WESTERN STATES CONTRACTING ALLIANCE
MASTER PRICE AGREEMENT
for
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES

Number B27166

This Agreement (this "Agreement", this "Master Price Agreement", or this "Contract) is made and entered into by IBM Corporation, 4660 La Jolla Village Drive, Suite 300, San Diego, CA 92122 ("Contractor") and the State of Minnesota, Department of Administration ("State") on behalf of the State of Minnesota, participating members of the National Association of State Procurement officials (NASPO), members of the Western States Contracting Alliance (WSCA) and other authorized Purchasing Entities. (collectively referred to herein as "Customer" or "State").

RECITALS

WHEREAS, the State has the need to purchase and the Contractor desire to sell; and,

WHEREAS, the State has the authority to offer contracts to CPV members of the State of Minnesota and to other states.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

INTENT AND PURPOSE

The intent and purpose of this Agreement is to establish a contractual relationship with equipment manufacturers to provide, warrant, and offer maintenance services on **ALL** Products proposed in their response to the RFP issued by the State of Minnesota. Delivery, support, warranty, and maintenance may be provided by the Contractor using subcontractors. The Contractor agrees to take legal responsibility for the warranty and maintenance of all Products furnished by Contractor under this Agreement. The Contractor is responsible for the timeliness and quality of all Services provided by individual subcontractors. Subcontractor participation on engagements involving other Participating Entities will be governed by those individual Participating Entities, who have the sole discretion to determine if they will accept Services from a subcontractor.

Individual Purchasing Entities may enter in to lease agreements for the Products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process, and if the Contractor submitted copies of its lease agreements with its response to the RFP. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process. The agreements are located in Exhibit C, Value-Added Services.

This Agreement is **NOT** for the purchase of major, large hardware or hardware and software offerings. In general, individual units/configurations for servers and storage (SANs, etc.) should not exceed $300,000 each. Desktop per unit/configuration costs should not exceed $100,000. Printers of all types and monitors per unit/configuration costs should not exceed $50,000 each. It is the expressed intent of some of the Participating States to set this level at not to exceed $25,000 each, or $50,000. Contractors must be willing to comply with these restrictions by agreeing to supply Products in those price ranges only. This **IS NOT** a restriction on how many units/configurations can be purchased, but on the value of each individual unit/configuration. Individual Participating States and Participating Entities may set specific limits in a participating addendum above these limits, provided that if such purchases are under this Agreement, they will be with the prior approval of the WSCA Directors; or may set specific limits in a participating addendum below these limits.

Contractors may offer, but participating states and entities do not have to accept, limited professional Services related **ONLY** to the equipment and configuration of the equipment purchased through this Agreement.

1. Definitions

"Announced Promotional Price" are prices offered nationally to specific categories of customers (Consumer, Business or government) for defined time periods under predefined terms and conditions.

"Consumables" those items that are required for the operation of the Equipment offered or supplied which are consumed over time with the purchaser's use of the equipment are included – printer cartridges, batteries, projector bulbs, etc. *Consumables such as magnetic media, paper and generally available office supplies are excluded.*

"Configuration" in most instances in this document means a total system configuration. This may include more than one model or part number (or SKU), or a combination of hardware, software, and configuring of the system to make the system work.

"Contract" means a binding agreement for the procurement of items of tangible personal property, software, or services or for the use of items provided to Customer by Contractor under license. Contract, Agreement, and Master Price Agreement are used interchangeably in this document.

"Contractor" means the successful Responder who enters into a binding Master Price Agreement. The Contractor is responsible for all sales, support, warranty, and maintenance Services for the Products it agrees to provide under this Agreement. The Contractor must manufacture or take direct, non-assignable, legal responsibility for the manufacture of the equipment and warranty thereof. For the purposes of this Contract, the term Contractor and Contract Vendor are synonymous.

"CPV Member" is any governmental unit having independent policy making and appropriating authority, that is a member of Minnesota's Cooperative Purchasing Venture (CPV) program.

"CPV Program." The Cooperative Purchasing Venture (CPV) program, as

established by Minn. Stat. § 16C.03, subd. 10, authorizes the commissioner of Administration to "enter into a cooperative purchasing agreement for the provision of goods, services, and utilities with [governmental entities] ..., as described in section 471.59, subdivision 1." Based on this authority, the commissioner of Administration, through the Materials Management Division (MMD), enters into a joint powers agreement that designates MMD as the authorized purchasing agent for the governmental entity. It is not legal for governmental entities that are not members of the CPV program to purchase from a State contract. Vendors are free to respond to other solicitations with the same prices they offer under a contract, but that is not considered use of the "State contract price."

"Cumulative Volume Discount" means a contractual, cumulative, permanent volume discount based on dollars resulting from the cumulative purchases by all governmental purchasers for the duration of the Master Price Agreement.

"Customer Set-Up Equipment" means IBM Equipment that Customer is responsible for installing according to instructions provided with it.

"Date of Installation" means the following:

a. for IBM Equipment that IBM is responsible for installing, the business day after the day IBM installs it or, if Customer defers installation, makes it available to Customer for subsequent installation by IBM;

b. for Customer Set-Up Equipment and non-IBM Equipment, the second business day after the Equipment's standard transit allowance period; and

c. for a software Product --

   (1) basic license, the second business day after the software Product's standard transit allowance period,

   (2) copy, the date on which IBM authorizes Customer to make a copy of the software Product, and chargeable component (also called a feature), the date Customer uses the chargeable component or a copy. Customer agrees to notify IBM of the chargeable component's Date of Installation.

"Documentation" refers to manuals, handbooks, and other publications listed in the PSS, or supplied with Products listed in the PSS, or supplied in connection with Services. Documentation may be provided on magnetic media or may be downloaded by Customer from the Contractor's web site.

"E-Rate" is a program sponsored by the Federal Communications Commission whereby educational and other qualifying institutions may purchase authorized technology at reduced prices.

"Educational Discount Price" means the price offered in a nationally announced promotion, which is limited to educational customers only.

"Equipment" " means workstations, desktop, laptop (includes Tablet PC's), handheld (PDA) devices, projectors, servers, printers, monitors, computing hardware, including upgrade components such as memory, storage drives, and spare parts. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in this RFP or subsequent contracts. The

exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item.

"FCC" means the Federal Communications Commission or successor federal agency. In the event of deregulation, this term applies to one or more state regulatory agencies or other governing bodies charged to perform the same, or similar, role.

"General Price Reduction Price" means the price offered to consumer, business or governmental purchasers at prices lower than PSS pricing. General price reduction prices will be reflected in the PSS as soon as practical.

"Lead State" means the State conducting this cooperative solicitation and centrally administering any resulting Master Price Agreement(s). For this Master Price Agreement, the Lead State is Minnesota.

"Licensed Internal Code" or **"LIC"** means Machine Code used by certain IBM Equipment IBM specifies (called "Specific Machines").

"**Machine Code**" means microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, diagnostics, and any other code (all subject to any exclusions in the license provided with it) delivered with an IBM Machine for the purpose of enabling the Machine's function as stated in its published specifications. Machine Code includes LIC.

"Mandatory" The terms "must" and "shall" identify a mandatory item or factor.

"Manufacturer" means a company that, as its primary business function, designs, assembles, owns or has the right to trademarks and patents and markets computer equipment such as workstations, desktop computers, laptop (includes Tablet PC's) computers, handheld (PDA) devices, servers, printers, and storage solutions/auxiliary storage devices. The manufacturer must provide direct un-infringed limited USA OEM warranties on the Products. The manufacturer's name(s) shall appear on the computer equipment. The Contractor(s) shall provide the warranty Service and maintenance Services for equipment on a Master Price Agreement as well as a Takeback Program.

"Master Price Agreement" means the contract that MMD will approve that contains the foundation terms and conditions for the acquisition of the Contractor's Products and/or Services by Purchasing Entities. The "Master Price Agreement" is a Permissive Price Agreement. In order for a Purchase Entity to participate in a Master Price Agreement, the appropriate state procurement official or other designated procurement official must be a Participating State or Participating Entity.

"Materials Management Division" or "MMD" means the procurement official for the State of Minnesota or a designated representative.

"NASPO" means the National Association of State Procurement Officials

"Participating Addendum" or "Participating Addenda" means a bilateral agreement executed by the Contractor and a Participating State or political subdivision of a State that clarifies the operation of the price agreement for the State or political subdivision concerned, e.g. ordering procedures specific to a State or political subdivision and other specific language or other requirements.

Terms and conditions contained in a Participating Addendum shall take precedence over the corresponding terms in the master price agreement. Additional terms and conditions, including but not limited to payment terms, may be added via the Participating Addendum. However, a Participating Addendum may not alter the scope of this Agreement or any other Participating Addendum. ***Unless otherwise specified, the Participating Addendum shall renew consecutively with the Master Price Agreement.*** One digitally formatted, executed copy of the Participating Addendum must be submitted to the WSCA/NASPO Contract Administrator PRIOR to any orders being processed.

"Participating State" or "Participating Entity" means a member of NASPO (Participating State) or a political subdivision of a NASPO member (Participating Entity) who has indicated its intent to participate by signing an Intent to Participate, where required, or another state or political subdivision of another state authorized by the WSCA Directors to be a party to the resulting Master Price Agreement.

"PDA" means a Personal Digital Assistant and refers to a wide variety of handheld and palm-size PCs, and electronic organizers. PDA's usually can store phone numbers, appointments, and to-do lists. PDA's can have a small keyboard, and/or have only a special pen that is used for input and output. The PDA can also have a wireless fax modem. Files can be created on a PDA which is later entered into a larger computer. NOTE: For this procurement, all Tablet PC's are NOT considered PDA's. The Contractor(s) shall provide the warranty Service and maintenance for equipment on a Master Price Agreement as well as a Takeback Program.

"Peripherals" means any product that can be attached to, added within, or networked with personal computers or servers, including but not limited to storage, printers (including multifunction network printers), scanners, monitors, keyboards, projectors, uninterruptible power supplies and accessories. Software, as defined in the RFP, is not considered a peripheral. Adaptive/Assistive technology devices are included as well as configurations for use in an educational environment. Peripherals may be manufactured by a third party, however, Contractor shall not offer any peripherals manufactured by another contractor holding a Master Price Agreement without the prior approval of the WSCA/NASPO Contract Administrator. AUDIO VISUAL PRODUCTS (digital cameras, televisions, whiteboards, etc.) are NOT included in the contract. The exception to this definition is whiteboards, which can be sold as part of the Instructional Bundles, but not as a stand-alone item. The Contractor(s) shall provide the warranty Service and maintenance Service for equipment under this Master Price Agreement as well as a Takeback Program.

