



**State of Oklahoma
Department of Central Services
Central Purchasing**

**Notice of Statewide Contract
Award**

Official signed contract documents are on file with DCS-Central Purchasing.

Contract Title: WSCA

Statewide Contract #: SW206

Contract Issuance Date: March 14, 2011

Total Number of Vendors: 1 (For details see: Vendor Information Sheet)

Contract Period: March 14, 2011 through August 31, 2012

Agreement Period: March 14, 2011 through August 31, 2014

Authorized Users: State agencies and all government entities

Contract Priority: Non- Mandatory

Type of Contract: Competitive

DCS-CP Contact: Gary Rowland

Phone: 1 - 405 - 521 - 2131

Title: Hi-Tech Contracting &
Procurement Officer

Fax: 1 - 405 - 522 - 1028

Email: gary_rowland@dcs.state.ok.us



State of Oklahoma
Department of Central Services
Central Purchasing

Awarded Vendor Information

PAGE OF

Vendor Name: EMC Corporation

Vendor ID#: 67896

Vendor Address: Address: 176 South Street

City: Hopkins

State: MA

Zip Code: 01748

Contact Person Name: Gary Shoemaker

Phone #: 1- 512 - 263 - 1858

Title: Program Office Manager

Fax #: 1- 888 - 580 - 6069

Email: gary.shoemaker@emc.com

Website: www.emc.com

Authorized Location: Locations list attached as (*attachment title*)

Address:

City:

State:

Zip Code:

Contract ID #: 2907

Delivery:

Minimum Order:

P/Card Accepted: Yes

No

Other:



CONTRACT

State of Oklahoma

Dispatch via Print

Vendor ID 0000067896
EMC CORPORATION
1437 S BOULDER AVE STE 940
TULSA OK 74119-3618

| | | | |
|--|------------------------|---------------------------------|-----------------------------|
| Contract ID 000000000000000000000000002907 | | Page 1 of 1 | |
| Contract Dates 03/14/2011 to 08/31/2012 | Currency USD | Rate Type CRRNT | Rate Date PO Date |
| Description: SW206 WSCA - EMC SAN Units | | Contract Maximum 0.00 | |
| TYPE: STATEWIDE | | | |

Tax Exempt? Y Tax Exempt ID:736017987

| Line # | Item ID/Item Desc | Minimum Order Qty | Amt | Maximum / Open Qty | Amt |
|--------|--|-------------------|------|--------------------|------|
| 1 | 1000010145 COMPUTER:WSCA Hdw/Sft Cnfgs - Information Technology Contract to provide EMC SANS Unit Configurations. | 1.00 | 0.00 | 0.00 | 0.00 |
| | Contract Base Pricing | 0.01000 | | EA | 0011 |
| 2 | 1000010165 SERVICE: WSCA Hdw/Sft Maint. & Support - Information Technology Contract provides EMC SANS Unit Configurations Support Services. | 1.00 | 0.00 | 0.00 | 0.00 |
| | Contract Base Pricing | 0.01000 | | EA | 0011 |

COMMENTS:

WSCA Agreement Number B27164 - this number must be on all purchase orders.

Contract Period: 03/14/2011 through 08/31/2012

Agreement Period: 03/14/2011 through 08/31/2012 with two(2) one (1) year options

CONTRACT INTENTION:

The intent of this contract is to provide a means to purchase EMC SAN hardware, hardware required software, and related accessories.

The initial purchase is to be a SAN hardware configuration, with supporting software. Ongoing purchases of hardware/software maintenance for initial purchase configuration are also available.

This contract does not provide for the purchase of standalone software or services.

Final = The price is final after adjustments
Hard = Apply adjustments regardless of other adjustments
Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature

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 2nd 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

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

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

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

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 or 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 a 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 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

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

Number B27161

This Agreement is made and entered into by EMC Corporation, 8444 Westpark Drive, Suite 700, McLean, VA 22102 ("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.

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 under this Agreement. The Contractor is responsible for the timeliness and quality of all services provided by individual subcontractors. Subcontractor participation will be governed by 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.

The 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, 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 the 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 or services. Contract 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 included in 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.

“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 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.

“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 the trademark/patent and markets computer equipment including 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 unlimited 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 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 education. 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 for equipment on a 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 public 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 for equipment on 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 a Contractor-supplied web site accessed via a URL. The Contractor(s) shall provide the warranty service and maintenance 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 that directs the Contractor to deliver Products or Services pursuant to a Price Agreement.

“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, defective parts replaced, and repackaged to meet original factory 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 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 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.

