

**PARTICIPATING ADDENDUM**  
**NASPO ValuePoint COOPERATIVE PURCHASING ORGANIZATION**  
**Computer Equipment**  
**Administered by the State of Minnesota**  
**(hereinafter "Lead State")**  
**MASTER AGREEMENT**  
Master Agreement No: MNWNC-116  
IBM Corporation  
(hereinafter "Contractor")  
and  
State of Arkansas  
Contract No: 4600036004

**1. Scope:**

This addendum allows for purchase of the following Computer Equipment/Services: Servers and Storage including related Peripherals & Services (Bands 4 & 5) from contract MNWNC-116 led by the State of Minnesota. It is for use by Arkansas state agencies and other entities located in the State that are authorized by the Arkansas Office of State Procurement to utilize state contracts.

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 Contractor. The configuration limits and restrictions for the Master Agreement are provided with revisions identified by Arkansas in this Participating Addendum.

**2. Participation:**

All eligible purchasers within the State of Arkansas, including State agencies, K-12 educational institutions, and local public procurement units (cities, counties, municipalities), are authorized to purchase products and services under the terms and conditions of this agreement.

**3. Order of Precedence:**

- A. Arkansas's Participating Addendum (PA); Arkansas'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 Contractor under the Terms of Minnesota NASPO ValuePoint Master Agreement.
- B. Minnesota NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions)
- C. The Solicitation including all Addendums; and
- D. Contractor'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. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and **must** be in writing and attached to the Master Agreement as an Exhibit or Attachment. No other terms and conditions **shall** apply, including terms and conditions listed in the Contractor's response to the Solicitation, or terms listed or references on the Contractor's website, in the Contractor's quotation/sales order or in similar documents subsequently provided by the Contractor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

**4. Participating State Modifications or Additions to Master Agreement:**

These modifications or additions **shall** apply only to actions and relationships within Arkansas.

- A. Software published by Adobe, Computer Associates, Corel, IBM, McAfee, Microsoft, Oracle, Symantec, and Trend Micro other than pre-loaded software products or operating software **shall not** be procured.
- B. Contractor **must** submit quarterly reports to the Arkansas Office of State Procurement via email to [OSP.ITContracts@dfa.arkansas.gov](mailto:OSP.ITContracts@dfa.arkansas.gov). Reports **shall** be due on or before the last day of the month following the end of the quarter. The contractor **shall** provide an electronic usage report in Excel format which lists, but is not limited to, the following:
  - 1) Vendor Contract Number
  - 2) State
  - 3) Customer Type (State, Education, Local Government)
  - 4) Bill to Name
  - 5) Customer PO Number
  - 6) Customer Number

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- 7) Order Date
- 8) Product/Service Description
- 9) Retail Price
- 10) Discount Unit Price
- 11) Quantity
- 12) Total Price

C. An administrative fee of one half (1/2) of one (1) percent of the sales of products and services (less any charges for tax and shipping) per quarter **shall** be collected on behalf of the State of Arkansas and **shall** be in accordance with the following schedule.

<b>Period End</b>	<b>Admin Fee Due</b>
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

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

Office of State Procurement  
Attn: Contract Administration Fee  
1509 W 7<sup>th</sup> St, Room 300  
Little Rock, AR 72201

- D. Payments **shall** be submitted to the contractor at the address shown on the invoice. Payments should be tendered to the contractor within thirty (30) days of the date of invoice. After the sixtieth (60) day from the date of invoice, unless mutually agreed to, interest **shall** be paid on the unpaid balance due to the contractor at the rate of one half (1/2) of one (1) percent per month in accordance with Arkansas Code Annotated §19-11-224. The procuring agency **shall** make a good-faith effort to pay within thirty (30) days after the date of invoice.
- E. Financial and accounting records relevant to State of Arkansas transactions **shall** be subject to examination by appropriate Arkansas government authorities for a period of five (5) years from the expiration date and final payment on the contract or extension thereof, provided, however, that such government authorities **shall** provide thirty (30) days written notice to the contractor of its intent to conduct such examination contemplated by this section.
- F. The laws of the State of Arkansas **shall** govern this agreement. Nothing under this agreement or the Master Agreement **shall** be deemed or construed as a waiver of the State's right of sovereign immunity.
- G. Expenses for travel **shall not** be reimbursed unless specifically permitted under the duties of the contractor. All travel **must** be approved in advance by the State. Expenditures made by the contractor for travel will be reimbursed at the current rate paid by the State.
- H. In the event the State of Arkansas no longer needs the service or commodity specified in the contract or purchase order due to program changes, changes in law, rules, regulations, lack of funds appropriated for this purpose, or relocation of offices, the State may cancel the contract or purchase order by giving the contractor written notice of such cancellation thirty (30) days prior to the date of cancellation.
- I. The following indemnification clause replaces in its entirety the Indemnification clause specified in the Master Agreement MNWNC-116. The contractor **shall** defend indemnify and hold harmless the other party along with their officers, agencies, and employees against damages for third-party claims, or causes of action including reasonable attorney's fees and related costs that a court finally awards for any death, bodily injury, or damage to tangible property arising from gross negligence or willful misconduct of the indemnifying party, its employees, subcontractors, or volunteers, at any tier, relating to the performance of its obligations under the Master Agreement. This section is not subject to any limitations of liability in the Master Agreement or in any other document executed in conjunction with the Master Agreement.