"Permissive Price Agreement" means that placement of orders through the Price Agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the Price Agreement without using statutory or regulatory procedures (e.g., invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the Price Agreement as long as applicable procurement statutes and rules are followed.

"Per Transaction Multiple Unit Discount" means a contractual volume discount based on dollars in a single Purchase Order or combination of Purchase

Orders submitted at one time by a Purchasing Entity or multiple entities conducting a cooperative purchase.

"Political Subdivision" means local pubic governmental subdivisions of a state, as defined by that state's statutes, including instrumentalities and institutions thereof. Political subdivisions include cities, counties, courts, public schools and institutions of higher education.

"Price Agreement/Master Price Agreement" means an indefinite quantity contract that requires the Contractor to furnish Products or Services to a Purchasing Entity that issues a valid Purchase Order.

"Procurement Manager" means the person or designee authorized by MMD to manage the relationships with WSCA, NASPO, and Participating States/Participating Entities.

"Product(s)" means personal computer equipment, peripherals, LAN hardware, pre-loaded Software, and Network Storage devices, but not unrelated Services. The Contractor(s) shall provide the warranty Service and maintenance Service for equipment under a Master Price Agreement as well as a Takeback Program.

"Products and Services Schedule Prices" or **"PSS"** refers to a complete list, grouped by major Product and/or Service categories, of the Products and Services provided by the Contractor that consists of an item number, item description and the Purchasing Entity's price for each Product or Service. All such Products and Services shall be approved by the WSCA/NASPO Contract Administrator prior to being listed on the Contractor-supplied web site accessed via a URL. The Contractor(s) shall provide the warranty Service and maintenance Service for all equipment listed on the PSS on a Master Price Agreement as well as a Takeback Program.

"Purchase Order" means an electronic or paper document issued by the Purchasing Entity, and mutually agreed upon by the parties, that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

"Purchasing Card" means a form of company credit card.

"Purchasing Entity" means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited by statute, in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and authorized to purchase the goods and/or Services described in this solicitation.

"**Refurbished Products**" are Products that may have been powered on or used by another customer that have been fully retested according to Manufacturer's standard procedures for the Refurbished Products; parts found to be defective replaced, and repackaged to meet the Product's specifications.

"Services" are broadly classed as installation/de-installation, maintenance, support, training, migration, and optimization of Products offered or supplied under the Master Price Agreement. These types of Services may include, but are not limited to: warranty Services, maintenance, installation, de-installation, factory integration (software or equipment components), asset management,

recycling/disposal, training and certification, pre-implementation design, disaster recovery planning and support, Service desk/helpdesk, and any other directly related technical support Service required for the effective operation of a Product offered or supplied. *General consulting and all forms of application development and programming Services are excluded.*

"Servicing Subcontractor/Subcontractor/Reseller Agent" means a Contractor authorized and state-approved subcontractor who may provide local marketing support or other authorized Services on behalf of the Contractor in accordance with the terms and conditions of the Contractor's Master Price Agreement. A wholly owned subsidiary or other company providing warranty or other technical support Services qualifies as a Servicing Subcontractor. Local business partners may qualify as Servicing Subcontractors. Servicing Subcontractors may not directly accept Purchase Orders or payments for Products or Services from Purchasing Entities, unless otherwise provided for in a Participating Addendum. Servicing Subcontractors shall be named individually or by class in the Participating Addendum. **The Contractor(s) actually holding the Master Price Agreement shall be responsible for Servicing Subcontractor's providing Products and Services, as well as warranty Service and maintenance Service for equipment the subcontractor has provided on a Master Price Agreement as well as the Takeback Program**.

"Standard Configurations" or **"Premium Savings Configurations"** means deeply discounted standard configurations that are available to Purchasing Entities using the Master Price Agreement only. Any entity, at any time, that commits to purchasing the standard configuration adopted by other Purchasing Entities shall receive the same price from the contract awardees. This specification includes a commitment to maintain and upgrade (keep pace with the advance of technology) the standard configurations for a stated period of time or intervals.

"State Procurement Official" means the director of the central purchasing authority of a state.

"Storage Solution/Auxiliary Storage" means the technology and equipment used for storage of large amounts of data or information. This includes technologies such as: Network Attached Storage (NAS) and Storage Area Networks (SAN). **The Contractor(s) shall provide the warranty service and maintenance service for equipment on a Master Price Agreement as well as a Takeback Program**.

"Takeback Program" means the Contractor's process for accepting the return of the equipment or other Products at the end of life—as determined by the State utilizing the Master Price Agreement.

"Trade In" refers to the exchange of used Equipment for new Equipment at a price reduced by the value of the used Equipment. Each Trade-in shall be governed by additional terms mutually agreed to by the parties.

"Travel" means expenses incurred by authorized personnel directly related to the performance of a Service. All such expenses shall be documented in a firm quotation for the Purchasing Entity prior to the issuance and acceptance of a Purchase Order. Travel expenses will be reimbursed in accordance with the

purchasing entities allowances, if any, as outlined in the PA.

"Universal Resource Locator" or **"URL"** means a standardized addressing scheme for accessing hypertext documents and other Services using the WWW browser.

"WSCA" means the Western States Contracting Alliance, a cooperative group contracting consortium for state procurement officials, representing departments, institutions, agencies, and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming.

"WSCA/NASPO Contract Administrator" means the person or designee authorized by MMD to manage all actions related to the Master Price Agreements on behalf of the State of Minnesota, the participating NASPO and WSCA members, and other authorized purchasers.

2. Scope of Work

The Contractor, or its approved subcontractor, shall deliver computing system Products and Services to Purchasing Entities in accordance with the terms of this Agreement. This Agreement is a "Master Price Agreement." Accordingly, the Contractor shall provide Products or Services only upon the issuance and acceptance by Contractor of valid "Purchase Orders." Purchase Orders may be issued to purchase the license for software or to purchase Products listed on the Contractor's PSS. A Purchasing Entity may purchase any quantity of Product or Service listed in the Contractor's PSS at the prices in accordance the Paragraph 13, Price Guarantees. Subcontractor participation is governed by the individual Participating State procurement official.

The Contractor is required to provide and/or agree to take legal responsibility for the warranty and maintenance Service of all proposed equipment, including without limitation Peripherals, which it agrees to provide to the Purchasing Entity. Taking legal responsibility means the Contractor must provide warranty and maintenance call numbers, accept, process and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) Service activities, in accordance with the terms of this Agreement and any additional maintenance Service terms mutually agreed upon by the parties. The Contractor shall offer a Takeback Program for all products covered by this Agreement.

3. Title Passage

Subject to any purchase money security interests or other limitations or restrictions identified in the Purchase Order, the Contractor must pass unencumbered title to any and all Equipment and Products purchased under this Agreement upon receipt by the purchasing entity. This obligation on the part of the Contractor to transfer all ownership rights does not apply to any underlying intellectual property rights of any kind or to any proprietary materials owned or licensed by the Contractor or its subsidiaries, subcontractors or licensor, or to unmodified commercial software that is available to the State on the open market. Ownership rights to intellectual property (including without limitation Machine Code), or such materials shall not be affected in any manner by this Agreement.

4. Permissive Price Agreement and Quantity Guarantee

This Agreement is not an exclusive agreement. Purchasing Entities may obtain computing system Products and Services from other sources during the term of this Agreement. The State of Minnesota, NASPO and WSCA make no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Products or Services will be procured.

5. Order of Precedence

Each Purchase Order that is accepted by the Contractor shall become a part of this Agreement as to the Products and Services listed on the Purchase Order only; no additional terms or conditions will be added to this Agreement as the result of acceptance of a Purchase Order. The Contractor agrees to accept all valid Purchase Orders. In the event of any conflict among these documents, the following order of precedence shall apply:

A. Executed Participating Addendum(s);

B. Terms and conditions of this Agreement, including Amendments;

C. Exhibits to this Agreement;

D. The list of Products and Services contained in the Purchase Order;

E. The request for proposals document; and

F. Contractor's proposal including best and final offer.

6. Payment Provisions

All payments under this Agreement are subject to the following provisions:

A. Acceptance

A Purchasing Entity shall determine whether all Products and Services delivered meet the Contractor's published 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 fifteen (15) calendar days of non-acceptance of a product or service; otherwise the Products or Services shall be deemed accepted.

B. Payment of Invoice

Payments shall be submitted to the Contractor at the address shown on the invoice, as long as the Contractor has exercised due diligence in notifying the State of Minnesota and/or the Purchasing Entity of any changes to that address. Minn. Stat. § 16A.124 requires payment within 30 days following receipt of an undisputed invoice, merchandise (Products) or Service, whichever is later. After the thirtieth day, interest shall be paid on the unpaid balance due to the Contractor at the rate of one and one-half percent per month. The ordering entity is not required to pay the Contractor for any goods and/or Services provided without a written Purchase Order or other approved ordering document from the appropriate purchasing entity. In addition, all goods and/or Services provided must meet all terms, conditions, and specifications of this

Agreement and other ordering document and be accepted as satisfactory by the ordering entity before payment will be issued. Payments may be made via a Purchasing Entity's "Purchasing Card."

In the event an order is shipped incomplete (partial), the Purchasing Entity shall pay for each shipment as invoiced by the Contractor unless the Purchasing Entity has clearly specified "No Partial Shipments" on each Purchase Order.

C. Payment of Taxes

Payment of taxes for any money received under this agreement shall be the Contractor's sole responsibility and shall be reported under the Contractor's federal and state tax identification numbers. If a Purchasing Entity is not exempt from sales, gross receipts, or local option taxes for the transaction, the Contractor shall be reimbursed by the Purchasing Entity to the extent of any tax liability assessed.

The State of Minnesota State agencies are subject to paying Minnesota sales and use taxes. Taxes for State agencies will be paid directly to the Department of Revenue using Direct Pay Permit #1114.

D. Invoices

Invoices shall be submitted to the Purchasing Entity at the address shown on the Purchase Order. Invoices shall match the line items on the Purchase Order.