“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 of all proposed equipment, including peripherals. 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 shall offer a Takeback Program for all products covered by this Agreement.

3. Title Passage

The Contractor must pass unencumbered title to any and all products purchased under this Contract upon receipt of payment by the State. This obligation on the part of the Contractor to transfer all ownership rights does not apply to 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 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 agreement term. 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 the 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;
- C. Exhibits and amendments 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 in a timely manner of non-acceptance of a product or service.

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 or service, whichever is later. 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 the Contract 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. The 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 the agreement is terminated.

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 cancellation, the Contractor shall be entitled to payment, determined on a pro rata basis, for work or services satisfactorily performed and accepted.

B. Termination for Cause

Either party may terminate this Agreement for cause based upon material breach of this Agreement 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 the Agreement effective immediately. The non-breaching party shall retain any and all other remedies available to it under the law.

C. A Purchasing Entity's Rights

In the event this Agreement expires or is terminated for any reason, 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.

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 goods or services due for multiple year agreements, or if operations of the paying 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.

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 until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations.

B. Whenever a Purchasing Entity does not accept 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 30 to 60 days after receipt of a purchase order, 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 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. 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, or unusual problems about which the Purchasing Entity has not been warned.
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 warranties attached as **Exhibit A**:

a) h4276-emc-prod-warranty-maint-table.pdf

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.

D. The basic warranty shall be three year, next business day, as stated in Appendix B of the RFP, for all products included in the Bands listed in Article 14 Products and Services Schedule.

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 claim that any Product or Service 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 or Service becomes, or in the Contractor's opinion is 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 or Services;
2. Replace or modify the Products or Services so that it becomes non-infringing; or
3. Accept the return of the Products or Service and refund an amount equal to the depreciated value of the returned Products or Service, less the unpaid portion of the purchase price and any other amounts, which are due to the contractor. 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.

- 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 the Contractor branded.

13. Price Guarantees

The Purchasing Entities shall pay the lower of the prices contained in the PSS or an 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 4 – Storage

SAN Connect Devices

Backup/Recovery Solutions

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

18. Product Delivery

Contractor agrees to deliver Products to Purchasing Entities within (90) days after receipt of a valid Purchase Order, or in accordance with the schedule in the Purchasing Entity's Purchase Order.

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 in the Participating Addendum 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, 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 State, pay all subcontractors and suppliers having an interest in the Contract their share of the payment for undisputed services provided by the subcontractors or suppliers. 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. 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. 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 or supplier. 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 representatives and employees, from any and all claims or causes of action, including all legal fees incurred by the State arising from the performance of the Contract by the Contractor or its agents, employees, or subcontractors. 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 the Contract.

The State agrees that the Contractor, its principals, members and employees shall not be liable to the State for any actions, damages, claims, liabilities, costs, expenses, or losses in any way arising out of or relating to the goods provided or services performed hereunder for an aggregate amount in excess of \$10,000,000 or the Contract amount, whichever is greater. This limitation of liability does not apply to damages for personal injury or death, or to Contractor's obligation to

indemnify, defend and hold the State harmless against intellectual property infringement or copyright claims under paragraph 12 of this Agreement. This indemnification does not include liabilities caused by the State's gross negligence, or intentional wrongdoing of the State.

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 Contract, 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 Contract 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 Contract 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 Contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this Contract 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 Contract 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 without notifying the WSCA/NASPO Contract Administrator and receiving written approval of the changes.

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 the Contract.

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 the 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 Contract 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 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 the Contract. In the event that the Contractor subcontracts any or all of the work to be performed under the Contract, the Contractor shall retain responsibility under the terms of this paragraph for such work.

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 the Contract. In the event the Contractor was aware of an organizational conflict of interest prior to the award of the Contract and did not disclose the conflict to the WSCA/NASPO Contract Administrator, the State may terminate the Contract 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 Contract 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 Contract. Failure to do so may result in the Contractor being held in default. This consent requirement includes reassignment of this Contract 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 Contract 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 Contract.

40. WSCA/NASPO Contract Administrator

The State shall appoint an 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.
- 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 the Contract, 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

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. (Ex. Purchases during January are reported by the 15th of February; purchases made during February are reported by the 15th of March; etc.). The report shall be in the format developed by the Lead State and supplied to the Contractor.
- 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. Payment shall be made in accordance with the following schedule:

| <u>Period End</u> | <u>Report Due</u> |
|-------------------|-------------------|
| 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. In addition, 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.

