PARTICIPATING ADDENDUM

WSCA-NASPO COOPERATIVE PURCHASING ORGANIZATION, LLC

MN 2014-2019 Computer Equipment

(Desktops, Laptops, Tablets, Servers, Storage including Related Peripherals & Services)

Administered by the State of Minnesota (hereinafter “Lead State”)

MASTER AGREEMENT

Master Agreement No: MNWNC-116

IBM Corporation.

(hereinafter “Contractor”)

And

State of Washington, Department of Enterprise Services

(hereinafter “Participating State”)

Participating State Contract #05815-006

This Addendum adds the State of Washington as a Participating State authorized to purchase from the NASPO ValuePoint Master Agreement number MNWNC-116 with IBM Corporation.

1. Scope: This addendum covers the NASPO Computer Equipment Contract categories identified below, led by the State of Minnesota for use by state agencies and other entities authorized by Washington State’s statutes and located in the Participating State to utilize state contracts with the prior approval of the state’s chief procurement official. Language contained here supersedes and is in addition to the language of the Master Pricing Agreement

a. IBM Corporation Computer Equipment: Category Awards:

Scope of Service

1. Band 4: Server. A server is a physical computer dedicated to run one or more services or applications (as a host) to serve the needs of the users of other computers on the network. This band also includes server appliances. Server appliances have their hardware and software preconfigured by the manufacturer. It also includes embedded networking components such as those found in blade chassis systems.

2. Band 5: Storage to include related Peripherals & Services.

Storage is hardware with the ability to store large amounts of data. This band includes SAN switching necessary for the proper functioning of the storage environment. Ruggedized equipment is not included in the Product and Service Schedule for this band.

3. Examples of peripherals/accessories/options: Include but are not limited to: monitors, audiovisual equipment, instructional equipment, cabling, modems, network to support servers, storage and client applications such as routers, switches. Software is an option which must be related to the purchase of equipment and subject to configuration limits. Third party products are allowed to be offered as peripherals/accessories/options and may be offered in any related band.
b. Products and Services NOT allowed or provided by this Participating Addendum:

- Ruggedized Devices, Printers, Multifunction Printers, Cell Phones
- Lease Agreements, Managed Print, Cloud Service

c. Use of Purchase Card is allowable at time of order placement.

2. Participation: Use of specific WSCA-NASPO cooperative contracts by all state agencies, political subdivisions and other entities (including cooperatives) located within the state of Washington authorized by state statutes to use state contracts are subject to the prior approval of the respective State Chief Procurement Officer. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Officer.

   Individual Customer: Each state agency and political subdivision, as a Participating Entity, that purchases products/services will be treated as if they were individual customers (a “purchaser” or “authorized purchaser” under this Contract). Except to the extend modified by this Participating Addendum, each agency and political subdivision shall be responsible to follow the terms and conditions of the Master Agreement; and they shall have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each agency and political subdivision shall have the same rights to any indemnity or to recover any costs allowed in the contract for their purchases. The Contractor shall apply the charges to each Participating Entity individually.

   Political and non-profit entities within the State of Washington may use this contract without further process provided they have completed, filed and accepted in the Washington State’s Master Contract Agreement (MCUA) process. Use by others then those stated above is not a valid use. Use of the contract in conflict with its language is not binding on any party and does not satisfy requirements.

   A list of all members is available at:

   http://des.wa.gov/services/ContractingPurchasing/Purchasing/Pages/MasterContracts1/usageAgreement.aspx

   THIS AGREEMENT IS NOT FOR PERSONAL USE.

3. Effective Date: This PA’s initial term will begin upon final executed signatures and shall be coterminous with the Lead State’s (Minnesota) Master Agreement and any extensions of the Master Agreement.

4. Participating State Modifications or Additions to Master Agreement:
Contractor and DES agree to the following modifications and additions to the Master Agreement for Computer Equipment and apply only to actions and relationships within the Participating Entity.

Department of Enterprise Services (DES) State Master Contract Standard Terms and Conditions.
The following standard terms and conditions are added to the Participating Addendum for the State of Washington. This section consists of general provisions and terms for contracts issued by
the Washington State Department of Enterprise Services (DES), acting under the authority of RCW 39.26 which regulates the manner in which state agencies may acquire services.

4.1 **Contract Modifications or Additional Terms and Conditions to the Master Agreement:**

DES reserves the right to modify the resulting contract (including but not limited to adding or deleting products, services, or delivery locations) by mutual agreement between DES and the contractor, as long as such modification is substantially within the scope of the original contract. Such modification(s) shall be memorialized in a signed, written document (Amendment) describing the agreed upon change, including any terms and conditions required to support such change. Changes to point of contact information may be updated without the issuance of a mutually agreed contract amendment.

4.2 **Restrictions:** In accordance with the Master Pricing Agreement the Participating Addendum identifies the following restrictions of product:

a. **Software**
   1. Software is restricted to operating systems and commercial off-the-shelf (COTS) software and is subject to equipment configuration limits.
   2. Software is an option which must be related to the procurement of equipment.
   3. Software must be pre-loaded or provided as an electronic link with the initial purchase of equipment.
   4. Software such as middleware which is not always installed on the equipment, but is related to storage and server equipment (band 4&5) purchased, is allowed and may be procured after the initial purchase of equipment.

b. **Services**
   1. Services must be related to the procurement of equipment.
   2. Service shall be unlimited.
   3. Wireless phone and internet service is not allowed.
   4. Cloud Services including acquisitions structured as managed on-site services are not allowed.
   5. Managed Print Services are not allowed.

c. **Third Party Products.**
   1. Contract Vendors shall only offer Third Party Products in the bands they have been awarded.
   2. Contract Vendor is restricted to purchases of computer hardware manufactured by Contractor.

d. **Additional Product/Services**
   1. Hardware and software required to solely support wide area network (WAN) operation and management are not allowed.
   2. Lease/Rentals of equipment shall not be allowed.
   3. Cellular Phone Equipment shall not be allowed.
   4. EPEAT Bronze requirement may be waived, on a State case by case basis, if approved by the State’s Chief Procurement Officer.

