

**PARTICIPATING ADDENDUM [hereinafter "Addendum"]**

For

**WSCA/NASPO PC Contracts 2009-2014  
COMPUTER EQUIPMENT, PERIPHERALS, AND RELATED SERVICES  
MASTER PRICE AGREEMENT NUMBER B27161**

Between

EMC Corporation  
[hereinafter "Contractor"]

and

The State of Oklahoma [hereinafter "Participating State"]

(Participating State Contract Number \_\_\_\_\_)

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

During the term of this contract, any state department, board, commission, agency or institution may utilize this contract. The Oklahoma statutes state that counties, school districts and municipalities of Oklahoma may avail themselves of the contract subject to the approval of the contractor. For purposes of the operation of this contract, counties, school districts and municipalities shall have the same benefits and responsibilities as a state agency. Under this contract, the State of Oklahoma bears no liability for the actions of counties, school districts and municipalities and the privities of contract exists solely between the contractor and the county, school board or municipality.

**2. Participation:**

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

A. The State of Oklahoma will participate in only the following product band:

- Band 4 – Storage Solutions (Hardware and Installation Services)

NOTE: No direct-from-manufacturer personal computer equipment, peripherals or related services are provided for within this contract.

B. The State of Oklahoma imposes the following configurations limits:

- Individual units \$100,000 each.
- Limits for Non-State agencies will defer to those limits specified in the Master Price Agreement.

**3. Changes:**

The State of Oklahoma and Contractor have mutually agreed to the following additions, deletion and modifications to the Master Price Agreement annotated as Number B27161.

- a) Modification to Term #6.B paragraph one of the MPA: Delete and replace with the following:

"The Purchasing Entity shall make a good faith effort to tender payment to the Contractor within thirty (30) days of the date of receipt of proper invoice. After the forty-fifth (45) day from proper invoice receipt, the Contractor is eligible to receive interest on the unpaid balance due per State of Oklahoma Statutes. The interest rate due is set by the Oklahoma State Treasurer's office each year. The Contractor is responsible for claiming the interest rate. Payments may be made via a Purchasing Entity's "Purchasing Card" if allowable by their purchasing procedures."

- b) Modification to Term #11.B. Warranties: Add the following as the second sentence:

"Approved modified warranties will pertain only to those products and/or services purchased after the modification. Warranties of products purchased prior to the approved warranty modification will not change."

- c) Delete Term #19 Force Majeure.

- d) Modification to Term #20 Records and Audit: Add the following sentence at the end of the paragraph

"If audit, litigation, or other action involving such records are started before the end of the applicable period, the records will be maintained until all issues arising out of the action, including appeals, are resolved or until the end of the three year retention period, whichever is later."

- e) Addition to Term #22 Use of Servicing Subcontractors: Add the following paragraph B to this term as follows:

"EMC will not use subcontractors as Reseller or Agents in the scope of the agreement for the State Agencies within Oklahoma, unless agreed in writing by DCS."

- f) Addition to Term #24 Indemnification, Hold Harmless and Limitation of Liability: Delete the 2<sup>nd</sup> paragraph and replace with the following:

**"To the extent any limitation of liability contained herein is construed by a court of competent jurisdiction to be a limitation of liability in violation of Oklahoma law, such limitation of liability shall be void."**

- g) Addition to Term #25 Amendments: Add the following paragraph to this section:

"No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Participating Addendum. The State of Oklahoma has the right to refuse any modifications to the Master Price Agreement and will notify Contractor's contacts in this Addendum in such case. All modifications to the agreement must be made in writing and signed by both parties, of which the authorized representative for the State of Oklahoma is the Central Purchasing Contracting Officer as identified as Primary Contact in Section 6 of this addendum."