7. Agreement Term

Pursuant to Minnesota law, the term of this Agreement shall be effective upon the date of final execution by the State of Minnesota, through August 31, 2012. This Agreement may be mutually renewed for two (2) additional one-year terms, or one additional two-year term, unless terminated pursuant to the terms of this Agreement.

8. Termination

The following provisions are applicable in the event that this Agreement is terminated. Any terms of this Agreement that by their nature extend beyond the Agreement termination remain in effect until fulfilled, and apply to both parties' respective successors and assignees.

A. Termination for Convenience

At any time, the State may terminate this Agreement, in whole or in part, by giving the Contractor (30) days written notice; provided, however, neither the State nor a Purchasing Entity has the right to terminate a specific Purchase Order for convenience after it has been issued if the Product is ultimately accepted. At any time, the Contractor may terminate this Agreement, in whole or in part, by giving the WSCA/NASPO Contract Administrator sixty (60) days written notice. Such termination shall not relieve the Contractor of warranty or other Service obligations incurred under the terms of this Agreement. In the event of a termination for convenience or any other cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or Services satisfactorily performed and in whole for Products delivered and accepted.

B. Termination for Cause

Either party may terminate this Agreement, or a Purchase Order, for cause based upon material breach of this Agreement, or the Purchase Order, by the other party, provided that the non-breaching party shall give the breaching party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice the breaching party has not corrected the breach or, in the case of a breach that cannot be corrected in thirty (30) days, begun and proceeded in good faith to correct the breach, the non-breaching party may declare the breaching party in default and terminate this Agreement, or the Purchase Order, effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

Termination of an individual Purchase Order shall not result in the termination of this Agreement nor any other Purchase Order. The termination of this Agreement shall not affect any Purchase Orders then in effect and such Purchase Orders will be performed and will continue to be governed by this Agreement, unless otherwise mutually agreed to.

C. A Purchasing Entity's Rights

In the event this Agreement expires or is terminated for any reason, except non-payment of fees, a Purchasing Entity shall retain its rights in all Products and Services accepted prior to the effective termination date.

D. The Contractor's Rights

In the event this Agreement expires or is terminated for any reason, a Purchasing Entity shall pay the Contractor all amounts due for Products and Services ordered and accepted prior to the effective termination date or ordered before the effective termination date and ultimately accepted, including, if applicable, taxes, expenses, charges, and return transportation and restocking fees.

9. Non-Appropriation

The terms of this Agreement and any Purchase Order issued for multiple years under this Agreement is contingent upon sufficient appropriations being made by the Legislature or other appropriate governing entity. Notwithstanding any language to the contrary in this Agreement or in any Purchase Order or other document, a Purchasing Entity may terminate its obligations under this Agreement, if sufficient appropriations are not made by the governing entity at a level sufficient to allow for payment of the Products or Services due for multiple year agreements, or if operations of the Purchasing Entity are being discontinued. The Purchasing Entity's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final and binding.

A Purchasing Entity shall provide sixty (60) days notice, if possible, of its intent to terminate for reason cited above. Such termination shall relieve the Purchasing Entity, its officers and employees from any responsibility or liability for the payment of any further amounts under the relevant Purchase Order except for Services already performed or Products already delivered.

10. Shipment and Risk of Loss

A. All deliveries shall be F.O.B. destination, prepaid and allowed, with all transportation and handling charges included in the price of the Product and paid by the Contractor. Responsibility and liability for loss or damage shall remain with the Contractor up to the time it is delivered to the Purchasing Entity or the Purchasing Entity's designated location, except as to latent defects, fraud and Contractor's warranty obligations. Thereafter, the Purchasing Entity assumes the risk.

B. Whenever a Purchasing Entity does not accept nonconforming Products and returns them to the Contractor, all related documentation furnished by the Contractor shall be returned also. Unless otherwise agreed upon by the Purchasing Entity, the Contractor is responsible for the pick-up of returned Products. The Contractor shall bear all risk of loss or damage with respect to returned Products except for loss or damage directly attributable to the negligence of the Purchasing Entity.

C. Unless otherwise arranged between the Purchasing Entity and Contractor, all Products shall be shipped within seven business (7) days after receipt of a purchase order, based on Product availability, by a reliable and insured shipping company.

11. Warranties

A. The Contractor agrees to warrant and assume responsibility for each Product that it licenses, or sells, to the Purchasing Entity under this Agreement. The Contractor agrees to take legal responsibility for the warranty and maintenance (under warranty) of all products furnished through this Agreement. Taking legal responsibility means the Contractor must provide warranty and maintenance call numbers, accept, process, and respond to those calls, and be legally liable for and pay for those warranty and maintenance (under warranty) activities. The Contractor acknowledges that the Uniform Commercial Code applies to this Agreement however this Agreement takes precedence in the event of any conflict. In general, the Contractor warrants that:

1. The Product conforms to the specific technical information about the Contractor's products which is published in the Contractor's product manuals or data sheets.
2. The product will meet mandatory specifications provided in writing to the Contractor prior to reliance by the Participating Entity on the Contractor's skill or judgment when it advised the Purchasing Entity about the Product's ability to meet those mandatory specifications.
3. The Product will be suitable for the ordinary purposes for which such Product is used,
4. The Product has been properly designed and manufactured for its intended use, and
5. The Product is free of significant defects in material and workmanship
6. The Product is in the legal possession of the Purchasing Entity, as defined

in Article 10 Shipment and Risk of Loss, before any warranty period begins.

7. Exhibit A contains additional warranties in effect as of the date of this Agreement. The warranties will be limited in duration to the time period(s) provided in Exhibit A. The warranties will not apply to use of a Product other than as anticipated and intended by the Contractor, to a problem arising after changes or modifications to the Products or operating system by any party other than the Contractor (unless expressly authorized in writing by the Contractor), or the use of a Product in conjunction or combination with other Products or software not authorized by the Contractor. The following is a list of the additional warranties attached as **Exhibit A**:

   a) Warranty for IBM Machines

   b) Warranty for IBM Programs

   c) Warranty for IBM Services

   d) Warranty for Systems

B. Contractor may modify the warranties described in Exhibit A from time to time with the prior approval of the WSCA/NASPO Contract Administrator.

C. Warranty documents for Products manufactured by a third party shall be delivered to the Purchasing Entity with the Products, as provided by the Manufacturer.

D. The Contractor will provide basic warranty coverage as provided herein. IBM products available under this Agreement have a manufacturer standard warranty period that ranges from one (1) year to three (3) years. The Contractor may offer the Purchasing Entities an ability to upgrade warranties, for an additional fee, at the time of purchase of Products and Services.

12. Patent, Copyright, Trademark and Trade Secret Indemnification

A. The Contractor shall defend, at its own expense, the State of Minnesota, Participating and Purchasing Entities and their agencies against any third party claim that any IBM Branded Product provided under this Agreement infringes any patent, copyright or trademark in the United States or Puerto Rico, and shall pay all costs, damages and attorneys' fees that a court finally awards as a result of any such claim. In addition, if any third party obtains a judgment against a Purchasing Entity based upon the Contractor's trade secret infringement relating to any Product or Service provided under this Agreement, the Contractor agrees to reimburse the Lead State for all costs, attorneys' fees and the amount of the judgment. To qualify for such defense and/or payment, the Lead State or Participating or Purchasing Entity shall:

   1. Give the Contractor prompt written notice of any claim;

   2. Allow the Contractor to control the defense or settlement of the claim; and

3. Cooperate with the Contractor in a reasonable way to facilitate the defense or settlement of the claim.

B. If any Products become, or in the Contractor's opinion are likely to become the subject of a claim of infringement, the Contractor shall at its option and expense:

1. Provide a Purchasing Entity the right to continue using the Products;

2. Replace or modify the Products or Services so that it becomes non-infringing; or

3. Accept the return of the Products and give the Purchasing Entity a credit equal to: a) for a Product, its net book value provided the Purchasing Entity has followed generally accepted accounting principles; b) for a Contractor Program, the amount paid by the Purchasing Entity or 12 months charges (whichever is less); and c) for Materials, the amount paid by the Purchasing Entity to Contractor for the creation of the Materials. The Contractor's obligation will be void as to any Products or Services modified by the Purchasing Entity to the extent such modification is the cause of the claim.

This is Contractor's entire obligation to the Purchasing Entity regarding any claim of infringement.

C. The Contractor has no obligation for any claim of infringement arising from:

1. The Contractor's compliance with the Purchasing Entity's or by a third party on the Purchasing Entity's behalf designs, specifications, or instructions;

2. The Contractor's use of technical information or technology provided by the Purchasing Entity;

3. Product modifications by the Purchasing Entity or a third party;

4. Product use prohibited by Specifications or related application notes; or

5. Product use with products that are not Contractor branded.

6. the combination, operation, or use of a Product with other products not provided by IBM as a system, or the combination, operation or use of a Product with any product, data, apparatus, or business method that IBM did not provide, or the distribution, operation or use of a Product for the benefit of a third party outside the Purchasing Entity's Enterprise.

13. Price Guarantees

The Purchasing Entities shall pay the lower of the prices contained in the PSS or a qualifying Announced Promotion Price, Educational Discount Price, General Price Reduction price, Trade-In price, Standard Configuration price or Per Transaction Multiple Unit Discount. Only General Price Reduction price

decreases will apply to all subsequent Purchase Orders accepted by Contractor after the date of the issuance of the General Price Reduction prices.

The initial base-line, Cumulative, and Per Transaction Multiple Unit Discounts shall be submitted by the Contractor in a format agreeable to both parties prior to signing the Agreement. Once a cumulative volume has been reached, the increased price discount will apply to all future orders, until the next level of cumulative volume is reached.

14. Product and Service Schedule

The Contractor agrees to maintain the PSS in accordance with the following provisions:

A. The PSS prices for Products and Services will conform to the guaranteed prices discount levels on file with WSCA/NASPO Contract Administrator for the following Products:

Band 1 – Servers
Band 4 – Storage Solutions
Operating Systems and middleware (License Terms in Exhibit D are included for informational purposes.)
Local Area Networks

B. The Contractor may change the price of any Product or Service at any time, based upon documented baseline price changes, but the guaranteed price discount levels shall remain unchanged during the agreed period unless or until prior approval is obtained from the WSCA/NASPO Contract Administrator. The Contractor agrees that the PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.