4.3 **Contract Administration**

- **State Contract Administrator**
DES will appoint a single point of contact that shall be the Contract Administrator for this contract and shall provide contract oversight. The Contract Administrator shall be the principal contact for the contractor for business activities under this contract. DES shall notify the contractor in writing, when there is a new Contract Administrator assigned to this contract.

- **Administration of Term Contract**

DES may maintain contract information and pricing and make it available on DES's website. The Contractor is not responsible for the accuracy of the information on this DES web site. The Contractor will maintain a web site for this Participating Addendum meeting the guidelines of the NASPO Master Agreement including but not limited to contract information, product price lists and other information to assist customers. The contract prices are the maximum price contractor can charge. The contractor may offer volume discounts to purchasers.

**4.4 Contractor Administrator Supervision and Coordination**

Contractor shall:

a. Competently and efficiently supervise and coordinate the implementation and completion of all contract requirements specified herein.

b. Identify the contractor’s Authorized Representative, who will be the principal point of contact for DES concerning contractor’s performance under this contract.

c. Promptly notify the Contract Administrator in writing of any change of designated Authorized Representative assigned to this contract.

d. Be responsive to all written communications given to the contractor’s Authorized Representative.

DES shall provide Contractor with timely written notice of a material violation of this section, so that so that Contractor can take corrective action.

**4.5 Term Contract Management**

Upon award of a term contract, the contractor shall:

a. Promote and market the use of this contract to all authorized contract purchasers.

b. Exert reasonable efforts to confirm that those who endeavor to utilize this contract are authorized purchasers under this contract.

c. At no additional charge, assist purchasers in making the most cost effective, value based purchases which may include, but is not limited to:

- Having representatives available to provide information regarding products and services, including visiting the purchaser site if needed, and providing purchaser with materials/supplies/equipment recommendations.
- Providing purchasers with a detail list of contract items including current contract pricing and part numbers.

The contractor shall identify a means to contact a Contractor customer service representative responsible for addressing purchaser issues including but not limited to:

- Logging requests for service, ensuring repairs are completed in a timely manner, dispatching service technicians and processing warranty claim documentation.

- Providing purchasers with regular and timely status updates in the event of a delay in repair or order fulfillment.

- Acting as the lead and liaison between the manufacturer and purchaser in resolving warranty claims for contract items purchased.

4.6 Changes

Alterations to any of the terms, conditions, or requirements of this contract shall only be effective upon written issuance of a mutually agreed contract amendment by DES. Changes to point of contact information may be updated without the issuance of mutually agreed contract amendment.

4.7 Statewide Payee Desk

Contractors must register with the Statewide Payee Desk, maintained by DES, to be paid for contract sales. Washington state agencies cannot make payments to a contractor until it is registered. Registration materials are available here: Receiving Payment from the State.

4.8 Management Fee

Contractor will pay a management fee of 2 percent to DES on all state contract sales/purchase prices for work orders. The purchase price is defined as total invoice price less sales tax.

The management fee must be rolled into the contractor’s current pricing for this Participating Addendum; the fee must not be shown as a separate line item on an invoice unless specifically requested and approved by DES.

How to determine the fee: Total invoiced sales (not including sales tax) x .0200 = management fee.

DES may increase, reduce or eliminate the management fee, and reserves the right to negotiate contract pricing with the contractor when adjustment of the management fee might justify an increase in pricing.

For purposes of the management fee, the parties agree that the initial management fee is included in the pricing. Therefore, any increase or reduction of the management fee must be reflected in contract pricing commensurate with the adjustment.
Taxability (if applicable): In 2013, the Washington Department of Revenue ruled that if the underlying transaction requires sales tax, the DES management fee portion of the transaction is also subject to a sales tax.

The state reserves the right to audit, or have a designated third party audit, applicable records to ensure that the state has been properly invoiced and all management fees have been paid. Failure to accurately report total net sales, to submit a timely sales report, or remit timely payment of the management fee may be cause for contract termination, the charging of interest or penalties, or the exercise of other remedies provided by law. Contractor shall be provided a written copy of the audit results and shall have ten (10) business days to respond to audit findings.

The parties agree that the State’s or any third-party’s access to Contractor’s books and records or Subcontractor’s books and records shall not include access to personnel, profit or internal cost data. In addition, the parties shall agree to mutually agree to what documents and records the State or any third-party shall gain access prior to the State or any third-party accessing such records and/or data. The State or any third-party shall bear all costs it incurs associated with audit activity.

The management fee does not include or supersede fees owed to other entities such as the NASPO ValuePoint or government entities other than the state of Washington.

DES will invoice the contractor every quarter based on sales reported by contractor. Contractors are not to remit payment until they receive an invoice from DES.

Management fee payment must reference the contract number, work request number (if applicable), the year and quarter for which the management fee is being remitted, and the contractor’s name as it is known to DES, if not already included on the face of the check.

Remit management fee to:

Washington State Department of Enterprise Services  
Finance Office  
PO Box 41460  
Olympia, WA 98504-1460

**NOTE:** **DO NOT** send payment to the DES Contract Administrator and do not pay prior to receiving the invoice.

### 4.9 Contract Sales/Usage Report

The management fee will be based on total contract sales, which must be reported quarterly by the contractor in the Contract Sales Reporting System. DES will provide a login password and a vendor number.