- h) Addition to Term #44. B. Reporting and Fees: Add paragraph 4 to this section as follows:

"The contractor agrees to provide periodic utilization reports to the State of Oklahoma encompassing all sales within the parameters of this participating addendum. Reports format will use current format or a format(s) mutually agreed upon and due dates are as scheduled in Master Agreement 44.A.2. The contractor shall submit a check payable to DCS Central Purchasing for an amount equal to one-half of one percent (0.005) of the net sales for the period. Fee remittance will follow the same period and due dates as the reports."

- i) Addition to Term #56 Value Added Services: Add the following paragraph to this term as follows:

Furthermore, all purchasing entities obtaining value added services must follow the purchasing guidelines as established for their jurisdiction and/or addressed in the State of Oklahoma Contract Award notice for the contract resulting from this addendum."

4. (Deleted)

5. **Lease Agreements:**

Leasing provisions have not been approved by the State of Oklahoma by procuring agencies within this jurisdiction. The State of Oklahoma reserves the right to open the possibility of adding the leasing provision later. Leasing is allowed for all other authorized purchases (non-state agencies) under this Addendum.

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

Lead State

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

Contractor

Name: Gary E. Shoemaker  
Address: 222 Lake Como Drive, Lakeway, TX 78734  
Telephone: (512) 263-1858  
eFax: (888) 580-6069  
E-mail: [shoemaker\\_gary@emc.com](mailto:shoemaker_gary@emc.com)

Participating State

Name: Gary Rowland  
Address: 2401 N. Lincoln, Ste 166, OKC, OK 73152  
Telephone: (405) 521-2131  
E-mail: [gary\\_rowland@dcs.state.ok.us](mailto:gary_rowland@dcs.state.ok.us)

**7. Servicing Subcontractors:** Subject to paragraph 3 (e) above, the following servicing contractors are authorized:

**All EMC authorized business partners listed on the state's landing page on this website [www.emc.com/emcwsca](http://www.emc.com/emcwsca)**

Each authorized business partner listed on the above website must complete and maintain, in good standing, a vendor registration with the Department of Central Service for the State of Oklahoma.

All orders are to be addressed to EMC; all payments are to be issued to EMC. Orders may be channeled through EMC authorized agents. Orders placed through an EMC authorized agent may result in a fee payment to the Agent. However, such fee payment will not affect the pricing in the WSCA/NASPO Master Price Agreement.

All orders are to be issued directly to: EMC

And all payments are to be issued to: EMC

**8. Compliance with reporting requirements of the "American Recovery and Reinvestment Act of 2009" ("ARRA"):** If or when contractor is notified by ordering entity that a specific purchase or purchases are being made with ARRA funds, contractor agrees to comply with the data element and reporting requirements as currently defined in Federal Register Vol 74 #61, Pages 14824-14829 (or subsequent changes or modifications to these requirements as published by the Federal OMB). Ordering entity is responsible for informing contractor as soon as the ordering entity is aware that ARRA funds are being used for a purchase or purchases. Contractor will provide the required report to the ordering entity with the invoice presented to the ordering entity for payment. The contractor, as it relates to purchases under this contract, is not a subcontractor or subgrantee, but simply a provider of goods and related services.

**9. Electronic and Information Technology Accessibility**

Pursuant to Title 74, Section 85.7d and OAC 580:15-6-22 electronic and information technology procurements, solicitations, agreements, and contracts shall comply with applicable Oklahoma Information Technology Accessibility Standards issued by the Oklahoma Office of State Finance.

EIT Standards may be found at [www.ok.gov/DCS/Central\\_Purchasing/index.html](http://www.ok.gov/DCS/Central_Purchasing/index.html) or [http://www.ok.gov/OSF/documents/isd\\_itas.doc](http://www.ok.gov/OSF/documents/isd_itas.doc).

1) For Information Technology or Communications Products, Systems and Applications not requiring development and/or customization. The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system or application by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request.

The Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications not requiring development and/or customized by the Contractor from any claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards.