C. The Contractor may make model changes; add new Products, and Product upgrades or Services to the PSS in accordance with Item 15 Product Substitutions, below. The pricing for these changes shall incorporate, to the extent possible, comparable price discount levels approved by the WSCA/NASPO Contract Administrator for similar Products or Services.

D. The Contractor agrees to delete obsolete and discontinued Products from the PSS on a timely basis.

E. The Contractor shall maintain the PSS on a Contractor supplied Internet web site.

15. Product Substitutions

A. Substitution of units/configurations

MMD and the WSCA Directors acknowledge that individual units and configurations may stop being produced during the life of the resulting contracts. Substitution of different units and configurations will be permitted with the prior written approval of the WSCA/NASPO Contract Administrator. This substitution is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and

approval of the WSCA/NASPO Contract Administrator.

B. Addition of units/configurations

MMD and the WSCA Directors acknowledge that with the evolution of technology, new, emerging units and configurations will develop. Addition of these new, emerging units may be permitted, with the prior approval of the WSCA/NASPO Contract Administrator and the WSCA Directors. The addition of new, emerging units and configurations is at the sole discretion of the WSCA/NASPO Contract Administrator, subject only to review and approval of the WSCA Directors.

16. Technical Support

The Contractor agrees to maintain a toll-free technical support telephone line. The line shall be accessible to Purchasing Entity personnel who wish to obtain competent technical assistance regarding the installation or operation of Products supplied by the Contractor during a product warranty period or during a support agreement.

17. Takeback and Other Environmental Programs

The Contractor agrees to maintain for the term of this Agreement, and all renewals/extensions thereof, programs as described in the following paragraphs.

A. Takeback/Recycling of CPUs, servers, monitors, flat panel displays, notebook computers, and printers for IBM products. Costs are list on the web site.

B. Environment: Compliance with the following standards: Blue Angel, EcoLogo, Energy Star, EPEAT (by level), Green Guard, Nordic Swan, and TCO as applicable.

C. Product labeling of compliance with Items B & C above, as well as a identification of such information on the web site as applicable.

18. Product Delivery

Contractor agrees to use commercially reasonable efforts to deliver Products to Purchasing Entities within twenty (20) business days or less after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order where the timeframe for required delivery is greater than twenty (20) business days or as otherwise mutually agreed by the Purchasing Entity and Contractor.

19. Force Majeure

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that performance of any such obligations is prevented or delayed by acts of God, war, riot or other catastrophes beyond the reasonable control of the party unless the act or occurrence could have been reasonably foreseen and reasonable action could have been taken to prevent the delay or failure to perform. A party defaulting under this provision must provide the other party prompt written notice of the default and take all necessary steps to bring about performance as soon as practicable.

20. Records and Audit

Per Minn. Stat. § 16C.05, Subd. 5, the books, records, documents, and accounting procedures and practices of the Contractor and its employees, agents, or subcontractors relevant to the Contract or transaction must be made available and subject to examination by the contracting agency or its agents, the Legislative Audit and/or the State Auditor for a minimum of six years after the end of the Contract or transaction. .

Unless otherwise required by other than Minnesota Purchasing Entity governing law, such records relevant to other Purchasing Entity transactions shall be subject to examination by appropriate government authorities for a period of three years from the date of acceptance of the Purchase Order.

21. Independent Contractor

The Contractor and its agents and employees are independent contractors and are not employees of the State of Minnesota or of any participating entity. The Contractor has no authorization, express or implied to bind the Lead State, NASPO, WSCA or any participating entity to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for the Lead State, NASPO, WSCA, or participating entity, except as expressly set forth herein. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the Lead State or Participating Entity as a result of this Agreement.

22. Use of Servicing Subcontractors

The Contractor may subcontract Services and Purchase Order fulfillment and/or support in accordance with the following paragraphs. However, the Contractor shall remain solely responsible for the performance of this Agreement.

A. Reseller Agent, Service Provider or Servicing Subcontractors shall be identified individually or by class in the applicable Participating Addendum, or as noted on the Purchasing Entities extranet site. The ordering and payment process for Products or Services shall be defined in the Participating Addendum.

23. Payments to Subcontractors

In the event the Contractor hires subcontractors to perform all or some of the duties of this Contract, for state agency Purchase Entities in the Lead State, the Contractor understands that in accordance with Minn. Stat. § 16A.1245 the Contractor shall, within ten (10) days of the Contractor's receipt of payment from the Lead State Purchasing Entity for undisputed services provided by the subcontractor, pay all subcontractors having an interest in the applicable Purchase Order their share of the payment for undisputed services provided by the subcontractors. The Contractor is required to pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid, undisputed balance of $100 or more will be $10. For an unpaid balance of less than $100, the amount will be the actual penalty due. A subcontract that takes civil action against the Contractor to collect interest

penalties and prevails will be entitled to its costs and disbursements, including attorney's fees that were incurred in bringing the action. The Contractor agrees to take all steps necessary to comply with said statute. A consultant is a subcontractor under this Contract. Notwithstanding, for the purposes of this Section 23, this section shall not apply to Contractor's obligations to its business development partners, including its authorized resellers and service providers, where Contractor's obligations to its partners are bound by the terms of a separate business development partner agreement between partner and the Contractor. In the event the Contractor fails to make timely payments to a subcontractor, the State may, at its sole option and discretion, pay a subcontractor or supplier any amounts due from the Contractor and deduct said payment from any remaining amounts due the Contractor under this Agreement. Before any such payment is made to a subcontractor or supplier, the State shall provide the Contractor written notice that payment will be made directly to a subcontractor. If there are not remaining outstanding payments to the Contractor, the State shall have no obligation to pay or to see to the payment of money to a subcontractor except as may otherwise be required by law.

The Contractor shall ensure that the subcontractor transfers all intellectual or industrial property rights, including but not limited to any copyright it may have in the work performed under this Contract, consistent with the intellectual property rights and ownership sections of this Contract. In the event the Contractor does not obtain the intellectual property rights of the subcontractor consistent with the transfer of rights under this Contract, the State may acquire such rights directly from the subcontractor. Any and all costs associated with such a direct transfer may be deducted from any amount due the Contractor.

24. Indemnification, Hold Harmless and Limitation of Liability

The Contractor shall indemnify, protect, save and hold harmless the Lead State, Participating Entities, and its agencies and employees, from any and all claims or causes of action, including attorney's fees for personal injury or damage to real or tangible personal property arising from the negligent or willful acts or omissions of the Contractor, or its agents, employees, or subcontractors in the performance of this Agreement. Contractor shall not be liable for damages that are the result of negligence or intentional wrong doing by the lead state, participating entity or its employees. This clause shall not be construed to bar any legal remedies the Contractor may have with the State's or Participating Entities' failure to fulfill its obligations pursuant to this Agreement.

The State agrees that the Contractor, its principals, members and employees shall not be liable to the State or any Purchasing Entity, unless otherwise stated in the applicable Participating Addendum, for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to this Agreement or the Products provided or Services performed hereunder for an aggregate amount in excess of two million dollars ($2,000,000.00). The foregoing limitation does not apply to Paragraph 12 and 24 of this Agreement or to damages resulting from personal injury caused by the Contractor's negligence. In no event shall the Contractor be liable for any indirect, special, punitive, or consequential damages arising out of this Agreement or the use of the Products or Services purchased by the Purchasing Entity hereunder, loss of, or damage to

data, loss profits, business, revenue, goodwill, or anticipated savings even if the contractor has been advised of the possibility of such damages. Both parties agree that this Agreement does not create any right or cause of action for any third party against the other except for third party claims that fit within the indemnification provision of this Agreement.

25. Amendments

Contract amendments shall be negotiated by the State with the Contractor whenever necessary to address changes in the terms and conditions, costs, timetable, or increased or decreased scope of work. This Agreement shall be amended only by written instrument executed by the parties. An approved Contract amendment means one approved by the authorized signatories of the Contractor and the State as required by law.

26. Scope of Agreement

This Agreement incorporates all of the agreements of the parties concerning the subject matter of this Agreement. No prior agreements, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

27. Severability

If any provision of this Agreement, including items incorporated by reference, is found to be illegal, unenforceable, or void, by a court of competent jurisdiction then both the State and the Contractor shall be relieved of all obligations arising under such provision. If the remainder of this Agreement is capable of performance, it shall not be affected by such declaration or finding and shall be fully performed.

28. Enforcement of Agreement/Waivers

A. No covenant, condition, duty, obligation, or undertaking contained in or made a part of this Agreement shall be waived except by the written consent of the parties. Forbearance or indulgence in any form or manner by either party in any regard whatsoever shall not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed, or discharged by the other party. Until complete performance or satisfaction of all such covenants, conditions, duties, obligations, and undertakings, the other party shall have the right to invoke any remedy available under law or equity, notwithstanding any such forbearance or indulgence.

B. Waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Agreement shall be held to be waived, modified, or deleted except by an instrument, in writing, signed by the parties hereto.

C. Neither party's failure to exercise any of its rights under this Agreement will constitute or be deemed a waiver or forfeiture of those rights.

29. Web Site Maintenance

A. The Contractor agrees to maintain and support an Internet website linked to the State's administration website for access to the PSS, Service

selection assistance, problem resolution assistance, billing concerns, configuration assistance, Product descriptions, Product specifications and other aids described in the RFP, and/or in accordance with instructions provided by the WSCA/NASPO Contract Administrator. The Contractor agrees that the approved PSS on the State's administration website shall contain a single, uniform WSCA price for configurations and items. Failure to comply with this requirement will be grounds for further action to be taken against the Contractor.

B. The Contractor agrees to maintain and support Participating State and Entity Internet websites for access to the specific Participating Entity PSS, as well as all other items listed in Item 29A. above. The website shall have the ability to hold quotes for 45 days, as well as the ability to change the quote.

C. The Contractor may provide electronic commerce assistance for the electronic submission of Purchase Orders, Purchase Order tracking and reports.

D. Once the website is approved, the Contractor may not make changes to the website as defined in Contractor's RFP Section 4, response without notifying the WSCA/NASPO Contract Administrator and receiving written approval of the changes, which shall not be unreasonably withheld.