Each sales report must identify every authorized purchaser by name as identified on the Contract Sales Reporting System and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The “Miscellaneous” option may be used only with prior approval by DES, and use of this option without prior approval by DES may be cause for contract termination.
**USAGE REPORT DUE DATE:** Reports must be submitted electronically within 30 days after the end of the calendar quarter:

<table>
<thead>
<tr>
<th>For sales invoiced during</th>
<th>Due date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q1 (Jan / Feb / March)</td>
<td>April 30</td>
</tr>
<tr>
<td>Q2 (April / May / June)</td>
<td>July 31</td>
</tr>
<tr>
<td>Q3 (July / Aug / Sept.)</td>
<td>Oct. 31</td>
</tr>
<tr>
<td>Q4 (Oct / Nov / Dec.)</td>
<td>Jan. 31</td>
</tr>
</tbody>
</table>

Failure to provide reports in accordance with the schedule above may be cause for contract termination.

The report may be corrected or modified by DES with subsequent written notice to the contractor.

Upon request by DES, contractor shall provide Contractor’s contact information to clarify what is noted on the sales report during the term of this contract. Contractor shall refer sales reporting questions to the Contract Administrator.

4.10 Other Required Term Contract Reports

DES may require the contractor to provide a detailed annual contract sales history report. This report, if requested, will include at a minimum, but is not limited to: product description, part number or other product identifier, per unit quantities sold, and contract price. This report must be provided to DES in an electronic format that can be read by MS Excel. Unless the solicitation specifies otherwise, all other required reports will be designed and approved by the parties by mutual agreement.

4.11 Common Vendor Registration and Bid Notification System

Contractor shall be registered in the state’s common vendor registration and bid notification system, RCW 39.29.006, known as Washington’s Electronic Business Solutions (WEBS) at [www.ga.wa.gov/webs](http://www.ga.wa.gov/webs). Contractors already registered need not re-register. It is the sole responsibility of contractors to properly register and maintain an accurate vendor profile.

4.12 Payment

a. **Advance payment prohibited:**

   No advance payment shall be made for the products and services furnished by contractor under this contract.
Notwithstanding the above, maintenance payments, if any, may be made on a quarterly basis at the beginning of each quarter.

b. Payment:

Payment is the sole responsibility of, and will be made by, the purchaser.

Payment is due upon receipt of invoice. Under Chapter 39.76 RCW, if purchaser fails to make timely payment(s), contractor may invoice for 1 percent per month on the amount overdue or a minimum of $1. Payment will not be considered late if a check is mailed within the time specified. If no terms are specified otherwise in the solicitation, net 30 days will automatically apply.

Payment for materials, supplies and/or equipment received and for services rendered shall be made by purchaser and be redeemable in U.S. dollars. Unless otherwise specified, the purchaser's sole responsibility shall be to issue this payment. Any bank or transaction fees or similar costs associated with currency exchange procedures or the use of purchasing/credit cards shall be fully assumed by the contractor.

Note: when the state and the Contractor agree that the state has been overcharged or otherwise reimbursed, the purchaser may elect to have either direct payments or written credit memos issued. If the contractor fails to make timely payment(s) or issuance of credit memos, the purchaser may impose a 1% per month on the amount upon written notice to Contractor and a 30 day cure period.

c. Invoicing and discounts

Contractor must provide a properly completed invoice to purchaser. All invoices are to be delivered to the address indicated in the purchase order.

Each invoice must be identified by the applicable purchaser's order number, and must be in U.S. dollars. Invoices must be prominently annotated by the contractor with all applicable prompt payment and/or volume discount(s) and shipping charges unless otherwise specified in the solicitation.

Invoices for payment will accurately reflect all discounts due the purchaser. Invoices will not be processed for payment, nor will the period of prompt payment discount commence, until receipt of a properly completed invoice denominated in U.S. dollars and until all invoiced items are received and accepted according to the Acceptance requirements in section 28 of the Master Agreement. If an adjustment in payment is necessary due to damage or dispute, any prompt payment discount period shall commence on the date final approval for payment is authorized.

4.13 Taxes, fees and licenses

a. Taxes
Where required by statute or regulation, the contractor shall pay for and maintain in current status all taxes that are necessary for contract performance. Unless otherwise indicated, the purchaser agrees to pay State of Washington taxes on all applicable materials, supplies, services and/or equipment purchased. Contractor agrees not to invoice the State of Washington for federal excise taxes provided that Contractor has been provided the applicable exemption certificate(s).

b. Collection of retail sales and use taxes

In general, contractors engaged in retail sales activities within the State of Washington are required to collect and remit sales tax to Department of Revenue (DOR). In general, out-of-state contractors must collect and remit “use tax” to Department of Revenue if the activity carried on by the seller in the State of Washington is significantly associated with contractor’s ability to establish or maintain a market for its products in Washington. Examples of such activity include where the contractor either directly or by an agent or other representative:

- Maintains an in-state office, distribution house, sales house, warehouse, service enterprise, or any other in-state place of business;
- Maintains an in-state inventory or stock of goods for sale;
- Regularly solicits orders from purchasers located within the State of Washington via sales representatives entering the State of Washington;
- Sends other staff into the State of Washington (e.g. product safety engineers, etc.) to interact with purchasers in an attempt to establish or maintain market(s); or
- Other factors identified in WAC 458-20.

c. Department of Revenue registration for out-of-state contractors

Out-of-state contractors meeting any of the above criteria must register and establish an account with the Department of Revenue. Refer to WAC 458-20-193, and call the Department of Revenue at 800-647-7706 for additional information. When out-of-state contractors are not required to collect and remit “use tax,” purchasers located in the State of Washington are responsible for paying this tax, if applicable, directly to the Department of Revenue.

d. Taxes on invoice

Contractor shall calculate and enter the appropriate state and local sales tax on all invoices. Tax is to be computed on new items after deduction of any trade-in in accordance with WAC 458-20-247.

e. Overpayments to contractor

When the purchaser and Contractor agree that the purchaser has made an erroneous payment or overpayment under this contract, Contractor shall refund to purchaser the mutually agreed amount of such erroneous payment or overpayment within 30
days' written notice. If contractor fails to make timely refund, purchaser may charge contractor 1 percent per month on the amount due, until paid in full.