2) For Information Technology or Communications Products, Systems or Applications requiring development and/or customization. The Contractor shall provide a description of conformance with the applicable Oklahoma Information Technology Accessibility Standards for the proposed product, system, or application developed and/or customized by means of either a Voluntary Product Accessibility Template (VPAT) or other comparable document, upon request. Additional requirements and documentation may be required and compliance will be necessary on the Contractor's part. Such requirements will be stated in documents such as State Bids, Request for Proposals, Contracts, Agreements, Purchase Orders, and Amendments.

The Contractor shall indemnify and hold harmless the State of Oklahoma and any Oklahoma Government entity purchasing the products, systems, or applications from the Contractor, from any claim arising out of the Contractor's failure to comply with applicable Oklahoma Information Technology Accessibility Standards subsequent to providing certification of compliance to such Standards. However, the Contractor shall no longer have an obligation to indemnify the State for liability resulting from products, systems or applications developed and/or customized that are not in compliance with applicable Oklahoma Information Technology Accessibility Standards ("Standards") after the State has tested and confirmed that the product, system or application meets the accessibility requirements in the Standards.

#### **10. Voluntary Product Accessibility Product (VPAT) Requirements**

- a) The contractor will provide a website accessible by participating agencies to request a EMC-branded product VPAT by entering the product description obtained from the State of Oklahoma contractor's website.
- b) The parties agree that as no development or customization services will be performed under this agreement and therefore both paragraphs of subsection 9.2 are not applicable to this agreement.

#### **11. Authorized Users**

During the term of this contract, any state department, board, commission, agency, or institution may utilize this contract. The Oklahoma statutes state that counties, school districts, and municipalities of Oklahoma may avail themselves of the contract subject to the approval of the contractor. For purposes of the operation of this contract, counties, school districts, and municipalities shall have the same benefits and responsibilities as a state agency. Under this contract, the State of Oklahoma bears no liability for the actions of counties, school districts and municipalities and the privity of contract exists solely between the contractor and the county, school board or municipality.

#### **12. Ordering**

Any services to be furnished under this contract shall be ordered by the issuance of written purchase orders by the state agencies and authorized entities. There is no limit on the number of orders that may be issued. Delivery to multiple destinations may be required. All orders are subject to the terms and conditions of this contract. Any purchase order dated prior to expiration of this contract shall be performed. In the event of conflict between a purchase order and this contract, the contract shall have precedence.

#### **13. Orders and Payment**

All orders and payment are to be issued directly to EMC. All purchase orders issued by purchasing entities with the jurisdiction of this Addendum must include the Participating State Contract Number and the Master Price Agreement Number B27161.

#### **14. State of Oklahoma WSCA Website**

The contractor will maintain a specific State of Oklahoma website. The website must contain at least the following:

- a) Presents only the products and services allowed in this agreement.
- b) Contract name and number
- c) A listing of the contact personnel of the awarded vendor and the pertinent contact numbers
- d) "How to Use" instructions for using the website
- e) Online process to allow agency personnel to configure, and print hardware/software configurations
- f) Online process for placing agency hardware configuration orders
- g) Defined manual process via phone calls for placing agency hardware configuration orders
- h) A general category grouping of products available for ease in researching systems.
  - This general category grouping should have an expanding tree of information for the selected configuration. Once selected the configuration should expand to provide all available configuration options and accessories to allow for complete hardware/software configuration. Once the configuration is complete, the web page should calculate the price based upon approved contract pricing.
- i) Except for any circumstance beyond the reasonable control of the Contractor, website availability should be at least ninety-nine (99%) percent of the time during the hours of 7:00am through 7:00pm Central Time, Monday through Saturday.

#### **15. Failure to Enforce**

Failure by the State of Oklahoma at any time to enforce the provisions of the contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right of the State of Oklahoma to enforce any provisions at any time in accordance with its terms.

#### **16. Conflict of Interest**

Contractor must disclose any contractual relationship or any other relevant contact with any state personnel, or other State contractors involved in the development of a request for proposal (RFP) that results in a Contract. Any conflict of interest shall, at the sole discretion of State, be grounds for termination of this Agreement or a Contract; provided that such termination must be made within a reasonable time after disclosure of such relationship or contact.