30. Equal Opportunity Compliance

The Contractor agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the state in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Contractor agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by the contractor under this Agreement. If the Contractor is found to be not in compliance with these requirements during the life of this Agreement, the Contractor agrees to take appropriate steps to correct these deficiencies.

The Contractor certifies that it will remain in compliance with Minn. Stat. § 363.073 during the life of this Agreement.

31. Governing Law

This Agreement shall be governed and construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against this Agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's state. Venue for any claim, dispute or action concerning the construction and effect of this Agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against this Agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's state.

32. Change in Contractor Representatives

Contractor shall appoint a primary representative to work with the WSCA/NASPO Contract Administrator to maintain, support and market this Agreement. The Contractor shall notify the WSCA/NASPO Contract Administrator of changes in any Contractor key personnel, in writing, and in advance if possible. The State reserves the right to require a change in Contractor's then-current primary representative if the assigned representative is not, in the opinion of the State, adequately serving the needs of the Lead State and the Participating Entities.

33. Release

The Contractor, upon final payment of the amount due under this Agreement, releases the Lead State and Participating Entities, its officers and employees, from all contractual liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the Lead State or any Participating Entity to any obligation, unless the Contractor has express written authority to do so, and then only within the strict limits of the authority.

34. Data Practices

A. The Contractor and the State must comply with the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13 (and where applicable, if the state contracting party is part of the judicial branch, with the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court as the same may be amended from time to time) as it applies to all data provided by the State to the Contractor and all data provided to the State by the Contractor. In addition, the Minnesota Government Data Practices Act applies to all data created, collected, received, stored, used, maintained or disseminated by the Contractor in accordance with this Agreement that is private, nonpublic, protected nonpublic, or confidential as defined by the Minnesota Government Data Practices Act, Ch. 13 (and where applicable, that is not accessible to the public under the Rules of Public Access to Records of the Judicial Branch).

B. In the event the Contractor receives a request to release the data referred to in this article, the Contractor must immediately notify the State. The State will give the Contractor instructions concerning the release of the data to the requesting party before the data is released. The civil remedies of Minn. Stat. § 13.08, apply to the release of the data referred to in this article by either the Contractor or the State.

C. The Contractor agrees to indemnify, save, and hold the State of Minnesota, its agents and employees, harmless from all claims arising out of, resulting from, or in any manner attributable to any violation of any provision of the Minnesota Government Data Practices Act (and where applicable, the Rules of Public Access to Records of the Judicial Branch), including legal fees and disbursements paid or incurred to enforce this provision of this Agreement. In the event that the Contractor subcontracts any or all of the work to be performed under this Agreement, the Contractor shall retain responsibility under the terms of this paragraph for

such work.

D. Notwithstanding the above, the parties agree that any confidential information required to be exchanged will be done so under the terms of a signed confidentiality agreement that is negotiated and signed by both parties. An example of the terms of a confidentiality agreement is described in Exhibit F.

35. Organizational Conflicts of Interest

A. The Contractor warrants that, to the best of its knowledge and belief, and except as otherwise disclosed, there are not relevant facts or circumstances which could give rise to organizational conflicts of interest. An organizational conflict of interest exists when, because of existing or planned activities or because of relationships with other persons:

- a Contractor is unable or potentially unable to render impartial assistance or advice to the State;
- the Contractor's objectivity in performing the work is or might be otherwise impaired; or
- the Contractor has an unfair competitive advantage.

B. The Contractor agrees that if an organizational conflict of interest is discovered after award, an immediate and full disclosure in writing shall be made to the Assistant Director of the Department of Administration's Materials Management Division that shall include a description of the action the Contractor has taken or proposes to take to avoid or mitigate such conflicts. If an organizational conflict of interest is determined to exist, the State may, at its discretion, cancel this Agreement. In the event the Contractor was aware of an organizational conflict of interest prior to the award of this Agreement and did not disclose the conflict to the WSCA/NASPO Contract Administrator, the State may terminate this Agreement for default. The provisions of this clause shall be included in all subcontracts for work to be performed, and the terms "Contract," "Contractor," and "WSCA/NASPO Contract Administrator" modified appropriately to preserve the State's rights.

36. Replacement Parts

Unless otherwise restricted in a Participating Addendum or maintenance service agreement, replacement parts may be manufacturer-certified refurbished parts carrying USA OEM warranties.

37. FCC Certification

The Contractor agrees that Equipment supplied by the Contractor meets all applicable FCC Certifications. Improper, falsely claimed or expired FCC certifications are grounds for termination of this Agreement for cause.

38. Site Preparation

A Purchasing Entity shall prepare and maintain its site in accordance with written instructions furnished by the Contractor prior to the scheduled delivery date of any Products and shall bear the costs associated with the site preparation.

39. Assignment

The Contractor shall not sell, transfer, assign, or otherwise dispose of this Agreement or any portion hereof or of any right, title, or interest herein without the prior written consent of the State's authorized agent. Such consent shall not be unreasonably withheld. The Contractor shall give written notice to the State's authorized agent of such a possibility at least 30 days prior to the sale, transfer, assignment, or other disposition of this Agreement. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Agreement due to a change in ownership, merger, or acquisition of the Contractor or its subsidiary or affiliated corporations. This section shall not be construed as prohibiting the Contractor's right to assign this Agreement to corporations to provide some of the services hereunder. Notwithstanding the foregoing acknowledgment, the Contractor shall remain solely liable for all performance required and provided under the terms and conditions of this Agreement. The Contractor may assign payments in advance with specific provisions stated in a Participating Addendum.

40. WSCA/NASPO Contract Administrator

The State shall appoint a WSCA/NASPO Contract Administrator whose duties shall include but not be limited to the following:

A. The WSCA/NASPO Contract Administrator may provide instructions concerning the contents of the Contractor's website.

B. The WSCA/NASPO Contract Administrator will facilitate dispute resolution between the Contractor and Purchasing Entities. Unresolved disputes shall be presented to the State for resolution.

C. The WSCA/NASPO Contract Administrator shall promote and support the use of this Agreement by NASPO members and other Participating Entities.

D. The WSCA/NASPO Contract Administrator shall advise the State regarding the Contractor's performance under the terms and conditions of this Agreement.

E. The WSCA/NASPO Contract Administrator shall receive and approve quarterly price agreement utilization reports and the administration fee payments.

F. The WSCA/NASPO Contract Administrator shall periodically verify the Product and Service prices in the PSS conform to the Contractor's volume price and other guarantees. The WSCA/NASPO Contract Administrator may require the Contractor to perform web site audits to accomplish this task, in accordance with Exhibit E.

G. The WSCA/NASPO Contract Administrator shall conduct annual Contractor performance reviews.

H. The WSCA/NASPO Contract Administrator shall maintain an Agreement administration website containing timely and accurate information.

41. Survival

The following rights and duties of the State and Contractor will survive the expiration or cancellation of the resulting Contract. These rights and duties include, but are not limited to Paragraph 12. Patent, Copyright, Trademark and Trade Secret Indemnification; Paragraph 20. Records and Audit; Paragraph 24. Indemnification, Hold Harmless, and Limitation of Liability; Paragraph 31, Governing Law; Paragraph 34. Data Practices; and Paragraph 52. Right to Publish.

42. Succession

This Agreement shall be entered into and be binding upon the successors and assigns of the parties.

43. Notification

A. If one party is required to give notice to the other under this Agreement, such notice shall be in writing and shall be effective upon receipt. Delivery may be by certified United States mail or by hand, in which case a signed receipt shall be obtained. A facsimile transmission shall constitute sufficient notice, provided the receipt of the transmission is confirmed by the receiving party. Either party must notify the other of a change in address for notification purposes. All notices shall be addressed as follows:

To MMD:

Department of Administration
Materials Management Division
Bernadette Kopischke, CPPB
Acquisitions Supervisor
50 Sherburne Avenue
112 State Administration Building
St. Paul, MN 55155
Fax: 651.297.3996
Email: bernie.kopischke@state.mn.us

To Contractor:

IBM Corporation
Karen Schneider
WSCA/NASPO National Program Manager
4660 La Jolla Village Drive, Suite 300
San Diego, CA 92122
Fax: 858-587-5099
Email: kasch@us.ibm.com

44. Reporting and Fees

A. Administration Reporting and Fees

1. The Contractor agrees to provide monthly utilization reports to the

WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator by the 15th of the month following the end of the previous month, which is the subject of the report. (Ex. Purchases during January are reported by the 15th of February; purchases made during February are reported by the 15th of March; etc.). Reports submitted within five (5) business days of the report due date shall not be deemed as a default by Contractor. The report shall be in the format developed by the Lead State and supplied to the Contractor for its review and mutual written consent prior to execution of this Agreement. Any changes to the reporting format shall require mutual written agreement. Contractor shall be released from reporting on the Lead State requested fields of UNSPSC codes until such time as Contractor shall have the capability to include the field(s) in its reports. Contractor will have the reporting capabilities to include the aforementioned fields within nine (9) to twelve (12) months of the commencement of this Contract. Notwithstanding the foregoing, Contractor will commence reporting on the requested fields once contractor's reporting tools are capable.

2. The Contractor agrees to provide quarterly Administrative Fee check payable to WSCA/NASPO for an amount equal to one-twentieth of one percent (0.0005) of the net sales for the period. The form to be submitted with the check, as well as the mailing address, has been supplied to the Contractor prior to or upon execution of this Agreement. Payment shall be made in accordance with the following schedule:

Period End	**Fee Due**
June 30	July 31
September 30	October 31
December 31	January 31
March 31	April 30

3. The Contractor agrees to include all Reseller Agent sales in the monthly utilization reports described above. Upon request, the Contractor agrees to provide a supplemental Reseller Agent utilization report of the net sales for the period subtotaled by Purchasing Entity name, within Purchasing Entity state name by Reseller Agent Name in a format to be mutually agreed upon.

4. Subject to the applicability to the products and Contractor's automated reporting capabilities, the Contractor will use reasonable commercial efforts to provide the EPEAT and Energy Start environmental information shown in a mutually agreed upon report format. Reporting on this information will occur no more than once quarterly, and will commence once the Contractor has the capability to generate automated reports to include this information for its US based customers. The number and type of units taken back are currently displayed as credit invoice in the utilization report

described in Section 44. A.1.

5. The utilization reports shall be submitted to the WSCA/NASPO PC Contracts Reporting person and the WSCA/NASPO Contract Administrator via electronic mail in a Microsoft Excel spreadsheet format, or other methods such as direct access to Internet or other databases.