4.14 Insurance

The following are general insurance provisions for the State of Washington. Additional requirements specific to a good/service may be detailed elsewhere in a solicitation or its appendices.

1. General requirements

Contractor shall, at its own expense, obtain and keep in force insurance as follows until completion of the contract.

Upon request, contractor shall furnish evidence in the form of a certificate of insurance satisfactory to the State of Washington that insurance, in the following kinds and minimum amounts, has been secured. Failure to provide proof of insurance, as required, may result in contract termination.

Any insurance requirements for subcontractors will be mutually approved in the applicable transaction document.

All insurance provided in compliance with this contract shall be primary only with respect to liability arising out this contract.

2. Specific requirements

Employer's Liability (Stop Gap): The contractor will at all times comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable and will maintain Employers Liability insurance with a limit of no less than $1,000,000.00. The State of Washington will not be held responsible in any way for worker's compensation claims filed by the contractor or their employees with regard to services performed under the terms of this contract.

Commercial General Liability Insurance: The contractor shall at all times during the term of this contract, carry and maintain commercial general liability insurance and if necessary, commercial umbrella insurance for product liability, premises liability, advertising injury liability, bodily injury, including disease, illness and death, third party property damage and contractual liability, each arising out of services provided under this contract and resulting from IBM's negligence for which IBM is legally liable. IBM subcontractors used in the performance of this contract shall maintain insurance coverages of the types and in the amounts customary for businesses of similar size and in accordance with industry practice.

IBM's insurer waives rights of subrogation with respect to DES and its authorized purchasers under this Contract for the recovery of damages to the extent they are covered under the Commercial General Liability Insurance policy. Each policy must include a waiver of subrogation in favor of DES and its authorized purchasers. IBM's
commercial general liability insurance policy shall apply on a primary and non-contributory basis only with respect to liability arising out of this Contract.

The limits of liability insurance shall not be less than as follows:

<table>
<thead>
<tr>
<th>Limit Description</th>
<th>Limit Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>General aggregate limits (other than products-completed operations)</td>
<td>$2 million</td>
</tr>
<tr>
<td>Products-completed operations aggregate</td>
<td>$2 million</td>
</tr>
<tr>
<td>Personal and advertising injury aggregate</td>
<td>$1 million</td>
</tr>
<tr>
<td>Each occurrence (applies to all of the above)</td>
<td>$1 million</td>
</tr>
<tr>
<td>Fire damage limit (per occurrence)</td>
<td>$50,000</td>
</tr>
<tr>
<td>Medical expense limit (any one person)</td>
<td>$5,000</td>
</tr>
</tbody>
</table>

3. **Business Auto Policy (BAP)**

In the event that the use of Contractor owned vehicles is involved with providing the services delivered pursuant to this contract or the transportation of clients pursuant to this contract, automobile liability insurance shall be required. The coverage provided applies to all sums IBM legally must pay as damages because of bodily injury or property damage caused by an accident involving a Contractor owned vehicle as a consequence of the performance of this service by the contractor.

Contractor shall maintain business auto liability and, if necessary, commercial umbrella liability insurance with a combined single limit not less than $1,000,000 per occurrence.

IBM’s insurer waives rights of subrogation with respect to DES and its authorized purchasers under this Contract for the recovery of damages to the extent they are covered under the Business Auto Insurance policy. Each policy must include a waiver of subrogation in favor of DES and its authorized purchasers. IBM’s insurance policies shall apply on a primary and non-contributory basis only with respect to liability arising out of this Contract.

4. **Additional insurance provisions**

All above insurance policies shall include, but not be limited to, the following provisions:

- **Additional insured:** State of Washington shall be named as an additional insured on the Commercial General Liability and Automobile Liability insurance policies. These two policies shall be primary and non-contributory with respect to liability arising out of this Contract.
Notice of policy cancellation/Non-renewal:

For insurers subject to Chapter 48.18 RCW (admitted and regulated by the Washington State Insurance Commissioner) a written notice shall be given to the director of purchasing or designee 45 calendar days prior to cancellation or any material change to the policy as it relates to this contract. Written notice shall include the affected contract reference number.

Cancellation for non-payment of premium:

If cancellation on any policy is due to non-payment of premium, a written notice shall be given the director of purchasing or designee 10 calendar days prior to cancellation. Written notice shall include the affected contract reference number.

Identification:

Certificates of insurance shall include the affected contract reference number.

5. Insurance carrier rating

The insurance required above shall be issued by an insurance company authorized to do business within the State of Washington. Insurance is to be placed with a carrier that has a rating of A- Class VII or better in the most recently published edition of Best’s Reports.

Any exception must be reviewed and approved by the Risk Manager for the State of Washington, by submitting a copy of the contract and evidence of insurance before contract commencement. If an insurer is not admitted, all insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

6. Excess coverage

The limits of all insurance required to be provided by the contractor shall be no less than the minimum amounts specified. However, coverage in the amounts of these minimum limits shall not be construed to relieve the contractor from liability in excess of such limits.

7. Limit adjustments

The state reserves the right to increase or decrease limits as appropriate. To be in effect, any such change shall be included in a written amendment to the Contract mutually approved in writing by the parties in compliance with section 4.1 above.

