

STATE OF NEW HAMPSHIRE
BUREAU OF PURCHASE AND PROPERTY
STATE HOUSE ANNEX - ROOM 102
25 CAPITOL ST
CONCORD NH 03301-6398

DATE: January 30, 2020

CONTRACT #: 8002658

NIGP CODE: 206-0000

CONTRACT FOR: IBM Hardware, Software, and Related Services

CONTRACTOR: IBM Corporation

VENDOR CODE #: 174837

SUBMITTED FOR ACCEPTANCE BY:



PAUL A. RHODES, ADMINISTRATOR III/CONTRACTS MANAGER
BUREAU OF PURCHASE AND PROPERTY

DATE 1/30/20

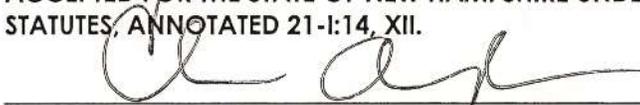
APPROVED FOR ACCEPTANCE BY:



GARY S. NINETTA, DIRECTOR
DIVISION OF PROCUREMENT & SUPPORT SERVICES

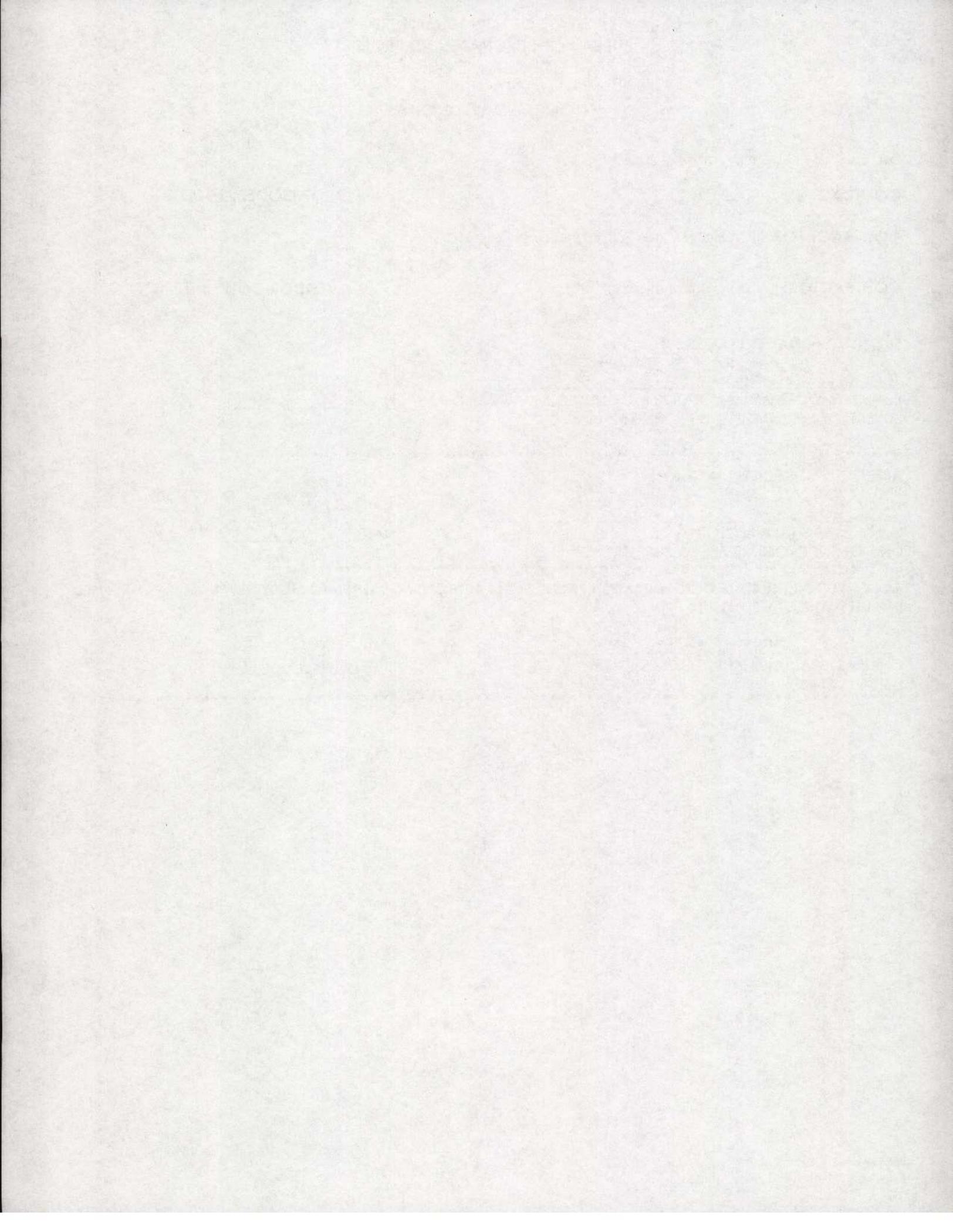
DATE 1/30/2020

ACCEPTED FOR THE STATE OF NEW HAMPSHIRE UNDER THE AUTHORITY GRANTED TO ME BY NEW HAMPSHIRE REVISED
STATUTES, ANNOTATED 21-I:14, XII.



CHARLES M. ARLINGHAUS, COMMISSIONER
DEPARTMENT OF ADMINISTRATIVE SERVICES

DATE 1/30/2020



PARTICIPATING ADDENDUM
NASPO ValuePoint COOPERATIVE PURCHASING PROGRAM
Computer Equipment

Administered by the State of Minnesota (hereinafter "Lead State")

MASTER AGREEMENT

Master Agreement No: MNWNC-116

IBM Corporation

(hereinafter "Contractor")

And

State of New Hampshire

(hereinafter "Participating State/Entity")

1. Scope: This addendum allows for purchase of the following Computer Equipment/Services: Servers and Storage including related Peripherals and Services led by the State of Minnesota along with a multi-state sourcing team for use by state agencies and other entities located in the Participating State/Entity that is authorized by that state's statutes to utilize state/entity contracts, and which receives prior written approval of the state's chief procurement official.

The original solicitation contains the requirements and definitions establishing the Product Bands allowed on the Master Agreement. The Master Agreement identifies the bands awarded to the Contract Vendor. The configuration limits and restrictions for the Master Agreement are provided with revisions identified by the Participating State in this Participating Addendum.

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

3. Order of Precedence:

1. A Participating Entity's Participating Addendum ("PA"); A Participating Entity's Participating Addendum shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with the Contract Vendor under the Terms of Minnesota NASPO ValuePoint Master Agreement

2. Minnesota NASPO ValuePoint Master Agreement (includes negotiated Terms & Conditions)

3. The Solicitation including all Addendums; and

4. Contract Vendor's response to the Solicitation.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contract Vendor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to the Master Agreement as an Exhibit or Attachment.