6. If requested by the WSCA/NASPO Contract Administrator, the Contractor agrees to provide supporting Purchase Order detail records on mutually agreed magnetic media in a mutually agreed format. Such request shall not exceed twelve per year.

7. The failure to file the utilization reports and fees on a timely basis shall constitute grounds for the removal of the Contractor's primary representative, suspension of this Agreement or termination of this Agreement for cause.

8. The WSCA/NASPO Contract Administrator shall be allowed access to all reports from all Purchasing Entities.

B. Participating Entity Reports and Fees

1. Participating Entities may require an additional fee be paid directly to the State on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments shall be incorporated in to the Participating Addendum that is made a part of this Agreement. The Contractor may adjust PSS pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of that State. All such agreements shall have no affect whatsoever on the WSCA fee or the prices paid by the Purchasing Entities outside the jurisdiction of the State requesting the additional fee.

2. Purchasing Entities will be encouraged to use the reporting format developed by the lead State for their reporting needs. However, the Contractor may agree to provide additional reports to Purchasing Entities upon agreement by both parties as to the format, content and delivery methods of the report. Methods of delivery may include direct access to Internet or other databases.

3. Each State Purchasing Entity shall be allowed access to reports from all entities within that State.

45. Default and Remedies

A. Any of the following shall constitute cause to declare this Agreement or any order under this Agreement in default:

1. Consistent Nonperformance of contractual requirements; or

2. A material breach of any term or condition of this Agreement.

B. A written notice of default, and an opportunity to cure within 30-days notification of the written notice, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire

Agreement), a Participating Entity (in the case of a breach of the participating addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.

C. If the default remains after the opportunity for cure, the non-defaulting party may:

1. Exercise any remedy provided by law or equity;
2. Terminate this Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against this Agreement;
3. Impose liquidated damages as mutually agreed by the parties, as specified in a Participating Addendum;
4. In the case of default by the Contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend Contractor from receiving future solicitations from within Participating Entity's jurisdiction.
5. Charge the defaulting Contractor the full increase in cost and administrative handling to purchase the product or service from another Contractor. The Purchasing Entity shall take reasonable actions to mitigate the cost to re-procure.

D. The MMD reserves the right, upon approval of the WSCA Directors, to develop and implement a step-by-step process to deal with Contractor failure to perform issues.

46. Audits

A. Website Product & Pricing Audit

The Contractor agrees to assist the WSCA/NASPO Contract Administrator or designee with web site Product and pricing audits based on the requirements described in Exhibit E – Website Product & Price Audit Requirements. The Contractor will review web site on a quarterly basis.

1. The Product audit will closely monitor the Products and Services listed on the website to insure they comply with the approved products and services. The addition of Products or Services not approved by the WSCA/NASPO Contract Administrator will not be tolerated and may be considered a material breach of this Agreement.

B. Sales Audit

The Contractor further agrees to provide sales audit reports based on the formulas described in Exhibit E – Sales Audit Report Format.

C. Upon request, the Contractor agrees to assist Participating Entities with invoice audits to ensure that the Contractor is complying with this Agreement in accordance with mutually agreed procedures set forth in the Participating Addendum.

47. Extensions

If specifically authorized by provision in a Participating Addendum, Contractor may, at the sole discretion of Contractor and in compliance with the laws of the Participating State, offer Products and Services to non-profit organizations, private schools, Native American governmental entities, government employees and students within the governmental jurisdiction of the entity completing the Participating Addendum with the understanding that the governmental entity has no liability whatsoever concerning payment for Products or Services.

48. Sovereign Immunity

The State does not waive its sovereign immunity by entering into this Contract and fully retains all immunities and defenses provided by law with regard to any action based on this Contract.

49. Ownership

Prior to the issuance of a purchase order of a purchase order, the Contractor will specify Materials to be delivered to the Purchasing Entity and will indentify them as being "Type I Materials", "Type II Materials", Type III Materials", or otherwise as both parties agree. If not specified, Materials will be considered Type II Materials.

A. **Ownership of Documents/Copyright for Type III Materials.** Any reports, studies, photographs, negatives, databases, computer programs, or other documents, whether in tangible or electronic forms, prepared by the Contractor in the performance of its obligations under the Agreement and paid for by the State, and described in the contract as a Type III Material, shall be the exclusive property of the State and all such material shall be remitted to the State by the Contractor upon completion, termination or cancellation of the Agreement. The Contractor shall not use, willingly allow or cause to allow such material to be used for any purpose other than performance of the Contractor's obligations under the Agreement without the prior written consent of the State.

B. **Rights, Title and Interest.** Along with ownership of the materials, any and all copyrights in the copyrightable material will be assigned to the State. The Contractor also agrees, upon the request of the State, to execute all papers and perform all other acts necessary to assist the State to obtain and register copyrights on such materials. Where so agreed, works of authorship created by the Contractor for the State in performance of the Contract shall be considered "works for hire" as defined in the U.S. Copyright Act. Nothing in this Agreement shall be construed as transferring any right, title, or interest in any of the Contractor's or third party's confidential information, trademarks, copyrights, or patents.

C. **Definition of Material Types**
Type I Materials are those, created during the Service performance period, in which the Purchasing Entity will have all right, title and interest (including ownership of copyright). Contractor will retain one copy of the Materials. The Purchasing Entity grants Contractor 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce

display, perform, distribute (internally and externally) copies of, and prepare derivative works based on, Type I Materials and 2) the right to authorize others to do any of the former.

Type II Materials are those, created during the Service Performance period or otherwise (such as those that preexist the Service), in which Contractor or third parties have all right, title, and interest (including ownership of copyright). Contractor will delivery one (1) copy of the specified Materials to the Purchasing Entity. Contractor grants the Purchasing Entity an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, within the Purchasing Entity's enterprise only, copies of Type II Materials.

Type III Materials are those, created during the project, which customer will own (including ownership of copyright). No license is granted to IBM with respect to Type III Materials. However, both parties are free to use any ideas, concepts, know-how, or techniques which are developed or provided by the other or jointly by both parties during a project. Both parties are free to enter into similar agreements with others and to develop and provide Materials or Services which are similar to those provided under this Agreement.

50. Prohibition Against Gratuities

A. The State may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this Contract if it is found by the State that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the Contractor or any employee, agent, or representative of the Contractor to any officer or employee of the State with a view toward securing this Contract, or securing favorable treatment with respect to the award or amendment of this Contract, or the making of any determinations with respect to the performance of this Contract.

B. The Contractor certifies that no elected or appointed official or employee of the State has benefited or will benefit financially or materially from this Contract. This Contract may be terminated by the State if it is determined that gratuities of any kind were either offered to or received by any of the aforementioned individuals from the Contractor, its agent, or its employees.

51. Antitrust

To the extent it is required to do so under applicable, the Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations which arise under antitrust laws of the United States and the antitrust laws of the State.

52. Right to Publish

A. Any publicity given to the program, publications or Services provided resulting from this Agreement, including but not limited to notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the Contractor, or its employees

individually or jointly with others, or any subcontractors or resellers shall identify the State as the sponsoring agency and shall not be released, unless such release is a specific part of an approved work plan included in this Agreement prior to its approval by the WSCA/NASPO Contract Administrator.

B. The Contractor shall not make any representations of the State's opinion or position as to the quality or effectiveness of the Products and/or Services that are the subject of this Agreement without the prior written consent of the WSCA/NASPO Contract Administrator. Representations include any publicity, including but not limited to advertisements, notices, press releases, reports, signs, and similar public notices.

53. Performance While Dispute is Pending

Notwithstanding the existence of a dispute, and except where the dispute relates to nonpayment of fees, the parties shall continue without delay to carry out all of their responsibilities under this Contract that are not affected by the dispute. If a party fails to continue without delay to perform its responsibilities under this Contract, in the accomplishment of all undisputed work, any additional cost incurred by the other parties as a result of such failure to proceed shall be borne by the responsible party.

54. Hazardous Substances

To the extent that the goods to be supplied to the Purchasing Entity by the Contractor contain or may create hazardous substances, harmful physical agents as set forth in applicable State and federal laws and regulations, the Contractor must provide the Purchasing Entity, upon request, with Material Safety Data Sheets regarding those substances (including mercury), to the extent required under applicable law.

55. Customer Satisfaction/Complaint Resolution

A. The Contractor's process for resolving complaints concerning Products, support, and billing problems is attached as **Exhibit B.**

B. The Contractor will survey its customers in each Participating State approximately two (2) months prior to the annual meeting with the Contract Administrator using, at a minimum, the survey questions provided by the State.

56. Value Added Services

The Contractor is expected to provide such Services as installation, training, and software imaging upon request of the Purchasing Entity. Additional Value Added Services offered by the Contractor are attached as **Exhibit C**.

57. E-Rate Program

The Contractor's E-Rate identification number is 143005607. The Universal Service Administrative Company (USAC) maintains a web site with information on eligible products and services at:
http://www.universalservice.org/sl/reference-area.aspx

To the extent IBM's participation in the E-rate program is consistent with its corporate strategy and direction, the Contractor shall continue in this program and to add Products as applicable.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date of execution by the State of Minnesota Commissioner of Administration, below.

1. IBM CORPORATION
The Contractor certifies that the appropriate person(s) have executed this Agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions,

By: K Schneider
Title: USCA/NASPO Nat'l Pgm Mgr
Date: Aug 28, 2009

By:

Title:

Date:

2. MATERIALS MANAGEMENT DIVISION
In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: Bernadette Kopischke
Title: Acquisitions Supervisor
Date: 8/31/09

3. COMMISSIONER OF ADMINISTRATION
Or delegated representative.

By: Brenda Mulland
Date: 8/31/09

EXHIBIT A – ADDITIONAL WARRANTIES

A. Warranty for IBM machines

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications. The warranty period for a Machine is specified, fixed period commencing on its Date of Installation. During the warranty period, IBM provides repair and exchange Service for the Machine, without charge, under the type of Service IBM designates for the Machine. If a Machine does not function as warranted, during the warranty period and IBM is unable to either 1) make it do so or 2) replace it with one that is that least functionally equivalent, you may return it to IBM and your money will be refunded.