4.15 Antitrust

The state maintains that, in actual practice, overcharges by Contractor’s suppliers resulting from antitrust violations of state or federal antitrust laws are borne by the purchaser. Therefore, during the term of this Contract, to the extent the purchaser bears all expenses, the contractor hereby assigns to the State of Washington any and all of the contractor’s claims for such price fixing or overcharges which arise under federal or state antitrust
laws, relating to the materials, supplies, services and/or equipment purchased under this contract.

4.16 Disputes and remedies

a. **Problem resolution and disputes**

Problems arising out of the performance of this contract shall be resolved in a timely manner at the lowest possible level with authority to resolve such problem. Both parties agree to exercise good faith in problem resolution. If a problem persists and cannot be resolved, it may be escalated within each organization.

The following procedure will be followed if resolution is required to a conflict arising during a transaction under this Contract:

- When an issue arises between purchaser and Contractor, purchaser and Contractor team member(s) will first strive to work out the problem in a timely and amicable manner.
- **Level 1**: If the team members cannot resolve the conflict within five (5) working days, the purchaser and Contractor Administrator will confer to resolve the issue.
- **Level 2**: If the conflict is not resolved within five (5) working days after being escalated to Level 1, the DES Contract Administrator and the Contractor Administrator will confer to resolve the issue.
- If the issue remains unresolved after Level 2 intervention, then either party may terminate the transaction. If the conflict is addressed by termination, purchaser agrees to pay Contractor as described below in section 4.20 Transaction Termination.
- During any issue resolution, Contractor agrees to provide services relating to items not in dispute, to the extent practicable pending resolution of the issue. Purchaser agrees to pay invoices as per this Contract.

b. **Administrative suspension**

When it is in the best interest of the state, DES may at any time, and without cause, upon ten (10) calendar days written notice to Contractor Administrator, suspend the contract or any portion thereof for a period of not more than 30 calendar days per event. Contractor shall exert commercially reasonable efforts to resume performance five (5) business days following the specified suspension period. The parties will work together to determine the impact on the delivery schedule based on any such administrative suspension. The parties agree that maintenance will not be halted under this administrative suspension.

c. **Force majeure**

The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of war, riots, strikes, fire, floods, windstorms, epidemics or other similar occurrences.
Exceptions: Except for payment of sums due, neither party shall be liable to the other or deemed in breach under this contract if, and to the extent that, such party's performance of this contract is prevented by reason of force majeure.

Notification: If either party is delayed by force majeure, said party shall exert commercially reasonable efforts to provide written notification within 48 hours. The notification shall provide reasonable evidence of the force majeure to the other party.

Such delay shall cease as soon as practicable and written notification of same shall likewise be provided. So far as consistent with the Rights Reserved below, the time of completion shall be extended by contract amendment for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this contract.

Rights reserved: During a force majeure event, and solely in relation to products and/or services affected by such a force majeure event, DES reserves the right to authorize an amendment to this contract, terminate the contract in accordance with Section 4.19 herein, and/or purchase materials, supplies, equipment and/or services from the best available source during the time of force majeure, and Contractor shall not prevent DES from taking such action.

d. Alternative dispute resolution fees and costs

In the event that the parties engage in arbitration, mediation or any other alternative dispute resolution forum to resolve a dispute in lieu of litigation, both parties shall share equally in the cost of the alternative dispute resolution method, including cost of mediator or arbitrator. In addition, each party shall be responsible for its own attorneys’ fees incurred as a result of the alternative dispute resolution method.

e. Non-exclusive remedies

The remedies provided for in this contract shall not be exclusive but are in addition to all other remedies available under law.

4.17 Liquidated damages

a. Liquidated damages - General

DES and or the purchasers and the contractor agree that the liquidated damages provisions in the contract are a reasonable forecast of the actual damages that would be suffered by the purchaser in the event of contractor’s nonperformance, that such liquidated damages are not a penalty but represent the reasonable compensation due purchaser in the event of a breach, and that such liquidated damages will be assessed as appropriate.

Any delay by contractor in meeting the Delivery Date, Installation Date, maintenance or repair date, or other applicable date set forth in this contract may interfere with the proper implementation of purchaser’s programs and may result in loss and damage to purchaser.
Based on the specific circumstances of each purchase, when applicable, the purchaser and Contractor will mutually agree on the amount of any applicable liquidated damages in the transaction document.

As it would be impracticable to fix the actual damage sustained in the event of any such failure(s) to perform and/or purchaser and contractor agrees that in the event of any such failure(s) to perform, as defined in the transaction document, the amount of damage which will be sustained will be assessed as appropriate based upon the purchasers inability to perform their function and the parties agree that contractor shall pay such amounts as liquidated damages and not as a penalty, as set forth in the transaction document.

Liquidated damages provided under the terms of this contract are subject to the same limitations as provided in the section titled Limitation of Liability.

b. Limitation of liability

The Limitation of Liability terms in the Master Agreement, Exhibit A – Terms and Conditions, Section C17, shall apply to this Contract.

4.18 Debarment and suspension

To the best of the undersigned’s knowledge and belief, Contractor Administrator certifies that neither Contractor nor Contractor’s affiliates presently are debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this contract by Department of Enterprise Services and its authorized purchasers. Contractor Administrator also shall exert commercially reasonable efforts to notify DES if Contractor Administrator becomes aware that Contractor’s debarment status changes after receiving notice of contract award, if any.