No other terms and conditions shall apply, including terms and conditions listed in the Contract Vendor's response to the Solicitation, or terms listed or referenced on the Contract Vendor's website, in the Contract Vendor quotation/sales order or in similar documents

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subsequently provided by the Contract Vendor. The solicitation language prevails unless a mutually agreed exception has been negotiated.

4. Participating State Modifications or Additions to Master Agreement:

4.1 Add to Exhibit A Section B, provision 7:

7.5 Confidentiality of data shall be governed by N.H. RSA chapter 91 A or other existing law. Disclosure of data requires prior written approval of the State.

4.2 Add to Exhibit A Section B provision 12:

12.1 This Participating Addendum and its amendments and exhibits thereto, shall be governed by New Hampshire Law. Venue for all legal proceedings arising out of the Participating Addendum, or breach thereof, shall be in the State court with competent jurisdiction in Merrimack County, New Hampshire. In the event that any provision of this Participating Addendum is contrary to New Hampshire law, such provision shall be null and void. The Contractor shall at all times comply with and observe all federal and state laws, local laws, ordinances, and regulations which are in effect during the period of this Participating Addendum and which are applicable to a provider of commercial IT products and services as provided herein.

a. The Master Agreement, Section B.12 last sentence is stricken and replaced with, "The venue for any dispute may be in any federal court with proper jurisdiction located in Merrimack County, New Hampshire. Nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State."

4.3 Add to Exhibit A Section B provision 24:

In no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to reduce or terminate the Services under this Agreement immediately upon giving the Contractor notice of such reduction or termination. The State shall not be required to transfer funds from any other account or source in the event funds are reduced or unavailable.

4.4 The Parties agree to incorporate Section 17 ("Indemnification and Limitation of Liability: Negotiated"), as amended below, of Section C "Minnesota Terms and Conditions" of the Master Agreement. Any references therein to "Minnesota" shall be replaced with "New Hampshire." Notwithstanding the foregoing, nothing herein contained shall be deemed

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to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State.