B. Warranty for IBM ICA Licensed Programs

IBM warrants that each warranted IBM Program, when used in the Specified Operating Environment, will conform to its Specifications. The warranty period for a Program expires when its Program Service are no longer available. During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted Program for at least one year following its general availability. If a program does not function as warranted during the first year after you obtain your license and IBM is unable to make it do so, you may return the Program and your money will be refunded. To be eligible, you must have obtained your license while Program Services (regardless of the remaining duration) were available for it.

Warranty for IBM IPLA Licensed Programs

IBM warrants that the Program, when used in its specified operating environment, will conform to its specifications. The warranty applies only to the unmodified portion of the Program. IBM does not warrant uninterrupted or error-free operation of the Program, or that IBM will correct all Program defects. Licensee is responsible for the results obtained from the use of the Program.

During the Warranty Period (one year, starting on the date the original Licensee is granted the license), IBM provides Licensee with access to IBM databases containing information on known Program defects, defect corrections, restrictions, and bypasses at no additional charge.

Consult the IBM Software Support Handbook for further information at http://www.ibm.com/software/support .

If the Program does not function as warranted during the Warranty Period and the problem cannot be resolved with information available in the IBM databases, Licensee may return the Program and its PoE to the party (either IBM or its reseller) from whom Licensee obtained it and receive a refund of the amount Licensee paid. After returning the Program, Licensee's license terminates. If Licensee downloaded the Program, Licensee should contact the party from whom Licensee obtained it for instructions on how to obtain the refund.

C. Warranty for IBM Services

IBM warrants that it performs each IBM Service using reasonable care and skill and according to its current description (including any completion criteria) contained in this Agreement, an Attachment or a Transaction Document.

D. Warranty for Systems

Where IBM provides Products to you as a system, IBM warrants that they are compatible and will operate with one another. This warranty is in addition to IBM's other applicable warranties.

E. Extend of Warranty

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of

limited warranty included with the Machine applies in place of these Machine warranties.

The warranties stated above will not apply to the extent that there has been misuse (including, but not limited to, use of any Machine capacity or capability, other than that authorized by IBM in writing), accident, modification, unsuitable physical or operating environment, operation in other than the Specified Operating Environment, Improper maintenance by you or failure caused by a product for which IBM is not responsible. With respect to Machines, the warranty is voided by removal or alteration of Machine or parts identification labels.

F. Items not Covered by Warranty

IBM does not warrant uninterrupted or error-free operation of a Product or Service or that IBM will correct all defects. IBM will identify IBM Machines and Programs that it does not warrant.

THESE WARRANTEIS ARE YOUR EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIOINS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

EXHIBIT B – COMPLAINT RESOLUTION

IBM Service and/or Equipment

IBM is dedicated to maintaining a high degree of customer satisfaction. Key to this is a proactive approach to potential problems. However, when problems do occur we have well documented processes to assign the resource(s) necessary to quickly and accurately resolve customer problems.

Hardware and Software Support 1-800-IBM-SERV

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

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

IBM support gives you the ability to contact IBM and ask installation and usage related questions as well as make defect inquiries about eligible products. You have the option of voice (1-800-IBM-SERV) or electronic access (http://www.ibm.com/support) to a team of technical specialists. IBM support enables you to reduce your own research time, increase productivity, and concentrate more on your core business. Support is available 24 hours per day, 7 days per week, 365 days per year.

For all eligible products, IBM can help you with:

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

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

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

- Determine the business impact – assign a severity level
  - Severity 1
    - Critical business impact, this indicates you are unable to use the program resulting in a critical impact on operations. This condition requires an immediate solution
  - Severity 2
    - Significant business impact, this indicates the problem is usable but is severely limited
  - Severity 3
    - Some business impact, this indicates the program is usable with less significant features (not critical to operations) unavailable
  - Severity 4
    - Minimal business impact, this indicates the problem causes little impact on operations or that a reasonable circumvention to the problem has been implemented

When you call support to report an IBM software problem or update/gain status on a problem, your request will be routed to a technical specialist. For onsite support, IBM will attempt to diagnose and resolve the problem remotely before sending a technician onsite. Onsite response times vary dependent on purchased warranty and maintenance coverage options. IBM will use commercially reasonable efforts to respond by telephone to hardware and software service calls within two business hours during normal country business hours, and within two hours during off-shift hours for critical problems. Our initial response may result in resolution of your request, or it will form the basis for determining what additional actions may be required to achieve technical resolution of your request.

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

At the resolution team level your call is researched, resolved, or escalated as appropriate. Due to the level of specialization required to maintain superior technical expertise at the team level, it is sometimes necessary to involve more than one support team in resolving a particular software problem. This is easily handled, as our support teams are all networked together and work as one to resolve whatever problems or issues arise.

If at any point in our service process, your expectations are not met by IBM, you may call our attention to this problem by asking to speak with a Duty Manager or by calling your local customer service executive. Escalations to an IBM manager will receive prompt attention and management focus. The Duty Manager or customer service executive will work with our technical staff to meet your expectations and appropriately handle your request. Further escalation procedures for complaint resolution are described in the following "IBM Complaint Management Process for Customer Complaints and Escalation Management" section of this RFP response.

IBM Billing and Ordering Support

IBM is committed to product order and invoice accuracy. Key to improving accuracy is IBM's electronic ordering and billing systems.

Electronic Billing:

IBM Invoices OnLine allows you to view your invoices using an Internet browser. Once you register with us providing an e-mail address and your IBM customer numbers, you'll receive a login ID and password. Whenever new invoices are issued, you will receive an e-mail notification alerting you to this fact. You can then login to Invoices OnLine and view them. You can also search the invoice database by customer number, date range, invoice type or payment status to view previously delivered invoices.

Electronic Data Interchange (EDI) will transmit invoices electronically to you and can feed right into your inventory management and / or accounts payable systems. IBM charges no fee for electronic invoicing. If you are interested in this method contact us by calling the toll free number on the top of your invoice or by sending a note to address in the upper left corner of your invoice and we will have someone contact you regarding this option.

eProcurement:

IBM can help leverage your investment by integrating your eProcurement system with an IBM electronic catalog. We provide the catalog with the products and prices you are entitled to through your current agreement/contract with IBM. Your end users can shop for the IBM products they need and place their order electronically.

In the event there is a problem with your order or invoice, IBM telephone support for ordering or billing inquiries is available from 8:00 am to 8:00 pm EST, Monday through Friday, by calling 1-877-426-6006, option 2.

IBM Customers with ordering inquiries also have the ability to submit an online request for order related inquiry.

Additionally, there are two different methods available within Invoices On-Line to electronically communicate with us if you have a question, comment, or problem with an invoice. The invoice inquiry function available from Invoices On-Line automatically creates a pre-populated inquiry form that includes the customer number, invoice number, your name, account name, e-mail address and telephone number is pre-populated on the form, all you need to do is select from a list the reason for your inquiry or invoice dispute and submit the form to us. We will review your request and respond to you as quickly as possible. You can also send an e-mail to us by clicking on the "Contact Us" button.

Once received by the IBM customer service team (telephone or electronic), our goal is to respond to your inquiry within one business day. Most inquiries are quickly resolved. If at any point in the inquiry process, your expectations are not met by IBM, you may call our attention to this problem by asking to speak with a CSO (customer service operations) Manager. CSO Managers are assigned geographically throughout the United States. Escalations to a CSO manager will receive prompt attention and management focus. They will work with our order and billing staff to meet your expectations and that appropriately handle your request.

Further escalation procedures for complaint resolution are described in the following section.

IBM Complaint Management Process for Customer Complaints and Escalation Management

The Complaint Management Process is the business process IBM uses to manage customer complaints and escalations when "business as usual" or advertised or entitled support processes have been exercised but have failed to resolve the customer's problem in a timely manner.

A customer complaint is defined as:

- A request from a customer or IBMer to correct an unfulfilled customer expectation or commitment/promise
- A failure from a previous customer-IBM interaction to deliver on a commitment/expectation

When the customer has attempted to exercise all or part of the advertised or entitled support structures to resolve a problem and is dissatisfied with its progress, customers may complain to an IBM executive. In these cases, these are referred to as executive complaints.

A critical situation is defined as:

- A customer complaint that is escalated within IBM to a status of Critical. Escalation to a Critical Situation is considered when
  - The problem is causing or is about to cause severe impact to the customer's business, or
  - Customer satisfaction has or is about to erode to the point that customer loyalty is in jeopardy, or
  - IBM determines that this problem is jeopardizing IBM's relationship with this customer and additional actions must be taken to save that relationship

An alert is defined as:

- A situation used primarily by the service/marketing offices to notify a pre-established list of people when a customer in that office/area has a critical product failure. This is often used for system down situations so that appropriate people are made aware of this situation and may act to resolve it.

A proactive situation is defined as:

- A situation created internally by IBM for the purpose of complaint avoidance. When an IBM employee becomes aware of a situation which may lead to customer dissatisfaction if not addressed, they may proactively engage additional resources to resolve the problem. The customer may or may not be aware that the situation has been opened.

The Complaint Management Tool is a consolidated, worldwide information system that supports management of customer and executive complaints, critical situations, proactive and alert situations. It links complaint management personnel in all geographies within IBM business units, product divisions, and headquarters for streamlined escalation management.

