PARTICIPATING ADDENDUM
[hereinafter "Addendum"]
For
WSCA/NASPO PC Contracts 2009-2014
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES
MASTER PRICE AGREEMENT NUMBER 27166
Between
IBM Corporation
[hereinafter "Contractor"]
and
STATE OF SOUTH CAROLINA, INFORMATION TECHNOLOGY MANAGEMENT OFFICE (ITMO), a unit of South Carolina Budget and Control Board's
Division of the Procurement Services
[hereinafter "Participating State"]
Participating State/Entity Contract Number 5000008965

1. Scope
This Addendum covers the WSCA/NASPO PC Contracts 2009-2014 (Computer Equipment, Peripherals and Related Services) lead by the State of Minnesota for use by state agencies and other entities located in the Participating State authorized by that state's statutes to utilize state contracts. **IBM CORPORATION** is authorized under this WSCA agreement to sell the following:

Servers (individual units/configurations shall not exceed $300,000.00)
(EXCLUDING Z servers)
Storage (individual units/configurations shall not exceed $300,000.00)

This Addendum is between ("Contractor") and all participating South Carolina public procurement units (as defined by S.C. Code Ann. § 11-35-4610(5), as amended) or governmental bodies (as defined by S.C. Code Ann. § 11-35-310(18), as amended).

2. Participation
Use of specific WSCA/NASPO cooperative contract by state agencies, political subdivisions and other entities (including cooperatives) authorized by an individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.

3. Changes:
Unless otherwise stated, terms used herein shall have the definitions assigned by Master Price Agreement **B27166.** NOTE: Any and all applicable references of Minnesota (MN) are to be changed to read South Carolina (SC).

A. Definitions:

"ITMO" means the Information Technology Management Office established by South Carolina Code Section 11-35-820, as amended.

"SC Participant(s) means all participating South Carolina public procurement units (as defined by S.C. Code Ann. § 11-35-4610(5), as amended) or governmental bodies (as defined by S.C. Code Ann. § 11-35-310(18), as amended).

LAN: If installation is included with LAN equipment it applies from PC to wall only.

B. **DELETE** the definition of **PDAs** and any and all references to "PDAs". They are not allowed in this S.C. participating addendum.

C. **Delete** under Peripherals – Any and all references to "**Whiteboards**". Whiteboards may be ordered under SC State Term Contract for Audio Visual equipment.

D. This Addendum is a "Participating Addendum" as defined in the Master Price Agreement, forms a part of the Master Price Agreement, and supersedes the Master Price Agreement to the extent of any inconsistency. The terms and conditions of this Addendum apply only to the relationship between SC Participants and Contractor.

E. Pursuant to Section 11-35-4810, South Carolina public procurement units, both state and local (as defined by S.C. Code Ann. § 11-35-4610(5), as amended) are authorized to participate in cooperative purchasing.

F. Pursuant to Section 11-35-510 of the South Carolina Code of Laws, ITMO is authorized to act as the statutory procurement agent for every state governmental body (as defined by S.C. Code Ann. § 11-35-310(18), as amended). Consistent with its statutory authority, ITMO is acting solely in a representative capacity and on behalf of such state governmental bodies.

G. Participation by local public procurement units (as defined by S.C. Code Ann. § 11-35-4610(3), as amended) in the Master Price Agreement is optional. By submitting an order and receiving delivery of an item pursuant to the Master Price Agreement, a local public procurement unit manifests its intent to be and is bound by the Master Price Agreement, including this addendum, unless the local public procurement unit has entered into a separate Participating Addendum.

H. Each SC Participant's obligations and liabilities are independent of any other SC Participant's obligations and liabilities. SC Participants are not obligated for any order submitted by another SC Participant and do not incur any liability with regard to any other SC Participant. ITMO is acting solely on behalf of SC governmental bodies and bears no liability for any damages that any party may incur with regard to the Master Price Agreement.