4.19 Contract termination

a. Termination for Cause

i. Material breach conditions

At DES' sole discretion, DES may terminate this Contract for cause due to material breach by Contractor, for failing to perform a material contractual requirement or for a material breach of any material term or condition. Material breach of a term or condition of the contract may include but is not limited to:

- Reserved
- Contractor becomes insolvent or in an unsound financial condition so as to endanger performance hereunder;
- Contractor becomes the subject of any proceeding under any law relating to bankruptcy, insolvency or reorganization, or relief from
creditors and/or debtors that endangers the contractor's proper
performance hereunder;

- Appointment of any receiver, trustee, or similar official for contractor or
any of the contractor's property and such appointment endangers the
contractor's proper performance hereunder;

- A determination that the contractor is in violation of applicable federal,
state, or local laws or regulations and that such determination renders
the contractor unable to perform any material aspect of the contract.

ii. **Opportunity to cure** in the event that contractor fails to perform a material
contractual requirement or materially breaches any material term or
condition, DES may issue a written cure notice. The contractor will be
provided a reasonable period of time in which to cure, which shall not be less
than ten (10) days or other time period as mutually agreed upon. The Parties
agree and acknowledge that it is DES's standard practice to issue a ten (10)
day cure period, however, if Contractor requests additional time to cure, DES
will consider granting Contractor's request in good faith and in consideration
of the circumstances.

DES is not required to allow the Contractor such time to cure defects if the
opportunity for cure would result in irreparable further harm to DES. Time
allowed for cure shall not diminish or eliminate contractor's liability for
liquidated or other damages as otherwise set forth herein, or otherwise affect
any other remedies available against contractor under the contract or by law.

If the material breach remains after contractor has been provided the
opportunity to cure, DES may do any one or more of the following, as
applicable:

- Exercise any remedy provided by law;
- Terminate this contract and any related contracts or portions thereof;
- Procure replacements as set forth elsewhere in this contract;
- As agreed upon in the applicable transaction document, impose actual
or liquidated damages;
- Suspend or bar contractor from receiving future solicitations or other
opportunities;
- Pursue remedies otherwise set forth herein, subject to the Limitation of
Liability section.

iii. **Effect of Termination for Material Breach**
In the event DES, in its sole discretion, determines that the contractor has failed to comply with the material conditions of this contract or is in material breach, DES has the right to suspend or terminate this contract, in part or in whole.

DES shall notify the contractor in writing of the need to take corrective action. If corrective action is not taken within 30 calendar days or as otherwise mutually approved, or if such corrective action is reasonably deemed by DES to be insufficient to cure the material breach, the Contract may be terminated. DES reserves the right to suspend all or part of the Contract.

In the event of termination under this Section 4.19(a), DES shall have the right to procure for all purchasers any replacement materials, supplies, services and/or equipment that are the subject of this contract on the open market.

In addition, the Contractor may be liable for damages subject to the Limitation of Liability terms herein and in the Master Agreement.

If it is determined under this Section 4.19(a) that: (1) the contractor was not in material breach; or (2) failure to perform was outside of contractor's or its subcontractor's control, fault or negligence, the termination shall be deemed to be a "termination for convenience" and subject to the terms and conditions of Section 4.19(b) below. The rights and remedies of DES and/or the purchaser provided in this contract are not exclusive and are in addition to any other rights and remedies provided by law.

b. Termination for convenience

Except as otherwise provided in this contract, DES, at the sole discretion of DES, may terminate this contract, in whole or in part by giving not less than 30 calendar days or other appropriate and mutually agreed time period written notice beginning on the second day after mailing to the contractor. If this contract is so terminated, purchasers shall be liable for payment required under this contract for properly authorized services rendered, or materials, supplies and/or equipment delivered to and accepted by the purchaser in accordance with the Acceptance requirements in section 28 of the Master Agreement prior to the effective date of contract termination, in addition to termination fees as set forth in the applicable transaction document (but such payment obligations will be exclusively with regard to purchasers' payment obligations due to such Termination for Convenience hereunder).

Purchasers shall promptly return or render payment to Contractor for any materials, supplies, and/or equipment that were delivered but not yet accepted prior to the termination date, in materially the same condition as when such items were delivered, at purchasers' own cost. For the avoidance of doubt, this Section 4.19(b) does not limit DES's or purchasers' other payment obligations hereunder apart from their Termination for Convenience payment obligations.
This Termination for Convenience clause may be invoked by DES when it is in the best interest of the State of Washington.

c. **Termination for withdrawal of authority**

In the event that DES' authority to perform any of its duties is withdrawn, reduced, or limited such that DES would be unable to fulfill its duties under the contract, then after the commencement of this contract and prior to normal completion, DES may terminate this contract, in whole or in part, by thirty (30) calendar day's written notice, or other appropriate and mutually agreed time period with written notice, to contractor. This termination shall otherwise be considered a Termination for Convenience in accordance with and subject to section 4.19(b) above and shall not be considered a Termination for Material Breach.

Purchasers shall promptly return or issue payment to Contractor for any materials, supplies, and/or equipment that were delivered but not yet accepted prior to the termination date, in materially the same condition as when such items were delivered, at purchasers' own cost.

d. **Termination for non-allocation of funds**

If sufficient funds are not allocated to a purchaser to fund a purchase in any future period, purchaser may terminate the applicable Order with at least seven (7) calendar days written notice, or other appropriate time period, to contractor, or work with contractor to arrive at a mutually acceptable resolution of the situation. Purchaser will pay Contractor in accordance with section 4.19(c) above. For the avoidance of doubt, purchaser's payment obligations under this Contract for any applicable consecutive periodic payments would be satisfied with the payment for the services, materials, supplies, and equipment delivered and accepted by the purchaser, in accordance with Section 4.19(c). Purchasers shall promptly return to Contractor any materials, supplies, and/or equipment that were delivered but not yet accepted prior to the termination date, in materially the same condition as when such items were delivered, at purchasers' own cost. DES and/or purchaser agree to notify contractor in writing of such non-allocation at the earliest possible time.