4. The Contractor agrees to provide with the utilization report the environmental information shown in the report format provided; as well as a supplemental report of the number and type of units taken back in a format to be mutually agreed to.
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 agrees to provide additional reports to Purchasing Entities upon agreement by both parties as to the 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. 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, 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 the Agreement, a Participating Addendum, or any portion thereof, including any Purchase Orders issued against the Agreement;
 3. Impose liquidated damages, 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.
 5. Charge the defaulting Contractor the full increase in cost and administrative handling to purchase the product or service from another Contractor.
- 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 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 the Vendor Mandatory meeting presentation. Website pricing audits will be performed on a monthly 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 the Vendor Mandatory meeting presentation. These presentations were held the week of March 30-April 3, 2009.

- 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

- A. **Ownership of Documents/Copyright.** 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 Contract and paid for by the State 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 Contract. 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 Contract without the prior written consent of the State.
- B. **Rights, Title and Interest.** All rights, title, and interest in all of the intellectual property rights, including copyrights, patents, trade secrets, trade marks, and service marks in the said documents that the Contractor conceives or originates, either individually or jointly with others, which arise out of the performance of the Contract, will be the property of the State and are, by the Contract, assigned to the State along with ownership of any and all copyrights in the copyrightable material. 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 applicable, 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.

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

The Contractor hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Contract 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 the Contract, 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 the Contract 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 Contract 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, 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).

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 E-Rate program is not applicable for SAN and NAS products.

The Contractor shall make every effort to continue its involvement 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. EMC CORPORATION

The Contractor certifies that the appropriate person

By: 

Name: Joseph F. Spaniol III

Title: Sr. Director Federal Contracts,

Compliance, and Pricing

Date: May 19, 2009

2. MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: 

Title: Acquisitions Supervisor

Date: 5/26/09

3. COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: 

Date: **Original signed**

MAY 26 2009

By Brenda Willard

EXHIBIT A – ADDITIONAL WARRANTIES

See the attached document titled EMC Product Warranty and Maintenance Table.

EMC PRODUCT WARRANTY AND MAINTENANCE TABLE

The table below sets forth EMC Product-specific warranty and maintenance terms and information. Each Product identified as Equipment also includes its related Core Software. Any software, excluding Core Software, that is not specifically identified on this table is governed by the terms stated at the row entitled "Software."

EMC recommends that you locate Products on the following table by simultaneously pressing the "Control" key and the letter "F" key to activate the "Find" feature, and then typing in the name of the applicable Product.

| Product | Standard Warranty Period and Support Option | Support Option Upgrade during Warranty Period | * Initial Product Installation | Support Options during Maintenance Period | Customer-Performed Tasks 1 | Designated Customer-Replaceable Units (CRUs) 2 |
|------------------------------------|---|---|--|---|--|--|
| AlphaStor Software | 90 days; defective media replacement Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Strongly recommended for separate purchase by Customer from EMC | Premium, Enhanced | Installation of subsequent Software Releases | None |
| ApplicationXtender Family Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced | Installation of subsequent Software Releases | None |
| Atmos Equipment | 1 year; Basic | Premium, Enhanced | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced, Basic | Replacement of designated CRUs. | Cooling units, disk-array enclosures (DAE), disk drives, Ethernet switches, logical control cards, power supplies, servers |
| Atmos Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced, Basic | Installation of subsequent Software Releases | None |
| Autograph Family Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Basic | Installation of subsequent Software Releases | None |
| AutoStart Family Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced | Installation of subsequent Software Releases | None |
| AutoSwap Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| AVALONidm Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced | Installation of subsequent Software Releases | None |

