates, is involved in any of the investment activities set forth in N.J.S.A. 52:32-56(f). If the Contractor is unable to so certify, the Contractor shall provide a detailed and precise description of such activities as directed on the form.

#### **18. Organ and Tissue Donation -**

As required by N.J.S.A. 52:32-33.1, the State encourages Contractors to disseminate information relative to organ donation and to notify its employees, through information and materials or through an organ and tissue awareness program, of organ donation options. The information provided to employees should be prepared in collaboration with the organ procurement organizations designated pursuant to 42 U.S.C. §1320b-8 to serve in this State.

### **12.0 State Laws Requiring Mandatory Compliance by Contractors Under Circumstances Set Forth in Law or Based on the Type of Contract**

#### **1. Compliance Codes-**

The Contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The Contractor will be responsible for securing and paying all necessary permits, where applicable.

#### **2. Public Works Contractor Registration Act-**

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A. 34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

#### **3. Worker and Community Right to Know Act-**

The provisions of N.J.S.A. 34:5A-1 et seq. which requires the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the Contractor in compliance with the provisions of the statute.

#### **4. Buy American-**

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the Contractor shall be required to so certify.



Upon the State's request, Contractor agrees to assist the State in identifying products that meet the State's requirements under Section 12.0 (State Laws Requiring Mandatory Compliance by All Contractors - Buy American) of this Participating Addendum on a per purchase basis.

### 13.0 Provisions Applicable to Services Being Provided under a Statement of Work

#### **1. State's Option to Reduce Scope of Work -**

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under a Statement of Work. In such an event, the Director shall provide to the Contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days' of receipt of such written notice, if either is applicable:

(a) If the Contractor does not agree with the Director's proposed adjusted contract price, the Contractor shall submit to the Director any additional information that the Contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision taking all such information into account, and shall notify the Contractor of the final adjusted contract price. In the event Contractor disagrees with the final adjusted price, Section 15.0 (Miscellaneous - Alternative Dispute Resolution) shall apply.

(b) If the Contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the Contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the Contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the Contractor of the compensation to be paid for such work effort.

#### **2. Change in Law -**

Whenever a change in applicable law or regulation affects the scope of work, the Director shall provide written notice to the Contractor of the change and the Director's determination as to the corresponding adjusted change in the scope of work and corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

(a) If the Contractor does not agree with the adjusted contract price, the Contractor shall submit to the Director any additional information that the Contractor believes impacts the adjusted contract price with a request that the Director reconsider the adjusted contract price. The Director shall make a prompt decision taking all such information into account, and shall notify the Contractor of the final adjusted contract price.

(b) If the Contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the Contractor shall be compensated for such work effort according to the applicable portions of its price

schedule and the Contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the Contractor of the compensation to be paid for such work effort. In the event Contractor disagrees with the final adjusted price, Section 15.0 (Miscellaneous - Alternative Dispute Resolution) shall apply.

### **3. Suspension of Work -**

The State may, for valid reason, issue a stop order directing the Contractor to suspend work under the contract for a specific time. The Contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The Contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the Contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The Contractor shall provide whatever information that Director may require related to the equitable adjustment. In the event Contractor disagrees with the final adjusted contract price, Section 15.0 (Miscellaneous - Alternative Dispute Resolution) shall apply.

## **14.0 Liabilities:**

### **Indemnification-**

The Contractor shall indemnify, defend, and save harmless the State and its employees, from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith on account of the loss of life, tangible property (not including lost or damaged data) or injury or damage to the person, body or property (not including lost or damaged data) of any person or persons whatsoever, which shall arise from or result directly or indirectly from the work and/or products supplied under the Agreement.

Contractor shall also indemnify, defend, and save harmless the State and its employees, from and against any and all third party claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith for or on account of the use of any U.S. registered copyrighted composition, U.S. issued patent, or trade secret, furnished or used in the performance of the Agreement.