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- J. CONFIDENTIAL INFORMATION **shall** only be considered confidential by Arkansas State law (Reference the Arkansas Freedom of Information Act, Ark Code Ann. § 25-19-105).
- K. The Contractor may use Partners; however, the Contractor **shall** be responsible for any agreements with the Partners. The State of Arkansas **shall not** agree to and **shall not** be responsible for any terms and conditions with a Partner. Contractor will identify and define the Partner program(s) available. 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. The Participating State will define the process to add Partners.
- Partners are subject to change, upon approval by OSP.
- L. Leasing **shall not** be authorized under this Participating Addendum.
- M. The following configuration limits are based on a single computer configuration:

Item	Configuration
Server/Storage	\$ 500,000
Desktops/Laptops	\$ 100,000
Tablets	\$ 50,000
Peripherals	\$ 50,000
Services	\$ 10,000

The contractor **shall not** propose or provide value-added services unless it meets one (1) or more of the following criteria:

- It is of no cost to the purchasing entity
- Services are linked to items the entity has purchased through a current or past transaction.

**5. Purchase Order Instructions:**

All purchase orders issued by Purchasing Entities within the jurisdiction of this participating addendum **shall** include the following:

- A. NASPO ValuePoint Contract number **MNWNC-116**
- B. State contract number **SP-16-0019 4600036004**
- C. Agency Name, Address, Contact, and Phone-Number
- D. IT procurement and/or other applicable approvals

**6. Performance Standards**

In accordance with Act 557 of 2015, all state agencies are required to include Performance Standards for the purchase of Services. Performance Standards **shall** be mutually agreed to and signed by both parties.

**7. Individual Customer**

Each State agency and political subdivision, as a Participating Entity, that purchases products/services **shall** be treated as if they were Individual Customers. Except to the extent modified by a Participating Addendum, each agency and political subdivision **shall** be responsible to follow the terms and conditions of the Master Agreement; and they **shall** have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision **shall** be responsible for their own charges, fees, and liabilities. Each agency and political subdivision **shall** have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor **shall** apply the charges to each Participating Entity individually.

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**8. Primary Contacts:**

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

<b>Lead State</b>	Name	Sue Kahle
	Address	50 Sherburne Ave, Room 112
	City, State Zip	St Paul, MN 55155
	Telephone	651-201-2434
	E-mail	Susan.kahle@state.mn.su

<b>NASPO ValuePoint</b>	Name	Tim Hay
	Address	201 East Main St, Suite 1405
	City, State Zip	Lexington, KY 40607
	Telephone	503-428-5705
	E-mail	thay@wsca-naspo.org

<b>Contractor</b>	Name	Karen Schneider
	Address	4660 La Jolla Village Drive, Ste 300
	City, State Zip	San Diego, CA 92122
	Telephone	720-397-5563
	E-mail	kasch@us.ibm.com

<b>State of Arkansas</b>	Name	Jaime Motley
	Address	1509 W 7th St 3rd Floor
	City, State Zip	Little Rock, AR 72201
	Telephone	501-371-6065
	E-mail	Jaime.Motley@dfa.arkansas.gov

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

This Participating Addendum and the Master Agreement number MNWNC-116 (administered by the State of Minnesota) together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Agreement, together with its exhibits, **shall not** be added to or incorporated into this Addendum or the Master Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions **shall** be hereby rejected. The terms and conditions of this Addendum and the Master Agreement and its exhibits **shall** prevail and govern in the case of any such inconsistent or additional terms within the Participating State.

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

<b>State of Arkansas:</b>	<b>Contractor:</b>
	International Business Machines Corporation
By: <i>Randy Wright</i>	By: <i>K. Schneider</i>
Name: <i>Randy Wright</i>	Name: Karen Schneider
Title: <i>Asst. Admin</i>	Title: NASPO ValuePoint Program Manager
Date: <i>12/8/15</i>	Date: <i>Dec 4, 2015</i>