| | | | | | | |
|--|---|----------------|--|--------------------------|--|--|
| Avamar Data Store | 2 years; Enhanced | Premium | Installation not included. Strongly recommended for separate purchase by Customer from EMC | Premium, Enhanced | Replacement of the designated CRUs | Power Supply, Disk Drives |
| Avamar Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Premium | Installation not included. Strongly recommended for separate purchase by Customer from EMC | Premium, Enhanced | Installation of subsequent Software Releases | None |
| Backup Manager for SharePoint Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Strongly recommended for separate purchase by Customer from EMC | Premium, Enhanced | Installation of subsequent Software Releases | None |
| Blade Logic Brand Software | No longer available for sale. Maintenance only. | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced | Installation of subsequent Software Releases | None |
| Captiva Family Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced, Basic | Installation of subsequent Software Releases | None |
| Catalog Solution Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| Celerra Family Equipment (excluding NX4, NS20, NS-120, NS-480, NS-960 and NS-G8) | 2 Years; Premium | Not Applicable | Performed by EMC and included in Product Purchase | Premium | None | None |
| Celerra NX4 Equipment | 3 Years; Enhanced | Premium | Installation not included. Performed by Customer or may be available for separate purchase | Enhanced, Premium | Replacement of Designated CRUs | Power/Cooling Module (in Processor Enclosures, and in Disk Array Enclosures), Blade, Storage Processor (SP), SP DIMM memory, SP I/O Module, SFP Transceiver, Standby Power Supply, Link Control Card, and Disk |
| Celerra NS20 Equipment | 3 Years; Enhanced | Premium | Installation not included. Performed by Customer or may be available for separate purchase | Enhanced, Premium | Replacement of Designated CRUs | Power/Cooling Module (in Processor Enclosures), SFP Transceiver Module, Disk |
| Celerra NS-120 and NS-480 Equipment | 3 Years; Enhanced | Premium | Installation not included. Performed by Customer or may be available for separate purchase | Enhanced, Premium | Replacement of Designated CRUs | Power/Cooling Module (in Processor Enclosures), Blade, Management I/O Module (in Storage Processor Enclosure), SFP Transceiver, Standby Power Supply, and Disk |

| | | | | | | |
|--|--|----------------|--|-------------------|---|--|
| Celerra NS-960 and NS-G8 Equipment | 3 Years; Enhanced | Premium | Installation not included. Requires separate purchase by Customer from EMC | Enhanced, Premium | Replacement of Designated CRUs | SFP Transceivers, X-Blade Enclosure Power Supply, X-Blade Enclosure Fan, Storage Processor Enclosure Power Supply, Storage Processor Enclosure Fan, and Disk |
| Celerra Manager Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | None | None |
| Celerra Replicator Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | None | None |
| CLARiiON AX100 and AX100i Equipment | No longer available for sale. Maintenance only | Enhanced | Installation not included. Performed by Customer or may be available for separate purchase | Enhanced, Basic | Replacement of designated CRUs. Installation of AX100 Core Software and system based Software Releases | All components |
| CLARiiON AX150 Equipment | 1 year; Basic | Enhanced | Installation not included. Performed by Customer or may be available for separate purchase | Enhanced, Basic | Replacement of designated CRUs. Installation of AX150 Core Software and system based Software Releases | All components |
| CLARiiON AX150/150i - EMC Insignia Equipment | 1 year; Basic | Enhanced | Installation not included. Performed by Customer or may be available for separate purchase | Enhanced, Basic | Replacement of designated CRUs Installation of AX150/150i Core Software and system based Software Releases | All components |
| CLARiiON AX4 series Equipment | 3 Years; Enhanced | Premium | Performed by Customer or may be available for separate purchase | Premium, Enhanced | Replacement of designated CRUs Installation of AX4 Core Software and system based Software Releases | All components |
| CLARiiON CX200 Equipment | No longer available for sale. Maintenance only. | Not Applicable | Performed by EMC and included in Product Purchase | Premium | None | None |
| CLARiiON CX300 Equipment | 2 Years; Premium | Not Applicable | Performed by EMC and included in Product Purchase | Premium, Enhanced | Replacement of designated CRUs | Disk drives |
| CLARiiON CX400/600 Equipment | No longer available for sale. Maintenance only. | Not Applicable | Performed by EMC and included in Product Purchase | Premium | None | None |
| CLARiiON CX500/700 Equipment | No longer available for sale. Maintenance only. | Not Applicable | Performed by EMC and included in Product Purchase | Premium, Enhanced | Replacement of designated CRUs | Disk drives |
| CLARiiON CX3-series Equipment | 3 Years; Enhanced | Premium | Performed by EMC and included in Product Purchase | Premium, Enhanced | Replacement of designated CRUs Installation of CX3-Series Core Software and system based Software Releases | Power supply, cooling units, Small Form Factor Pluggable Transceivers, disk drives per approval of Disk Replacement Utility (DRU) tool |