The entire first paragraph in Section C.17 of the Master Agreement for purposes of orders under this Participating Addendum shall be as follows:

"The Contractor shall indemnify, keep, and save harmless the State of New Hampshire, its officers, agents, and employees against all suits, actions, or claims (and all related damages, settlement payments, attorneys' fees, costs expenses, losses or liabilities) by a third party that a court finally awards against the State or are included in a settlement approved in advance by Contractor which are attributable to bodily injury or death, or to injury to or destruction of tangible personal property arising out of or in connection with the services acquired hereunder. Contractor shall be given timely written notice of any suit or claim, and State shall allow Contractor to control to the extent it is consistent with applicable law and approved by the New Hampshire Department of Justice, which will not be unreasonably withheld and State shall reasonably cooperate with Contractor in the defense and any related settlement negotiations. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. If the New Hampshire Department of Justice does not give such approval, Contractor has no obligation to defend the State of New Hampshire as set forth above."

4.5 Remove provision 4 CONFIGURATION DOLLAR LIMITS from Master Agreement and substitute the following:

There shall be no configuration cap.

4.6 Exhibit A is incorporated in the Participating Addendum.

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

<u>Contractor</u>	
Name	Karen A. Schneider
Address	3935 Acacia Ave, Bonita, CA 91902
Telephone	720-397-5563
Fax	N/A
E-mail	kasch@us.ibm.com

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Participating Entity

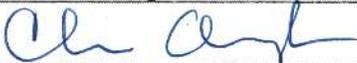
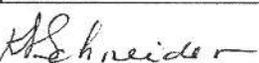
Name	Paul Rhodes
Address	25 Capitol Street, RM 101, Concord, NH 03301
Telephone	603-271-3350
Fax	603-271-1949
E-mail	Paul.rhodes@das.nh.gov

6. Partner Utilization: Each state represented by NASPO ValuePoint participating in this Master Agreement independently has the option of utilizing partners. Only partners approved by this Participating State may be deployed. The Participating State will define the process to add partners. The Contractor will identify and define the partner program(s) available. Approved partners will be listed along with instructions on how to utilize those partners will be on the Contractor's web site for this Participating Addendum. The Contractor's partners' participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

7. Terms: The Participating State/Entity is agreeing to the terms of the Master Agreement only to the extent the terms are not in conflict with applicable law.

8. Orders: Any Purchase Order placed by a Participating Entity or Purchasing Entity for a Product and/or Service available from this Master Agreement must have the contract number on the Purchase Order in order to be deemed a sale under (and governed by the prices and other terms and conditions of) the Master Agreement.

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

Participating State: State of New Hampshire	Contractor: International Business Machines, Corporation
By: 	By: 
Name: Charles M. Arlinghaus	Name: Karen Schneider
Title: Commissioner, Dept. of Administrative Services	Title: NASPO ValuePoint Program Manager
Date:	Date: <i>Jan 28, 2020</i>



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For questions on executing a participating addendum, please contact:

NASPO ValuePoint

Cooperative Development Coordinator	Tim Hay
Telephone	503-428-5705
E-mail	thay@naspovaluepoint.org

[Please email fully executed PDF copy of this document to
PA@naspovaluepoint.org to support documentation of participation and
posting in appropriate data bases]

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EXHIBIT A

1.1 SERVICES

The State may procure IBM Services under this agreement, which shall include, but not be limited to: warranty services, hardware support and maintenance, software support and maintenance, and limited engagement Technical Support Services.

1.1.1 PERSONNEL

Both the State and Contractor are responsible for the supervision, direction, control, and compensation of the respective personnel.

1.1.2 LIMITED ENGAGEMENT TECHNICAL SUPPORT SERVICES

Contractor shall provide ad hoc technical support services on a limited basis as requested by the State as long as such services are available from IBM, eligible via the NASPO contract and may be for a charge. These service engagements may be used to assist the State in maintaining computer operations by providing technical assistance, configuration support, and trouble shooting and defect repair, for hardware and software including, but not limited to Cognos, WebSphere, FileNet, and Rational Tester.

Prior to commencement of these services, Contractor and the State shall agree in writing on a Statement of Work (SOW) for the scope and deliverables of the engagement. The SOW shall be signed by the Contractor and the State's Chief Information Officer.