I. South Carolina Prompt Payment Statute: The obligations of any SC Participant are governed by Section 11-35-45 of the South Carolina Code of Laws, if the participant is a "governmental body," as that term is defined in Section 11-35-310(18).

J. Business Partners may be approved to participate in an IBM fee based offering but all orders and fulfillment will be direct with IBM. See #6 Servicing Subcontractors.

K. This Addendum, any order against the Master Price Agreement, and any dispute, claim, or controversy relating to the either shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina. Any claim by Contractor against any SC

Participant shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. Contractor agrees that no act by a SC Participant shall constitute waiver of either the SC Participant's sovereign immunity or the SC Participant's immunity under the Eleventh Amendment of the United State's Constitution.

L. Tax Exempt: In order to exempt the State from the obligation to withhold taxes from payments due, Contractor shall, upon request by the State, register as required by South Carolina Code Section 12-8-550, as amended, and submit the appropriate form (Nonresident Taxpayer Registration Affidavit – Income Tax Withholding) in accordance with its instructions.

M. **Products and Services NOT Provided by this Participating Addendum**: Authorized purchasers may purchase, and contractors may supply, "Services" only as defined herein. For the purposes of this agreement, "Services" includes only those Services directly related to the installation and configuration of the equipment and **operating** software i.e. Microsoft, Windows, etc., to allow the equipment to function in accordance with the manufacturer's specifications and those services related to maintenance of the equipment either to fulfill the Contractor's warranty or any services related to the routine maintenance of the equipment or service. "Services" **do not include** Professional Services for custom application design, or development, or other professional consulting services unrelated to the installation and/or configuration of equipment and/or software authorized under the Addendum.

Other items EXCLUDED from being purchased from this contract are as follows:
Printer Supplies (The State of SC has a separate contract for HP printer supplies)
Application Software (The State of SC has a separate contract for Application Software.)
Consulting Services
Copiers (The State of SC has a separate contract for Copiers)
Design Services
Desktop
Laptop
LAN
Tablet PC
Monitors
Printers
Z servers
Digital Projectors (The State of SC has a separate contract for AV equipment)
Internet Based Educational Training Services
Instructional Packages
IT Temporary Professional Services, (The State of SC has a separate State Term Contract)

Mainframe (no mainframes of any types)
Middleware
Networking Hardware except for Network Interface Cards (NIC) and the cables necessary to attach a personal computer to the network. (The State of SC has a separate Networking Hardware contract)
PDAs
Whiteboards (The State of SC has a separate contract for AV equipment)
World Wide Web Services.

The Purchase of software is not allowed under this contract except the operating software at time of purchase. No additional software is allowed to be purchased at any time.

N. Item Substitution: No Substitutes will be allowed on Purchase Orders received from South Carolina procurement units without written permission from the issuing procurement unit.

O. Reports: All contract holders will be required to process monthly usage reports. The monthly reports shall be submitted by the 30th day of the month for the previous month's actual sales. If "No Sales" are achieved for a specific month, then "zero" 0 must be reported for that specific month.

The report format shall be as mutually agreed upon. The Primary Point of contact for reporting purposes is Jay Lopez, **803-737-0283,** jlopez@itmo.sc.gov.

Periodic failure to provide this report by the 30th of every month may result in taking the contract link down from the website and/or termination of the contract. Consistent failure to meet this requirement will result in termination of the contract.

P. Contract History: The State of South Carolina has an auditing requirement for the retention of contract history. The retention for the contract history is three (3) years after the expiration date of the contract. Upon prior written request, the Contractor will make available to the State those records directly associated with Contractor's performance under the Addendum.

Q. Records Retention & Right to Audit: The state shall have the right to audit the books and records of the contractor as they pertain to this contract, both independent of, and pursuant to, S.C. Code Section 11-35-2220. Such books and records shall be maintained for a period of three (3) years from the date of final payment under the contract. The state may conduct, or have conducted, performance audits of the contractor. The state may conduct, or have conducted, audits of specific requirements of this bid as determined necessary by the state. Pertaining to all audits, contractor shall make available to the state access to its computer files containing the history of contract performance and all other

documents related to the audit. Additionally, any software used by the contractor shall be made available for auditing purposes at no cost to the state.