| | | | | | | |
|--|---|----------------|--|--------------------------|---|--|
| CLARiiON CX4-series Equipment | 3 Years; Enhanced | Premium | Performed by Customer or may be available for separate purchase | Premium, Enhanced | Replacement of designated CRUs Installation of CX4-Series system based Software Releases | Power supply, cooling units, Small Form Factor Pluggable Transceivers, disk drives per approval of Disk Replacement Utility (DRU) tool |
| CLARiiON FC45xx/4700/4700-2 Equipment | No longer available for sale. Maintenance only | Not Applicable | Performed by EMC and included in Product Purchase | Premium | None | None |
| Connectrix Family Equipment | 2 Years; Premium | Not Applicable | Performed by EMC and included in Product Purchase | Premium | None | None |
| CopyPoint software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| DatabaseXtender Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced | Installation of subsequent Software Releases | None |
| DiskXtender Family Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Strongly recommended for separate purchase by Customer from EMC | Premium, Enhanced | Installation of subsequent Software Releases | None |
| Documentum Family Software (except ApplicationXtender) | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced, Basic | Installation of subsequent Software Releases | None |
| EmailXtender Family Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced | Installation of subsequent Software Releases | None |
| EMC Backup Advisor Family Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Strongly recommended for separate purchase by Customer from EMC | Premium, Enhanced | Installation of subsequent Software Releases | None |
| EMC Data Protection Advisor | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Strongly recommended for separate purchase by Customer from EMC | Premium, Enhanced | Installation of subsequent Software Releases | None |
| EMC Centera Family Equipment | 2 Years, Enhanced | Premium | Performed by EMC and included in Product Purchase | Premium, Enhanced | Resetting of modems and nodes | None |
| EMC ControlCenter Family Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| EMC Disk Library Family Equipment (except for DL3D-1500, DL3D-3000, and 3D-4000) | 2 years; Premium | Not Applicable | Performed by EMC and included in Product Purchase | Premium | None | None |
| EMC Disk Library Family Equipment for DL3D-1500, DL3D-3000, and 3D-4000 | 3 years; Enhanced | Premium | Installation not included. Requires separate purchase by Customer from EMC | Premium | Replacement of Designated CRUs | Disk Drives within the array only |

| | | | | | | |
|--|---|---|--|---|--|------------------------------|
| EMC Geographically Dispersed Disaster Restart Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| EMC IT Compliance Analyzer-Application Addition Equipment | No longer available for sale. Maintenance only. | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Basic | Installation of subsequent Software Releases | None |
| EMC Rainfinity Appliance Equipment | 1 year, Enhanced | Premium (applies only to qualifying models specified by EMC in the product quote) | Installation not included. Performed by Customer or may be available for separate purchase | Enhanced, Premium (applies only to qualifying models specified by EMC in the maintenance quote) | Replacement of the designated CRUs. Installation of subsequent Software Releases | Disk drives and power supply |
| EMC Rainfinity Appliance Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Enhanced, Premium (applies only to qualifying models specified by EMC in the maintenance quote) | Installation of subsequent Software Releases | |
| EMC Smarts Application Discovery Manager Appliance Equipment (nLayers) | 1 year, Enhanced | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Enhanced | Installation of subsequent Software Releases | None |
| EMC Smarts Application Discovery Manager Appliance Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Basic | Installation of subsequent Software Releases | None |
| EMC Smarts Family Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Basic | Installation of subsequent Software Releases | None |
| EMC Voyence Family Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Basic | Installation of subsequent Software Releases | None |
| Enginuity operating environment for Symmetrix | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Performed by EMC and included in Product Purchase | Premium | None | None |
| eRoom software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced, Basic | Installation of subsequent Software Releases | None |
| HomeBase Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Strongly recommended for separate purchase by Customer from EMC | Enhanced | Installation of subsequent Software Releases | None |
| InfoMover | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| Informative Graphics Brava! WebKit Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced, Basic | Installation of subsequent Software Releases | None |

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| Infra Family Software | 90 days; defective <u>media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Basic | Installation of subsequent Software Releases | None |
| Invista Equipment | 2 Years; Premium | Not Applicable | Performed by EMC and included in Product Purchase | Premium | None | None |
| IT Compliance Analyzer Application Edition Software | 90 days; defective <u>media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Basic | Installation of subsequent Software Releases | None |
| IT Performance Reporter Network Edition Software | 90 days; defective <u>media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Basic | Installation of subsequent Software Releases | None |
| IT Process Centre Request Management Software | 90 days; defective <u>media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Basic | Installation of subsequent Software Releases | None |
| Kofax Ascent Capture Software | 90 days; defective <u>media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Enhanced | Installation of subsequent Software Releases | None |
| MirrorView Software | 90 days; defective <u>media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| Navisphere Family Software | 90 days; defective <u>media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| NetWin 110 Equipment | No longer available for sale. Maintenance only | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Support level as identified at <u>EMC Product Maintenance NetWin 110</u> | Replacement of the designated CRU | All components |
| NetWin 200 Equipment | No longer available for sale. Maintenance only | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Support level as identified at <u>EMC Product Maintenance NetWin 200</u> | Replacement of the designated CRU | All components |
| NetWorker Family Software (except for NetWorker Fast Start) | 90 days; defective <u>media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Strongly recommended for separate purchase by Customer from EMC | Premium, Enhanced. | Installation of subsequent Software Releases | None |
| NetWorker Fast Start | 90 days; defective <u>media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Basic | Installation of subsequent Software Releases | None |
| Open Migrator/LM Software | 90 days; defective <u>media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |

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| Open Replicator For Symmetrix Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| Performance Essential | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| PowerPath Family Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| RecoverPoint Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Strongly recommended for separate purchase by Customer from EMC | Premium | None | None |
| RecoverPoint Equipment | 1 year; Premium | Not Applicable | Installation not included. Strongly recommended for separate purchase by Customer from EMC | Premium | None | None |
| Replication Manager Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Strongly recommended for separate purchase by Customer from EMC | Premium | Installation of subsequent Software Releases | None |
| RepliStor Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced | Installation of subsequent Software Releases | None |
| SAN Copy Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| SnapView Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| Software (Application, Enhanced Feature and/or Enterprise Storage Software, but excluding Core Software) not listed with its own warranty or maintenance Support Options on this table | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Basic | Installation of subsequent Software Releases | None |
| SourceOne | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced | Installation of subsequent Software Releases | None |
| SRDF Family Software | 90 days; defective media replacement - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |

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| Symmetrix Family Equipment (excluding Symmetrix V-Max Series) | 2 Years; Premium | Not Applicable | Performed by EMC and included in Product Purchase | Premium | None | None |
| Symmetrix V-Max Series | 3 Years; Premium | Not Applicable | Performed by EMC and included in Product Purchase | Premium | None | None |
| Symmetrix Management Console Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| Symmetrix Manager Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| Symmetrix Optimizer Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| Telestream Flip Factory Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced, Basic | Installation of subsequent Software Releases | None |
| TeraSAM Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| TimeFinder Family Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| ViewPoint Software for SAP | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced, | Installation of subsequent Software Releases | None |
| VisualSRM Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| VSAM Assist Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |
| Web Publisher Portlets Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced, Basic | Installation of subsequent Software Releases | None |
| Woodwing Smart Connection Enterprise Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium, Enhanced, Basic | Installation of subsequent Software Releases | None |

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| X-Hive Family Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Basic | Installation of subsequent Software Releases | None |
| xPression Family Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Enhanced, Basic | Installation of subsequent Software Releases | None |
| z/OS Storage Manager Software | <u>90 days; defective media replacement</u> - Support during warranty available with purchase of a maintenance support option | Not Applicable | Installation not included. Performed by Customer or may be available for separate purchase | Premium | Installation of subsequent Software Releases | None |

* Installation services may be offered by EMC or an authorized service partner.

1. Customer-Performed Tasks:

Customer-Performed Tasks are product support tasks that Customer is authorized by EMC to perform and will not be performed by EMC as part of the Product warranty or maintenance. EMC will provide diagnostic tools and documentation to enable Customer to perform replacement of designated CRUs and other service tasks.

2. Customer Replaceable Units (CRUs):

CRUs are specific assemblies, components or individual parts of designated EMC equipment that Customer is authorized by EMC to self-replace. In the event of a failure or technical issue, Customer may remove and replace a CRU by using EMC provided diagnostic tools and/or documentation. Assemblies or components not designated as CRUs must be serviced and/or replaced by EMC or an EMC authorized service partner.

EMC², EMC, EMC Centera, EMC ControlCenter, AlphaStor, ApplicationXtender, Avamar, Captiva, Catalog Solution, Celerra, Centera, CentraStar, CLARiiON, Connectrix, Dantz, DiskXtender, Documentum, EmailXtender, eRoom, Invista, Legato, Navisphere, nLayers, Powerlink, Rainfinity, RepliStor, Retrospect, Smarts, SnapView/IP, SRDF, Symmetrix, TimeFinder, VisualSAN, VSAM-Assist, where information lives, and Xtender are registered trademarks and Atmos, AutoStart, AutoSwap, AVALONidm, CopyCross, CopyPoint, DatabaseXtender, EDM, InfoMover, MirrorView, NetWin, SAN Copy, SAN Manager, Symmetrix DMX and VisualSRM are trademarks of EMC Corporation. All other trademarks used herein are the property of their respective owners. © 2003, 2004, 2005, 2006, 2007, 2008, 2009 EMC Corporation. All rights reserved.