No penalty shall accrue to the purchaser in the event this section shall be exercised. This section shall not be construed to permit DES to terminate this contract (or purchaser to terminate an Order) in order to acquire similar materials, supplies, services and/or equipment from a third party.

e. **Termination for conflict of interest**

DES may terminate this contract by written notice to contractor if it is determined, after due notice and examination, that any party to this contract has violated Chapter 42.52 RCW, Ethics in Public Service, under this Contract, or any other applicable laws
regarding ethics in public acquisitions and procurement and performance of contracts. In the event this contract is so terminated:

- Due to Contractor's violation of Chapter 42.52 RCW, DES may terminate this Contract for cause in accordance with section 4.19 c above.

- Due to DES, one or more purchaser's, or other third party's violation of Chapter 42.52 RCW, DES may terminate this Contract for convenience in accordance with section 4.19 e above.

f. **Termination by mutual agreement**

DES and the contractor may terminate this contract in whole or in part, at any time, by mutual agreement. This shall be considered a Termination for Convenience in accordance with section 4.19 d above.

g. **Termination procedure**

In addition to the procedures set forth below, if DES terminates this contract, contractor shall follow any procedures mutually agreed upon receipt of DES' termination notice.

Upon termination of this contract and in addition to any other rights provided in this contract, DES may require the contractor to deliver to the purchaser any property specifically produced or acquired for the performance of such part of this contract as has been terminated.

Upon termination of this contract or a purchase order under sections 4.19 a. through 4.19f above, the purchaser shall pay to the contractor the agreed upon price, if separately stated, for completed work and service(s) Accepted by the purchaser, and the amount agreed upon by the contractor and the purchaser for (i) completed materials, supplies, services rendered and/or equipment for which no separate price is stated, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment which are Accepted by the purchaser, and (iv) the protection and preservation of property, unless the termination is for cause, in which case DES, the purchaser, and the Contractor shall mutually agree on the extent of the liability of the purchaser. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this contract.

The rights and remedies of DES and/or the purchaser provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

After receipt of a termination notice, and except as otherwise expressly directed in writing by DES, the contractor shall:

- Stop all work, order fulfillment, shipments, and deliveries under the contract on the date, and to the extent specified, in the notice;
• Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to the contract except as is necessary to complete or fulfill such portion of the contract that is not terminated;

• Complete or fulfill such portion of the contract that is not terminated in compliance with all contractual requirements;

• Subject to DES and purchasers' payment obligations for the applicable termination, fulfill any outstanding orders specifically arising out of such termination of orders and subcontracts pursuant to its payment obligations hereunder, provided, however that this clause does not limit either Party's ability to seek any remedies available to it under applicable law;

• In accordance with the applicable transaction document, transfer title to the purchaser and deliver in the manner, at the times, and to the extent directed by DES on behalf of the purchaser any property which, if the contract had been completed, would have been required to be furnished to the purchaser, provided that the purchaser has paid Contractor for the property;

• Take such mutually agreed action as may reasonably be necessary for the protection and preservation of the property related to this contract which is in the possession of the contractor and in which DES and/or the purchaser has or may acquire an interest.

4.20 Transaction Termination

Either party (the purchaser or the Contractor) may terminate a transaction under this Contract by giving the other party at least thirty (30) days written notice. Upon termination, purchaser will pay Contractor for (i) completed materials, supplies, services rendered and/or shipping cost for the of equipment, (ii) partially completed materials, supplies, services rendered and/or equipment, (iii) other materials, supplies, services rendered and/or equipment, and (iv) associated travel expenses incurred prior to transaction termination. The purchaser and Contractor shall negotiate in good faith an agreement as to the percent complete and the associated fees for then in-progress milestone(s) or Services prior to the effective date of termination.

4.21 Federal funding (if applicable)

In the event that a federally funded acquisition results from this procurement, the contractor may be required to provide additional information (free of charge) at the request of DES or purchaser. Further, the contractor may be subject to those federal requirements specific to the commodity as mutually agreed and specified in the applicable transaction document.
4.22 **Federal restrictions on lobbying** (if applicable)

Contractor certifies that under the requirements of Lobbying Disclosure Act, 2 U.S.C., Section 1601 et seq., no federal appropriated funds have been paid or will be paid, by or on behalf of the contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

5. **Primary Contacts:** The primary contact individual (or their named successor) for this Participating Addendum is as follows:

<table>
<thead>
<tr>
<th>Contractor</th>
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<tbody>
<tr>
<td>Name</td>
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<tr>
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6. **Minority and Women’s Business Enterprises (MWBE)**

In accordance with the legislative findings and policies set forth in **RCW 39.19**, the State of Washington encourages participation in all of its contracts by minority and woman-owned businesses firms certified by the **Office of Minority and Women’s Business Enterprises (OMWBE)**. While the state does not give preferential treatment, it does seek equitable representation from the minority and women’s business community. In addition, the state welcomes participation by self-identified minority and woman owned firms and strongly encourages such firms to become certified by OMWBE.

Contractor shall consider and encourage minority and women owned firms in their pool of subcontractors. However, unless required by federal statutes, regulations, grants, or contract terms no preference will be included in the evaluation of bids.

Any applicable affirmative action requirements set forth in federal regulations or statutes included or referenced in the original solicitation shall apply. Contact OMWBE for information on other certified firms for potential sub-contracting arrangements. DES encourages participation by non-MWBE firms as well as MWBE firms. Prior to performance, an awarded bidder that is a MWBE or intends to use MWBE subcontractors is encouraged to identify the participating firm(s) to DES.
6.1. Public records and exempt information

To the extent consistent with the Public Records Act (PRA), DES shall maintain the confidentiality of any submitted documents designated "confidential" or "proprietary" by the record owner. Any such designation must be clear and prominent. DES' sole responsibility shall be limited to:

(i) taking reasonable steps to protect any such clearly marked document, and
(ii) notifying the record owner of any public records request(s) for the documents in accordance with the public records requests procedure defined below.