In the event of a third party patent and copyright claim or suit, the Contractor, at its option, may: (1) procure for the State the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties. The State will (1) promptly notify Contractor in writing of the claim; (2) provide reasonable assistance to Contractor in defending or settling the claim, including the selection of attorneys. The State must agree to any settlement of an alleged claim, which approval shall not be unreasonably withheld. The State may observe the proceeding and confer with

Contractor at its own expense. In addition, the State retains the right to take over its defense, at its own cost, upon reasonable notice to Contractor. Where a claim involves State-specific issues, as hereinafter defined, or if a claim includes a claim(s) unrelated to claims of infringement, then the State retains the right to take over the defense of any State-specific issues(s) or those unrelated to infringement. "State-specific issues" shall include, without limitation, any claims, arguments, or positions concerning the State's sovereign, statutory, or other immunities.

Notwithstanding the foregoing, Contractor has no obligation or liability for any patent or copyright claim or suit arising from: (1) the unauthorized combination, operation, or use of a product supplied under this Participating Addendum with any product, device, or software not supplied by Contractor; (2) the unauthorized alteration or modification of any product supplied under this Participating Addendum; (3) Contractor's compliance with the State's designs, specifications, requests, or instructions, provided that if the State provides Contractor with the State's designs, specifications, requests, or instructions, Contractor shall review same and advise whether there are any foreseeable issues of patent or copyright infringement; or (4) the State's failure to promptly implement a required update, use a new version of the Product, or to make a change or modification to the product if requested in writing by Contractor. This Section states the entire obligation of Contractor and its suppliers, and the exclusive remedy of the State, in respect of any infringement or alleged infringement of any intellectual property rights or proprietary rights. This indemnity obligation and remedy are given to the State solely for its benefit and in lieu of, and Contractor disclaims, all warranties, conditions and other terms of non-infringement or title with respect to any product.

Notwithstanding anything to the contrary contained in the WSCA Master Agreement, the State shall not be responsible for the Contractor's attorney fees and/or expenses.

The Contractor's indemnification and liability is not limited by, but is in addition to the insurance obligations contained in this Participating Addendum.

Notwithstanding anything to the contrary in the Agreement or any contract document, under no circumstances will the State indemnify, defend or hold harmless Contractor and any such provision in the WSCA Master Agreement or any contract document shall be of no force and effect. The State will not pay or reimburse for claims absent compliance with the terms of the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the Contractual Liability Act, N.J.S.A. 59:13-1 et seq. and a determination by the State to pay the claim or a final order of a court of competent jurisdiction.

#### ***Limitation of Liability-***

Contractor's liability arising out of or in connection with this Participating Addendum is limited to the lesser of two times (2x) the amount paid by the State under this Participating Addendum over the prior twelve months or \$5 million. Notwithstanding the preceding sentence, in no event shall the limit of liability be less than \$250,000. In no event shall Contractor be liable for any punitive, special, indirect, or consequential damages arising out of this Participating Addendum. This limitation on

liability shall not apply to Contractor's obligation to indemnify, defend, and save harmless the State and its employees as described in this Participating Addendum.

#### **Insurance-**

The Contractor shall secure and maintain in force for the term of this Participating Addendum insurance as provided herein. All required insurance shall be provided by insurance companies with an A- VIII or better rating by A.M. Best & Company.

The Contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. If the Contractor receives a notice of cancellation, the Contractor will promptly replace such coverage so that no lapse in insurance occurs. Certificates of renewals shall be provided within five (5) business days of the replacement or renewal of the insurance.

The Contractor shall not begin to provide services or goods to the State or Authorized Purchaser, as applicable, until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance and Audit Unit, PO Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates shall be emailed to the State at:

[ccau.certificate@treas.state.nj.us](mailto:ccau.certificate@treas.state.nj.us)

The insurance to be provided by the Contractor shall be as follows:

1. Occurrence Form Commercial General Liability Insurance or its equivalent: The annual policy limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall include the State, its officers, and employees and Authorized Purchasers under Contract **40047** as "Additional Insureds." Such Commercial General Liability Insurance policy shall be written on a current standard Insurance Services Organization form, or its equivalent, and contain only such reasonable and customary exclusionary endorsements based on the Contractor's industry and size. The insurance obligations contained in this Participating Addendum are in addition to and shall not limit Contractor's obligations under this Participating Addendum, including, but not limited to, the Contractor's defense and indemnity obligations.
2. Automobile liability insurance which shall be written to cover any owned, non-owned, and hired automobile used by the insured. Annual policy limits of liability for bodily injury and property damage shall be \$1 million per occurrence or per accident as a combined single limit. The State, its officers, and employees and Authorized Purchasers under Contract \_\_\_\_\_ must be included as "Additional Insureds."
3. Worker's Compensation Insurance applicable under the laws of the State of New Jersey and Employers Liability Insurance with limits of:

- A. \$1,000,000 BODILY INJURY, EACH OCCURRENCE
  - B. \$1,000,000 DISEASE EACH EMPLOYEE
  - C. \$1,000,000 DISEASE AGGREGATE LIMIT
4. Professional Liability Insurance: The Contractor shall provide Errors and Omissions, Professional Liability Insurance and/or Professional Liability Malpractice Insurance to protect the Contractor from insured liability arising out of the professional obligations performed pursuant to the requirements of this Agreement. The insurance shall be in the amount of \$2,000,000 per claim and in the aggregate. If the Contractor has claims-made coverage and subsequently changes carriers during the term of the contract, the new Errors and Omissions, Professional Liability Insurance and/or Professional Malpractice Insurance shall provide retroactive coverage to the inception date of this contract or earlier.

Notwithstanding anything to the contrary herein, Contractor may meet the above insurance requirements via commercial insurance, self-insurance, or a combination of these options at Contractor's sole discretion. In addition, any combination of Primary, Umbrella, or Excess Liability policies may be used to meet any coverage or limits requirements listed above.

#### **15.0 Miscellaneous:**

##### **Confidentiality-**

- a. The State's obligation to maintain the confidentiality of Contractor's confidential information provided to the State under the Agreement is conditioned upon and subject to the State's obligations under the New Jersey Public Records Act, N.J.S.A. 47:1A-1 et seq., ("OPRA"), the New Jersey common law right to know, and any other lawful document request or subpoena.
- b. By virtue of the Agreement, the parties may have access to information that is confidential to one another. The parties agree to disclose only information that is required for the performance of their obligations under the Agreement. Contractor's confidential information, to the extent not expressly prohibited by law, shall consist of all information clearly identified as confidential at the time of disclosure ("Contractor Confidential Information"). Notwithstanding the previous sentence, the Contractor acknowledges the terms and pricing of the contract are subject to disclosure under OPRA, the New Jersey common law right to know, and any other lawful document request or subpoena.
- c. The Contractor shall treat as Confidential Information all information or data contained in documents supplied by the State, any information or data gathered by the Contractor in fulfillment of the contract and any analysis thereof (whether in fulfillment of the contract or not).
- d. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain or publicly available through no act or omission of the other party, except that if the information is personally identifying to a person or entity regardless of whether it has become part of the public domain through other means, the other party must maintain full efforts under the Contract to keep it confidential; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing

party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

e. The parties agree to hold each other's Confidential Information in confidence, using at least the same degree of care in doing so that it uses to protect its own confidential information, but not less than reasonable care.

f. In the event that the State receives a request for Contractor Confidential Information related to the contract pursuant to a court order, subpoena, lawful document request or other operation of law, the State agrees, if permitted by law, to provide Contractor with as much notice, in writing, as is reasonably practicable and the State's intended response to such request. Contractor shall take any action it deems appropriate to protect its documents and/or information.

g. In addition, in the event Contractor receives a request for State Confidential Information pursuant to a court order, subpoena, or other operation of law, Contractor shall, if permitted by law, provide the State with as much notice, in writing, as is reasonably practicable and Contractor's intended response to such request. The State shall take any action it deems appropriate to protect its documents and/or information. Notice to the State shall not relieve the Contractor of its obligation to take action to protect such information if the Contractor is aware of a legal reason to do so.