H4276.15

Rev. May 8, 2009

EXHIBIT B – COMPLAINT RESOLUTION

EMC provides a single contact point (amongst multiple vendors) for the entire solution.

Placing a Service Call "Case":

Opening the service case alerts EMC that a problem is occurring and starts all our support mechanisms. Opening the case with the correct Serial Number allows the incident to be recorded in our tracking tool and gives visibility to the issue to anyone inside EMC working the issue. We would rather work with an issue that turns out to be nothing than become alerted at the point it is a problem that is critical and impacts availability.

In the event that you cannot determine if it is a hardware or software problem, state so and ask to be routed to a software engineer for further analysis. It is your option, based on priority, to ask for live transfer to an engineer; otherwise a callback may be initiated.

Escalation Summary:

1. Log a call with 1-800-SVC-4EMC. (1-800-872-4786) OR <http://powerlink.emc.com/>
2. Work the issue with the solution center engineer and set appropriate expectations and specific communication timeframes to ensure timely resolution. Be sure to provide the detailed symptom/issue and also request to be live transferred to the next available engineer.
3. If you have been working an issue with an engineer and then are unable to re-contact that engineer, contact a dispatcher at 1-800-SVC-4EMC and request another engineer or the duty manager to be paged.
4. If the problem persists and is mission critical, request to escalate for more attention and ask to be live transferred to the next engineer if possible. Inform the solution center engineer that you would like the case escalated and the priority increased. You may also then request the duty manager to be paged.

NOTE: Please refer to the severity levels below when escalating.

Always escalate if you do not get a call back if:

- Severity 1 and you have not received a callback within 30 minutes.
- Severity 2 and you have not received a callback within 3 hours.
- Severity 3 and you have not received a callback within 24 hours.

Examples of Severity Levels for Hardware & Software calls:

- Level 1: Severe Customer Business Impact. Customer or workgroup cannot perform normal job functions.
 - Examples: System down, Data loss, Data unavailable, Unavailable Workaround
 - Response Time: 4 hours
- Level 2: Moderate Customer Business Impact. Customer or workgroup performance of job function is degraded.
 - Examples: Major system function is unavailable or degraded, Available Workaround, Running unprotected, New installation deadline approaching
 - Response Time: 24 hours
- Level 3: Limited Customer Business Impact. Customer or workgroup performance of job function is largely unaffected.
 - Examples: How-to questions, New software installs, Code upgrades
 - Response Time: As available

EXHIBIT C – VALUE-ADDED SERVICES

EMC is offering extensive data storage architecture, planning and implementation services. These services solely complement and insure effective and efficient data storage solutions for our customers. These services are only involved with data storage and do not include any general consulting or any form of application development services.

Most of these services are highly customized and configured in conjunction with the customer to make certain the customer maximizes functionality and insure optimal data storage effectiveness. Most of these services include significant knowledge transfer so that the customer is not left with a data storage system they cannot confidently administer and manage.

Addendum to Master Price Agreement
Between
EMC²
And

State of Minnesota, Materials Management Division
Representing the Western States Contracting Alliance (WSCA) and
the National Association of State Procurement Officials (NASPO)
Lead State Contract #: B27161 Executed on: May 26, 2009

July 22, 2009

Page 1 of 1

This Master Price Agreement Addendum governs EMC²'s (hereinafter "CONTRACTOR") use of the NASPO/WSCA name and logo during the term of this Master Price Agreement and amendments to this Master Price Agreement. CONTRACTOR may use the name and logo only as set forth below. Any use not expressly permitted herein is prohibited, and such use constitutes a material breach of the Master Price Agreement with the Lead State and all Participating States.