The key Roles and Responsibilities of the Complaint Management Tool are:

- Feedback Collector (FC), the person with initial contact with the customer
  - Captures key customer information, such as contact information and problem description
  - Categorizes the primary problem/issue so that the complaint can be routed to the most appropriate Resolution Owner
- Response Coordinator (RC), identifies the most appropriate RO or RTL or RA to engage in a situation when a request for assistance is made
  - Ensures right RO/RTL from their organization is assigned
  - Monitors progress against responsiveness indicators such as 7-day Close or Action plan, 48 hour RO acknowledgement, and 48 hour RTL assignment
  - Keeps functional management informed
- Resolution Owner (RO), acts as the customer advocate by serving as the primary IBM interface with the customer
  - Contacts the customer within 48 hours to acknowledge ownership of the situation and determine the customer's conditions of satisfaction
  - Develops and documents a customer-agreed to action plan within 7 working days of open
  - Qualifies situations for the escalation process
  - Engages a Resolution Team Leader and Resolution Assistants if assistance is needed to resolve the customer concerns
  - Confirms with customer that the issue is resolved to their satisfaction and that the customer agrees to closure
- Resolution Team Leader (RTL), teams with the Resolution Owner to resolve the customer's issue
  - Develops and manages the IBM internal resolution action plan

  - Provides technical/organizational knowledge to help engage the right resources, including RAs
  - Works in partnership with the Resolution Owner
- Resolution Assistant (RA), assists the RO or the RTL
  - Performs action plan tasks
  - Provides assistance in resolving the customer request or preventing recurrence
- Senior Executive Reviewer (SER) is the senior executive escalation process which provides
  - Issues already escalated through worldwide customer satisfaction project offices whose resolution was not acceptable to the General Manager of the Resolution Owner's (RO) organization
  - Situations affecting multiple customers which identify pervasive and complex issues involving multiple Divisions where the problems have not been resolved

How the CM tool works to resolve customer complaints:

- A customer complaint is received by any customer contact person (the Feedback Collector).
- The Feedback Collector records the customer's issue and contact information and categorizes the customer's primary problem. The FC requests assistance in assigning the appropriate Resolution Owner based upon the customer's issue.
- The RO contacts the customer within 48 hours to acknowledge ownership, explore the customer's conditions of satisfaction, develops an action plan which may involve escalation to various levels of management across divisions, and resolves the customer complaint. If resolution assistance is needed, the Resolution Owner requests assistance for a Resolution Team Leader to be assigned within 48 hours.
- The RO and the RTL document and execute the agreed-to action plan to resolve the situation.
- When the customer agrees the situation is resolved, the RO closes the situation.

EXHIBIT C – VALUE ADDED SERVICES

The following is a sample of Value Added Services. It is not intended to be a comprehensive list. Value Added Services may be deleted without notice. Value Added Services may be replaced, updated or elements to a Value Added Service added without notice. Value Added Services are priced according to the services and requirements requested by the customer. Quotes for such Value Added Services will be provided upon customer request and upon customer providing sufficient information for pricing.

IT integration

- IBM IT Optimization Services: Limited resources and aging IT infrastructures are common problems for public sector entities and universities in today's economic climate. Yet to remain competitive, an institution's IT infrastructure must remain resilient. IBM can streamline existing technology systems to help public sector entities achieve their objectives.
- Security Solutions: Today, everybody wants to be connected to everybody else. But with all these connections, across multiple platforms, systems and networks, there are bound to be security breaches. IBM has integrated security solutions that can help enforce your institution-wide security policies. IBM offers Physical Safety & Security solutions, IT Security Services, which include Security and Privacy Services for data, assets and information, Managed Security Services, Business Continuity & Recovery Services, and Resilient Business and Infrastructure Service, Security Software, Security Hardware and Security Research Laboratories.
- Training: IBM has been a premier provider of educational services for more than 80 years. Today, IBM Learning Services spans the globe providing education solutions to our 375,000+ employees and our customers in 55 countries. IBM Learning Services is among the largest IT training organization in the world. IBM has a wide range of certification and training programs available in both IBM and vendor hardware and software as well as other topics.

Other Value Added Services include:

- Installation, Implementation, Integration of WSCA/NASPO products
- Asset Management and Asset Recovery Services
- Training and Education Services
- Assessment, Design, Implementation including Disaster Recovery Services

For more information on these and other services, please contact IBM.

IBM Leasing Information

Individual Purchasing Entities may enter into lease agreements for the products covered in this Master Price Agreement, if they have the legal authority to enter into these types of agreements without going through a competitive process. The lease agreements were not reviewed or evaluated as part of the RFP evaluation process. For more information on lease options, please contact IBM or the link found on the IBM WSCA/NASPO web site.

Exhibit D – Software License Terms

Notwithstanding any terms presented prior to Exhibit D, Customer who acquires approved eligible software under the WSCA/NASPO must have agreed to the terms of the IBM International Passport Advantage Agreement which governs acquisition of the eligible software. Such software program licenses are governed by the terms of the IBM International Program License Agreement and the individual program's corresponding License Information (LI) terms. Purchasing Entities who already have a Passport Advantage Agreement in place are not required to sign another agreement. For those Purchasing Entiteis that do not have a Passport Advantage Agreement in place, go to the links listed below to obtain a copy of the Agreement.

Passport Advantage and Passport Advantage Express are simple, comprehensive IBM offerings that cover eligible software acquisitions including Fixed Term Licenses, Software Subscription and Support and renewals, and product upgrades under a single, common set of agreements, processes and tools. Passport Advantage is designed for larger enterprises, while Passport Advantage Express, a transaction-based offering, is designed to meet the needs of medium-sized entities.

Acquisition of eligible software requires enrollment into the Passport Advantage program by each customer. More details can be found on:
http://www.ibm.com/software/howtobuy/passportadvantage.

To preview a particular software program license agreement, Customer may review the terms at following url: http://www-306.ibm.com/software/sla/sladb.nsf/ . License terms are also displayed prior to any download of software and are typically included as part of the program's installation process. License terms may also be provided in hard copy format for some programs which are distributed as physical media.

More detailed information about Support can be found in the IBM Software Support Guide, located at
http://techsupport.services.ibm.com/guides/handbook.html

Exhibit E – Website Product & Price Audit Requirements

Website Product and Price Audit

The IBM System x on-line WSCA/NASPO stores receive nightly, automated product updates which help ensure the accurate, contract-entitled products and prices are made available to WSCA/NASPO end users. In addition, the IBM web team will perform quarterly manual audits to validate product and pricing compliance. Specifically, IBM will randomly select several WSCA/NASPO stores to review products for appropriate discounts. We will rotate the part numbers reviewed quarterly in order to apply a broader sampling. This quarterly assessment will also be done for the other IBM brands to ensure the product and price files are accurately displaying information appropriate to the participating WSCA/NASPO entity. Upon request, IBM will provide a summary of the quarterly reviews.

Sales Audit Report Format:

- The IBM Contract Administrator for the WSCA/NASPO contract will perform quarterly audits to ensure the WSCA/NASPO end users paid the discounted or lower price. Specifically IBM will test one tenth of one percent (.001) of orders, at least one if any sales, no more than 100 orders per quarter. Orders will be randomly selected but will be reviewed to ensure different brands are covered. IBM will provide a summary of the quarterly reviews to the WSCA/NASPO Cooperative Development Team..

IBM

Exhibit F – Agreement for Exchange of Confidential Information (AECI)

Agreement for Exchange of Confidential Information

Our mutual objective under this Agreement is to provide protection for confidential information (Information) while maintaining our ability to conduct our respective business activities. Each of us agrees that the following terms apply when one of us (Discloser) discloses Information to the other (Recipient).

1. Disclosure

Information will be disclosed either:

1) in writing;
2) by delivery of items;
3) by initiation of access to Information, such as may be in a data base; or
4) by oral or visual presentation.

Information should be marked with a restrictive legend of the Discloser. If Information is not marked with such legend or is disclosed orally, the Information will be identified as confidential at the time of disclosure.

2. Obligations

The Recipient agrees to:

1) use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and
2) use the Discloser's Information for the purpose for which it was disclosed or otherwise for the benefit of the Discloser.

The Recipient may disclose Information to:

1) its employees who have a need to know, and employees of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know. Control means to own or control, directly or indirectly, over 50% of voting shares; and
2) any other party with the Discloser's prior written consent.

Before disclosure to any of the above parties, the Recipient will have a written agreement with the party sufficient to require that party to treat Information in accordance with this Agreement.

The Recipient may disclose Information to the extent required by law. However, the Recipient will give the Discloser prompt notice to allow the Discloser a reasonable opportunity to obtain a protective order.

3. Confidentiality Period

Information disclosed under this Agreement will be subject to this Agreement for two years following the initial date of disclosure.

4. Exceptions to Obligations

The Recipient may disclose, publish, disseminate, and use Information that is:

1) already in its possession without obligation of confidentiality;
2) developed independently;
3) obtained from a source other than the Discloser without obligation of confidentiality;
4) publicly available when received, or subsequently becomes publicly available through no fault of the Recipient; or
5) disclosed by the Discloser to another without obligation of confidentiality.

The Recipient may use in its business activities the ideas, concepts and know-how contained in the Discloser's Information which are retained in the memories of Recipient's employees who have had access to the Information under this Agreement.

5. Disclaimers

THE DISCLOSER PROVIDES INFORMATION WITHOUT WARRANTIES OF ANY KIND.

The Discloser will not be liable for any damages arising out of the use of Information disclosed under this Agreement.

Neither this Agreement nor any disclosure of Information made under it grants the Recipient any right or license under any trademark, copyright or patent now or subsequently owned or controlled by the Discloser.

6. General

This Agreement does not require either of us to disclose or to receive Information.

Neither of us may assign, or otherwise transfer, its rights or delegate its duties or obligations under this Agreement without prior written consent. Any attempt to do so is void.

The receipt of Information under this Agreement will not in any way limit the Recipient from:

1) providing to others products or services which may be competitive with products or services of the Discloser;
2) providing products or services to others who compete with the Discloser; or
3) assigning its employees in any way it may choose.

The Recipient will 1) comply with all applicable export and import laws and regulations, including associated embargo and sanction regulations, and 2) unless authorized by applicable governmental license or regulation, not directly or indirectly export or re-export any technical information or software subject to this Agreement (including direct products of such technical information or software) to any prohibited destination or country (including release to nationals, wherever they may be located, of any prohibited country) as specified in such applicable export regulations. This paragraph will survive the termination or expiration of this Agreement and the confidentiality period above and will remain in effect until fulfilled.

Only a written agreement signed by both of us can modify this Agreement.

Either of us may terminate this Agreement by providing one month's written notice to the other. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

Both of us consent to the application of the laws of ***(name of country)*** to govern, interpret, and enforce all of your and our rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

This Agreement is the complete and exclusive agreement regarding our disclosures of Information, and replaces any prior oral or written communications between us regarding these disclosures. By signing below for our respective enterprises, each of us agrees to the terms of this Agreement. Once signed, any reproduction of this Agreement made by reliable means (for example, photocopy or facsimile) is considered an original.

Agreed to:	*Agreed to:* ***(IBM Company name)***
By _____ Authorized Signature	By _____ Authorized Signature
Name (type or print):	Name (type or print):
Date:	Date:
Identification number:	Agreement number:
Address:	IBM address:

After signing, please return a copy of this Agreement to the "IBM address" shown above.