h. Notwithstanding the requirements of nondisclosure described in this Section 15.0, Miscellaneous (Confidentiality) either party may release the other party's Confidential Information (i) if directed to do so by a court or arbitrator of competent jurisdiction, (ii) pursuant to a lawfully issued subpoena or other lawful document request, (iii) in the case of the State, if the State determines the documents or information are subject to disclosure and Contractor does not exercise its rights as described in subsection 15.0 Miscellaneous (Confidentiality)(f), or if Contractor is unsuccessful in defending its rights as described in subsection 15.0 Miscellaneous (Confidentiality)(f), or (iv) in the case of Contractor, if Contractor determines the documents or information are subject to disclosure and the State does not exercise its rights as described in subsection 15.0 Miscellaneous (Confidentiality)(g), or if the State is unsuccessful in defending its rights as described in subsection 15.0 Miscellaneous (Confidentiality)(g).

i. Except as permitted above and for confidentiality obligations related to information about a party's intellectual property, which shall never expire, neither party will use or disclose the other's Confidential Information for seven (7) years after the termination of the Agreement or such longer time period as required by applicable law.

Contractor shall be liable for damages arising from its breach of the confidentiality obligations of this Participating Addendum.

*Assignment of Antitrust Claim(s)-*

The Contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this Participating Addendum, the Contractor, acting herein by and through its duly authorized agent, hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this Participating Addendum.

In connection with this assignment, the following are the express obligations of the Contractor:

1. It will take no action which will in any way diminish the value of the rights conveyed or assigned hereunder.
2. It will advise the Attorney General of New Jersey:
  - a. in advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action;
  - b. immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
3. It shall notify the defendants in any antitrust suit of the fact of the within assignment at the earliest practicable opportunity after the Contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice will be sent to the Attorney General of New Jersey.

Furthermore, it is understood and agreed that in the event any payment under any such claim or cause of action is made to the Contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

#### **Mergers, Acquisitions and Dissolutions-**

##### **Merger or Acquisition:**

If, during the term of this Participating Addendum, the Contractor shall merge with or be acquired by another firm, the Contractor shall give notice to the Director as soon as practicable and in no event longer than thirty (30) days after said merger or acquisition. Any such merger or acquisition will require the assignment of the WSCA Master Agreement, as amended by this Participating Addendum, pursuant to the provisions related thereto set forth therein. The Contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the Contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents shall be submitted within thirty (30) days of the request. Failure to do so may result in termination of this Participating Addendum for cause.

#### ***Dissolution:***

If, during the term of this Participating Addendum, the Contractor's partnership, joint venture or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director, in writing, the names of the parties proposed to perform under this Participating Addendum and the names of the parties to whom payment should be made. No payment will be made until all parties to the dissolved business entity submit the required documents to the Director.

#### ***Independent Contractor -***

The Contractor's status shall be that of an independent contractor and not as an employee of the State.

#### ***Announcements and/or Advertisements-***

All publicity and/or public announcements pertaining to this Participating Addendum shall be approved in writing by the State prior to release.

Contractor must obtain prior written (email) approval, no less than seven (7) business days before release for any and all advertisements pertaining to this Participating Addendum during its effective term. Any and all Authorized Resellers may not directly send advertisements to any and all Authorized Purchasers without explicit written approval from the Contractor.

#### ***Contractor and/or Authorized Reseller Facilities Inspection-***

The State reserves the right to inspect the Contractor and/or Fulfillment Partner's establishment for the purposes of ascertaining whether the Contractor has the necessary facilities for performing the Agreement, and for ongoing contract compliance.

#### ***Governing Law; Jurisdiction -***

Any claims under this Participating Addendum and any and all litigation arising therefrom or related thereto shall be brought in State court in the State of New Jersey and governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles. The State of New Jersey's obligations under this Participating Addendum are subject to the New Jersey Tort Claims Act (N.J.S.A. 59:1-1 et. seq.), the New Jersey Contractual Liability Act (N.J.S.A. 59:13-1 et. seq.) and the availability of funds.

#### ***Tax Exemption-***

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

#### ***Request for Additional Information-***

The Director reserves the right to request relevant information from the Contractor, including factors necessary to evaluate the Contractor's financial capabilities to perform the Agreement. Further, the Director



reserves the right to request a Contractor to explain to the Director's reasonable satisfaction, how the bid price was determined.