1. CONTRACTOR may display the NASPO/WSCA name and logo on the face of the Master Price Agreement, including all electronic and hard copy versions.
2. CONTRACTOR and its subcontractors, resellers, and agents may display the NASPO/WSCA names and logos on a web site as a "click on" link to the Master Price Agreement. No other use of the logos or names is permitted on any web site, except as permitted in paragraphs 1 and 3.
3. With, and only with, prior written approval of the Lead State Contract Administrator, CONTRACTOR may advertise the Master Price Agreement in publications and promotional materials aimed at state and local government entities eligible to use the Master Price Agreement. The sole focus and intent of such advertisements must be to increase participation in the Master Price Agreement. The NASPO/WSCA names may be used and the logos displayed in the advertisement ONLY as it relates to the Master Price Agreement. The Lead State Contract Administrator's approval must encompass the content and appearance of the advertisement and the media in which the advertisement will appear.
4. CONTRACTOR may not make explicit or implicit representations concerning the opinion of NASPO/WSCA, the Lead State, or any Participating State regarding CONTRACTOR or its products or services. This restriction includes general use of the NASPO/WSCA names and logos NOT directly linked to or related to this Master Price Agreement.
5. CONTRACTOR must ensure that its sub-contractors, resellers, and agents adhere to the terms of this Addendum, and CONTRACTOR is responsible for any breach by these entities.
6. CONTRACTOR must immediately cease all use of the NASPO/WSCA names and logos if directed to do so in writing by the Lead State Contract Administrator, and CONTRACTOR must ensure that its sub-contractors, re-sellers, and agents immediately cease all use.
7. CONTRACTOR shall not make, or permit its subcontractors, resellers, or agents to make, any alterations to NASPO's or WSCA's names or logos (including characters, style and colors) and CONTRACTOR shall not use or permit the use of NASPO's or WSCA's names or logos in a manner or context that could adversely affect NASPO's/WSCA's integrity, goodwill, or reputation.
8. Upon termination or expiration of the Master Price Agreement, CONTRACTOR and its sub-contractors, re-sellers, and agents must cease all use of the NASPO/WSCA names and logos; except that, CONTRACTOR may use the NASPO/WSCA names for reference purposes in a description of its prior experience.

Acknowledged:

CONTRACTOR:

The Contractor certifies that the appropriate person(s) have executed this agreement on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

Signature

Kurt
Sales Contracts Manager

Title

July 22, 2009

Date

LEAD STATE:

In accordance with state statutes or rules.

Signature

Title

Date

Bernadette Kopischke
Acq. Supvr.
7/29/09



WSCA/NASPO Contract Administration

112 Administration Building

50 Sherburne Avenue

St. Paul, MN 55155

Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529

<http://www.mmd.admin.state.mn.us>

**AMENDMENT NUMBER: 1
TO CONTRACT NUMBER: B27161**

THIS AMENDMENT is by and between the State of Minnesota, acting through its commissioner of Administration, for the WSCA/NASPO ("Lead State") and EMC Corporation, 8444 Westpark Drive, Suite 700, McLean, VA 22102 (Contractor).

WHEREAS, the Lead State has a Contract with the Contractor identified as No. B27161, effective September 1, 2009, through August 31, 2012, to provide direct-from-manufacturer personal computer equipment, peripherals and related services; and

WHEREAS, Minn. Stat. § 16C.03, subd. 5, affords the commissioner of Administration, or delegate pursuant to Minn. Stat. § 16C.03, subd. 16, the authority to amend contracts; and

WHEREAS, the terms of the Contract specifically state that 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.

NOW, THEREFORE, it is agreed by the parties to amend the Contract as follows:

1. Exhibit C, Value Added Services is hereby amended to include the EMC WSCA/NASPO Sample Lease Docs via a link from the mail url: www.emc.com/emcwsca.

The specific link is to the docs is: <http://www.emc.com/collateral/emcwsca/sample-lease-docs.pdf>.

This Amendment is effective beginning on the date that the final required signatures are obtained, and shall remain in effect until August 31, 2012, or until the Contract is canceled, whichever occurs first.

Except as herein amended, the provisions of the original Contract between the parties hereto are expressly reaffirmed and remain in full force and effect.

Intentionally Left Blank



WSCA/NASPO Contract Administration

112 Administration Building
50 Sherburne Avenue
St. Paul, MN 55155
Fax: 651.297.3996

TTY: MN Relay Service 1.800.627.3529
<http://www.mmd.admin.state.mn.us>

IN WITNESS WHEREOF, the parties have caused this Amendment to be duly executed intending to be bound thereby.

1. EMC CORPORATION

The Contractor certifies that the appropriate person(s) have executed this document on behalf of the Contractor as required by applicable articles, bylaws, resolutions, or ordinances.

By: *Joseph Hamz*

Title: Sr. Director Federal Contracts Compliance & Pricing

Date: November, 9th 2009

By:

Title:

Date:

2. LEAD STATE

MATERIALS MANAGEMENT DIVISION

In accordance with Minn. Stat. § 16C.03, Subd. 3.

By: *Bernadette Kopsichke*

Title: Acquisitions Supervisor

Date: *11/10/09*

3. LEAD STATE

COMMISSIONER OF ADMINISTRATION

Or delegated representative.

By: *Brenda Willard*

Date: *11/10/09*