In addition to any requirements of law or through a professional code of ethics or conduct, the Contractor employees performing services for the State are required to disclose any outside activities or interests that conflict or may conflict with the best interests of the State. Further, such employees shall not plan, prepare, or engage in any activity that conflicts or may conflict with the best interests of the State of Oklahoma during the period of this agreement without prior written approval of the State. Prompt disclosure is required under this paragraph if the activity or interest is related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees, other third-party individuals, or entities holding contracts with the State.

**17. Media Ownership (Disk Drive and/or Memory Chip Ownership)**

a). In conjunction with the Oklahoma Computer Equipment Recovery Act and the Office of State Finance's Information Security, Policies, Procedures, and Guidelines, Appendix E – Revisions, #3 – Media Sanitization Procedures for the Destruction or Disposal of all Electronic Storage Media: disk drives and memory cards purchased with or for use in leased equipment under this contract remain the property of the State of Oklahoma.

b). Disk drives and memory cards purchased with or included in leased or purchased equipment under this contract must remain the property of the State of Oklahoma; therefore 'Keep Your Hard Drive' costs must be included in the vendor(s) proposed cost.

c). Personal Identification Information can be retained within electronic media devices and components; therefore, the State cannot allow the release of electronic media either between State Agencies or for the resale of refurbished equipment that has been in use by State entities, by the vendor to the general public or other entities. Electronic Media Retention by the State for equipment whether purchased or leased must also be applied to replacement devices and components the selected vendor(s) may supply during the downtime (repair) of equipment purchased or leased through this contract. If a device has to be removed from a location for repairs, there must be sufficient safeguards in place (such as a record of hard drive serial numbers) to protect the Personal Identification Information that may be stored within the hard drive/memory of the device.

**18. Failure to Enforce**

The contractor's repeated failure to provide defined services, without reasonable basis as determined by the State of Oklahoma, shall constitute a material breach of the contractor's obligations, which may result in cancellation of the contract.

**19. P-Cards**

The State of Oklahoma has issued P-Cards to most state agencies. The current P-Card contract holder utilizes MASTERCARD.

If awarded a statewide contract will your company accept MASTERCARD: Yes \_\_\_\_\_ No \_\_\_\_\_ (check one)

**20. Tax Exemption**

State agency acquisitions are exempt from sales taxes and federal excise taxes. Offerors shall not include these taxes in price quotes.

**21. Employment Relationship**

The Contract does not create an employment relationship. Individuals performing services required by this Contract are not employees of the State of Oklahoma or the procuring agency. The supplier's employees shall not be considered employees of the State of Oklahoma nor of the procuring agency for any purpose, and accordingly shall not be eligible for rights or benefits accruing to state employees.

**The Master Price Agreement Number B27161 MUST be shown on all Purchase Orders against this Agreement.**

This Addendum and the Master Price Agreement together with its exhibits, set forth the entire agreement between the parties with respect to the subject matter of all previous communications, representations or agreements, whether oral or written, with respect to the subject matter hereof. Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum and the Master Price Agreement, together with its exhibits, shall not be added to or incorporated into this Addendum or the Master Price Agreement and its exhibits, by any subsequent purchase order or otherwise, and any such attempts to add or incorporate such terms and conditions are hereby rejected. The terms and conditions of this Addendum and the Master Price Agreement and its exhibits shall prevail and govern in the case of any such inconsistent or additional terms. This Addendum applies only in the jurisdiction of the Participating State or Participating Entity, which has executed this Addendum.

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

**State of Oklahoma**

By:



Name: Scott Schlotthauer

Title: State Purchasing Director for the State of Oklahoma

Date:

3/10/2011

**EMC Corporation**

By:



Name: Joseph F. Spaniol III

Title: Vice President, Federal and Public Sector Contracts

Date: January 25, 2011

**Signatures as required by State Statutes, Rules or Policies**