#### **Maintenance of Records-**

The Contractor shall maintain records for products and/or services directly related to sales orders and corresponding invoices, including product specifications at time of shipping, issued in accordance with this Participating Addendum for a period of five (5) years from the date of final payment. Such records shall be made available to the State, including the State of New Jersey, Office of the State Comptroller, for audit and review.

#### **Software Audits-**

Notwithstanding anything to the contrary in the WSCA Master Agreement or Contractor's software license agreement, in the event that the Contractor seeks to exercise a right in the WSCA Master Agreement or its software license agreement to audit the State's use of Contractor's Intellectual Property, as hereinafter defined under the heading "Ownership", the Contractor shall deliver simultaneous written notice, no less than thirty (30) days in advance of the audit start date (unless the Contractor's notice provides a longer notice period), to:

- a. the Director of the New Jersey Department of Treasury, Division of Purchase and Property:  
Procurement Bureau, Technology Unit  
P.O. Box 230  
Trenton, NJ 08625-0230
- b. the Chief of Staff of the New Jersey Office of Information Technology:  
Office of the Chief Technology Officer  
300 Riverview Plaza  
Trenton, NJ 08625
- c. and the State Contract Manager for this contract:

The notice shall reference the specific audit provision(s) in the WSCA Master Agreement or the Contractor's software license agreement being exercised and include copies of same, specify the means by which the Contractor will conduct the audit, and shall require the audit to be conducted in accordance with generally accepted standards in the field of such audits.

To the extent Contractor's license agreement permits Contractor to conduct periodic audits of the State's usage of the products and/or services provided thereunder, such provision is amended to include the following dispute resolution process:

- a. If the State, in good faith, provides Contractor with written notice of an alleged error in the amount of underpaid fees due Contractor as a result of an audit (the "dispute"), then the parties will endeavor to resolve the dispute in accordance with this paragraph. Each party will appoint a Vice President, Assistant Director, or the equivalent (hereinafter referred to as "Representative") to discuss the dispute and no formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid

non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such Representative concludes, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely. In addition, the parties shall refrain from exercising any termination right related to the dispute being considered under this paragraph and shall continue to perform their respective obligations under the license agreement, while they endeavor to resolve the dispute under this paragraph.

Notwithstanding anything to the contrary in the WSCA Master Agreement or Contractor's software license agreement, the State will not pay or reimburse Contractor for costs or expenses associated with the performance of an audit.

In the event that the WSCA Master Agreement or the Contractor's software license agreement does not permit audits of the State's usage of the Contractor's Intellectual Property this provision shall not be interpreted to provide such an audit right.

#### **Ownership -**

State Intellectual Property - The State retains ownership of all State Intellectual Property provided to the Contractor pursuant to the Agreement. State Intellectual Property includes any intellectual property owned by the State. The State grants the Contractor a non-exclusive, royalty-free, license to use, copy, display, distribute, transit and prepare derivative works of State Intellectual Property and State data and background information only to fulfill the purposes of the Agreement. The State's license to the Contractor is limited by the term of the Agreement and the confidentiality obligations set forth in Section 15.0 Miscellaneous (Confidentiality) of this Participating Addendum.

#### **No Warranties -**

Notwithstanding anything to the contrary in the WSCA Master Agreement, the Contractor's software agreement or services agreement, the State makes no warranties unless they are expressly stated in this Participating Addendum.

#### **Liquidated Damages-**

A liquidated damages provision, if any, must be agreed to and signed by both parties and stated in the purchase order issued pursuant to this Participating Addendum in order to be in effect.

#### **Data Storage -**

Contractor must store all State data in Contractor's data centers located in the U.S.As used in this section 15.0 (Miscellaneous - Data Storage), the term "State data" shall not include information relating to equipment registration, technical support or maintenance, or sales and purchasing support.

#### **Dispute Resolution-**

The State and Contractor will attempt to resolve any dispute through face-to-face negotiation with persons fully authorized to resolve the dispute or through non-binding mediation utilizing a mediator agreed to by the parties, rather than through litigation. No formal proceedings for the judicial resolution of such dispute, except for the seeking of equitable relief or those required to avoid non-compliance with the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq., may begin until either such persons conclude, after a good faith effort to resolve the dispute, that resolution through continued discussion is unlikely.