R. **Administrative Fee**: The Information Technology Management Office (ITMO) issues and maintains State term contracts for the benefit of governmental entities within the State of South Carolina. In order to maintain and enhance the quality and quantity of its State term contracts an administrative fee of one percent (1%) of the total actual sales will be assessed of each contractor. Total actual sales will be equal to gross sales less return goods and taxes as stated on the invoice. The Administrative Fee will be remitted monthly in the form of a check to:

The Information Technology Management Office
Attn: Reports Manager
1201 Main Street, Suite 430
Columbia, SC 29210

Each remittance will include the period covered and the contract number. The monthly administrative fee shall be submitted by the last business day of the month for the previous month's actual sales.

S. Change in Contractor Representatives: The Contractor will email the South Carolina point of contact within seven (7) days of any change of contract contacts and contact information.

T. Purchasing Card: South Carolina has entered into an agreement for a Visa Card to provide the State with purchasing card services. The purchasing card allows state agencies to make authorized purchases from a vendor without the requirement to issue a purchase order. Purchasing cards are issued to select employees authorized to purchase for the agency. Cardholders can make purchases directly from any vendor that accepts the purchasing card. State Agencies may request authorization from the Materials Management Officer, Mr. Voight Shealy, to use the purchasing card to pay for the purchase of goods and services from these state term contracts otherwise the purchasing card can only be used for goods approved by the State and the maximum purchase per transaction is $1,500.

U. Protection of Human Health & the Environment: The State of South Carolina requires all contractual activities to be in compliance with local, state, and federal mandates concerning "protection of human health and the environment". Any contractor doing business with the State will be required to document compliance and to specify prudent practices used by the contractor to address applicable mandates including, but not restricted to "the hazard communication standard" OSHA CFR 1910.1200 (SCRR Article 1,71-1910.1200). By submission of this bid, the vendor agrees to take all necessary steps to ensure compliance with these requirements.

V. Insolvency: This contract is voidable and subject to immediate termination by the State upon the contractor's insolvency, including the filing of proceedings in bankruptcy.

W. **Price Agreement Number**: All purchase orders issued by procuring agencies within the jurisdiction of this Participating Addendum shall include the State of South Carolina Contract Number **5000008965.**

X. **Income Tax Credit for State Contractors Having Subcontracts with MINORITY Firms:**
TAX CREDIT FOR SUBCONTRACTING WITH DISADVANTAGED SMALL BUSINESSES (JAN 2008)
Pursuant to Section 12-6-3350, a taxpayer having a contract with this State who subcontracts with a socially and economically disadvantaged small business is eligible for an income tax credit equal to four percent of the payments to that subcontractor for work pursuant to the contract. The subcontractor must be certified as a socially and economically disadvantaged small business as defined in Section 11-35-5010 and regulations pursuant to it. The credit is limited to a maximum of fifty thousand dollars annually. A taxpayer is eligible to claim the credit for ten consecutive taxable years beginning with the taxable year in which the first payment is made to the subcontractor that qualifies for the credit. After the above ten consecutive taxable years, the taxpayer is no longer eligible for the credit. A taxpayer claiming the credit shall maintain evidence of work performed for the contract by the subcontractor. The credit may be claimed on Form TC-2, "Minority Business Credit." A copy of the subcontractor's certificate from the Governor's Office of Small and Minority Business (OSMBA) is to be attached to the contractor's income tax return. Questions regarding the tax credit and how to file are to be referred to: SC Department of Revenue, Research and Review, Phone: (803) 898-5786, Fax: (803) 898-5888. Questions regarding subcontractor certification are to be referred to: Governor's Office of Small and Minority Business Assistance, Phone: (803) 734- 0657, Fax: (803) 734-2498.