All documents submitted by said Contractor to DES during the performance of this agreement are subject to disclosure unless specifically exempt under Revised Code of Washington (RCW) 42.56 (The Public Records Act).

Confidential documents: DES strongly discourages submittal of any confidential material. DES considers confidential material to be any portion of your information that is clearly marked or designated all or in part "Confidential," "Proprietary" or "Trade Secret" (or the equivalent).

- The exchange of any confidential information between a purchaser and Contractor in the performance of this Contract will be made under a signed, separate confidentiality agreement which shall be negotiated between purchaser and Contractor.
- All confidential information shall be handled in accordance with RCW 42.56 (The Public Disclosure Act). In the event there is a conflict between RCW 42.56 and subsequent confidentiality agreements, RCW 42.56 shall take precedent.

Public records requests: If a public records request seeks to view or obtain a copy of Contractor's confidential information that is clearly marked or designated "Confidential," "Proprietary" or "Trade Secret" (or the equivalent), DES will:

- Promptly notify you in writing of the date DES will disclose the requested records;
- Give you an opportunity to seek a court order that stops DES from disclosing the records.

DES shall not:

- Evaluate or defend your claim of confidentiality. It is your responsibility to support your claim and take appropriate legal action to do so;
- Withhold or redact your documents without a court order.

Questions about the confidentiality of your submittal can be directed to the Procurement Coordinator or the DES Public Records Officer at (360) 407-8768 or publicrecords@des.wa.gov.

6.2 Legal notices

Any notice or demand or other communication required or permitted to be given under the contract or applicable law (except notice of malfunctioning Equipment) will be effective only if
it is in writing and signed by the applicable party, properly addressed, and either delivered in person, or by a recognized courier service, or deposited with the United States Postal Service as first-class mail, postage prepaid, certified mail, return receipt requested, via facsimile or by electronic mail, to the parties at the addresses and fax numbers, e-mail addresses provided in the Authorized Offer and Contract Signature Page below. For purposes of complying with any provision in the contract or applicable law that requires a "writing," such communication, when digitally signed shall be considered to be "in writing" or "written" to an extent no less than if it were in paper form. Notices will be effective upon receipt or four business days after mailing, whichever is earlier. The notice address as provided herein may be changed by written notice given as provided above.

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Equipment or Services provided pursuant to the contract is served upon contractor or DES, such party agrees to promptly notify the other party (unless prohibited by the applicable government authority or court of competent jurisdiction) in the most expeditious fashion possible following receipt of such subpoena or other legal process. The contractor and DES further agree to use reasonable efforts to cooperate with the other party (at the other party's expense) in any lawful effort by the other party to contest the legal validity of such subpoena or other legal process commenced by a third party.

6.3 Information and Communications

Proprietary or confidential information

To the extent consistent with Chapter 42.56 RCW, the Public Disclosure Act, DES shall maintain the confidentiality of contractor's information marked confidential or proprietary. If a request is made to view contractor's proprietary information, DES will promptly notify contractor of the request and of the date that the records will be released to the requester unless contractor obtains a court order enjoining that disclosure. If contractor fails to obtain the court order enjoining disclosure, DES will release the requested information on the date specified.

The state's sole responsibility shall be limited to maintaining the above data in a secure area and to notify contractor of any request(s) for disclosure for so long as DES retains contractor's information in DES records. Failure to so label such materials or failure to timely respond after notice of request for public disclosure has been given shall be deemed a waiver by contractor of any claim that such materials are exempt from disclosure.

7. Subcontractors: As defined in the Master Agreement, each State represented by NASPO ValuePoint participating in the Master Agreement independently has the option of utilizing Partners. Only Partners approved by this Participating State may be deployed. The Participating State will define the process to add partners. The Contractor's Partners' participating will be in accordance with the terms and conditions set for the in the aforementioned Master Agreement. The Contractor will identify and define the Partner program(s) available. Approved Partners and instructions on how to utilize those Partners will be listed on the Contractor's web site for this State's Participating Addendum.
8. **Orders:** Any Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Participating Addendum must have the State Contract number on the Purchase Order in order to be deemed to be a sale under (and governed by the prices and other terms and conditions) of the Master Agreement unless the parties to the Order agree in writing that another contract or agreement applies to such Order. Purchase orders must be submitted with a valid quote and written acceptance from agency prior to contract performance.

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

<table>
<thead>
<tr>
<th>Participating State: Washington</th>
<th>Contractor: International Business Machines Corporation (IBM)</th>
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<tbody>
<tr>
<td><strong>By:</strong> C. F. Presnell</td>
<td><strong>By:</strong> H. Schneider</td>
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<tr>
<td><strong>Name:</strong> Farrell Presnell</td>
<td><strong>Name:</strong> Karen Schneider</td>
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<tr>
<td><strong>Title:</strong> Assist. Dir.</td>
<td><strong>Title:</strong> NASPO ValuePoint National Program Manager</td>
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<tr>
<td><strong>Date:</strong> 01/29/2016</td>
<td><strong>Date:</strong> Jan 29, 2016</td>
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<td><strong>By (Signature):</strong></td>
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<tr>
<td><strong>Name:</strong> Hubert Friedlander</td>
<td><strong>Name:</strong></td>
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<tr>
<td><strong>Title:</strong> Contract Specialist</td>
<td><strong>Title:</strong></td>
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<td><strong>Date:</strong> 29 Jan 2016</td>
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