#### 16.0 Waiver:

No term or provision of this Participating Addendum shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by an individual authorized to so waive or consent. Any consent by either party to, or waiver of, a breach by the other whether expressed or implied, shall not constitute a consent to, waiver of, or excuse for, any other breach or any subsequent breach, except as may be expressly provided in the waiver or consent.

#### 17.0 The State of New Jersey Mandatory Certification Requirements:

The following are New Jersey procurement requirements that Contractor agrees to fulfill prior to the Effective Date. Some Authorized Purchasers may have additional requirements when placing an order and Contractor shall comply with same as necessary.

1. New Jersey Business Registration (N.J.S.A. 52:32-44);
2. Ownership Disclosure (N.J.S.A. 52:25-24.2);
3. Disclosure of Investment Activities in Iran (N.J.S.A. 52:32-55 et seq.)
4. Executed MacBride Principles (N.J.S.A. 52:34-12.2);
5. Completed Contractor Certification and Disclosure of Political Contributions (N.J.S.A. 19:44A-20:13 et. seq.);
6. Disclosure of Investigations and Actions Involving Bidder
7. Vendor Certification (P.L. 2005, c.271);
8. Proof of insurance as specified herein;
9. Proof of compliance with New Jersey Affirmative Action requirements (N.J.A.C. 17:27-1.1 et. seq.)
  - a. New Jersey Form AA-302 Affirmative Action Employee Information Report; or New Jersey Affirmative Action Certificate; or Federal Affirmative Action Approval Letter.

#### 18.0 Primary Contacts:

The Division of Purchase and Property contact for this Participating Addendum is as follows:

Name:	Vicente Azarcon
Title:	Procurement Specialist
Participating Entity Name:	Division of Purchase and Property, Department of the Treasury State of New Jersey
Address:	33 West State Street, 8 <sup>th</sup> Floor

Telephone: PO Box 230  
Trenton, New Jersey 08625-0230  
Fax: (609) 292-0250  
E-mail: (609) 292-5170  
vicente.azarcon@treas.nj.gov

The State Contract Manager for this Participating Addendum is as follows:

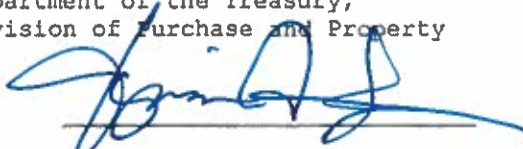
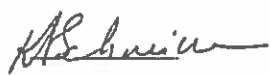

Name: Lynne Gash  
Title: State Contract Manager  
Participating Entity Name: Office of Information Technology,  
State of New Jersey  
Address: 300 Riverview Plaza  
Trenton, New Jersey 08625  
Telephone: (609) 777-4121  
E-mail: lynne.gash@oit.nj.gov

The primary Contractor contact for this Participating Addendum is as follows:

Name: Karen Schneider  
Title: NASPO ValuePoint Program Mgr  
Contractor: IBM Corporation.  
Address: 4660 La Jolla Village Drive, Suite 300, San  
Diego, CA 92122  
Telephone: 720-397-5563  
Fax: N/A  
E-mail: kasch@us.ibm.com

The parties hereto agree that this Participating Addendum may be executed in counterpart, each original signed page to become part of the original document.

IN WITNESS WHEREOF, authorized representatives of Contractor and the State have executed this Participating Addendum to be effective on the Effective Date.

<p>State of New Jersey, Department of the Treasury, Division of Purchase and Property</p> <p>By: </p> <p>Name: Jignasa Desai-McCleary</p> <p>Title: Director</p> <p>Date: <u>10/14/15</u></p>	<p>CONTRACTOR IBM Corporation</p> <p>By: </p> <p>Name: Karen Schneider</p> <p>Title: NASPO ValuePoint Pgm Mgr</p> <p>Date: <u>2 Oct 2015</u></p>
<p>Approved as to Form: John J. Hoffman Acting Attorney General of the State of New Jersey</p> <p>By: </p> <p>Name: <u>John E. Gibson</u></p> <p>Title: Deputy Attorney General</p> <p>Date: <u>10/5/15</u></p>	