4. Lease Agreements
Any/all leasing will be handled through the South Carolina Leasing Hardware State Term Contract.

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

MASTER AGREEMENT CONTACTS:

Lead State

Name:	Bernadette Kopischke
Address:	50 Sherburne Ave., 112 Admin Bldg, St Paul, MN 55155
Telephone:	(651) 201-2450
Fax:	(651) 297-3996
E-mail:	bernie.kopischke@state.mn.us

Contractor

Name: Karen Schneider

Address: **4660 La Jolla Village Drive, Ste 300, San Diego, CA, 92122**
Telephone: **858-587-5137**
Fax: **858-587-5099**
E-mail: **kasch@us.ibm.com**

PARTICIPATING ADDENDUM CONTACTS:

Participating State

Name:	Agnes Copeland or Tammy Cash Office of Information Technology Management Office (ITMO)	
Address:	1201 Main Street, Suite 430 Columbia, South Carolina, 29201	
E-mail:	acopela@itmo.sc.gov,	tcash@itmo.sc.gov
Phone:	(803) 896-0068/	(803) 239-8513
Fax:	(803) 737-0201	(803) 737-0201

Contractor State Contract Manager:

Name:	Karen Schneider
Address:	4660 La Jolla Village Drive, Ste 300 San Diego, CA 92122
Email:	kasch@us.ibm.com
Phone:	858-587-5137
Fax:	858-587-5099

6. Servicing Subcontractors:

Only those IBM Business Partners authorized by IBM are eligible to support the IBM WSCA/NASPO Master Price Agreement and will be identified in the individual Participating Addendum or on the individual website for the Participating Entity. IBM Business Partners are only authorized to quote to the Participating Entity the Products and pricing specified by IBM for the WSCA/NASPO Master Price Agreement. Inclusion of the Business Partner identifier in the Purchase Order may result in a fee payment to the Business Partner. Such fee payment will not affect the pricing specified in the WSCA/NASPO Master Price Agreement.

All orders are to be issued directly to:
IBM Corporation
IBM State Contracts Team
7100 Highlands Parkway
Smyrna, GA 30082

You may remit payment to the address which will appear on your invoice:

ATLANTA
Lockbox 534151
P.O. Box 534151
Atlanta, GA 30353-4151

All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State contract number: 5000008965; and the Master Price Agreement Number: B27166.

7. **Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA"):** If Vendor is notified by ordering entity that a specific purchase order is being made with ARRA funds, Vendor agrees to assist the ordering entity with their requirement to comply with the data element and reporting as currently defined in Federal Register Vol 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Ordering entity is responsible for informing Vendor at the time of purchase order placement that ARRA funds are being used. Vendor will include the tracking data, if provided by ordering entity, as an element within the utilization report, as per Article 44 of the MPA. Vendor, as it relates to purchases under this contract, is not a subcontractor or sub-grantee, but simply a provider of goods and related services.

8. Services:
The terms of the Agreement shall apply each time Customer engages IBM Corporation, Inc to provide services. All services provided will be described in one or more of the following:

(i) "Service Descriptions" used to describe any services purchased by an entity;
(ii) any mutually agreed upon "Statement of Work" ("SOW") executed by the parties; or
(iii) any "Technical Specification Form" approved by the parties

9. Evaluation Equipment:
Vendor, by mutual agreement with the Participating Entity, wishes to allow the use of equipment for the purposes of evaluation prior to purchase. Purchases of the equipment shall comply with the terms of the Master Purchase Agreement and participating addendum.

This Addendum and the Master Price Agreement 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 Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of

this Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity which has executed this Addendum.

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

FOR SOUTH CAROLINA GOVERNMENTAL BODIES:
The undersigned person warrants that he or she is authorized to execute the contract and legally bind the governmental bodies thereto.

	IBM Corporation
Signature: Agnes P Copeland	Signature: K Schneider
Printed Name: **Agnes P. Copeland**	Printed Name: Karen Schneider
Title: **Procurement Manager**	Title: WSCA/NASPO Nat'l Pgm Mgr
Date: October 20, 2009	Date: October 15, 2009

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