

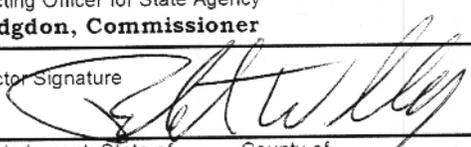
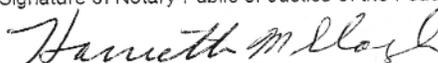
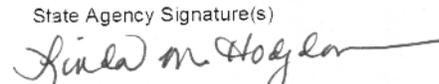
Subject: Statewide IBM Contract

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. Identification and Definitions.

1.1 State Agency Name <b>NH Department of Administrative Services</b>		1.2 State Agency Address <b>25 Capitol Street Concord, NH 03301</b>	
1.3 Contractor Name <b>International Business Machines Corporation</b>		1.4 Contractor Address <b>Attn: Client Manager, NE State and Local Govt. 29 Orchard Street Scaborough, ME 04074</b>	
1.5 Account No. <b>Various Agency Accounts</b>	1.6 Completion Date <b>January 31, 2015</b>	1.7 Audit Date <b>N/A</b>	1.8 Price Limitation <b>\$15,000,000.00</b>
1.9 Contracting Officer for State Agency <b>Linda M. Hodgdon, Commissioner</b>		1.10 State Agency Telephone Number <b>603-223-5703</b>	
1.11 Contractor Signature 		1.12 Name & Title of Contractor Signer <b>Rob Willey, IBM Client Manager</b>	
1.13 Acknowledgment: State of _____ County of _____ On <u>11/17/10</u> , before the undersigned officer, personally appeared the person identified in block 1.12., or satisfactorily proven to be the person whose name is signed in block 1.11., and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace [Seal] 			
1.13.2 Name & Title of Notary Public or Justice of the Peace <b>HARRIETTE M. SLAGLE Notary Public, Maine My Commission Expires January 12, 2013</b>			
1.14 State Agency Signature(s) 		1.15 Name/Title of State Agency Signor(s) <b>Linda M. Hodgdon, Commissioner</b>	
1.16 Approval by Department of Personnel (Rate of Compensation for Individual Consultants) By: _____ Director. On: _____			
1.17 Approval by Attorney General (Form, Substance and Execution) 1.18 By: _____ Assistant Attorney General. On: _____			
1.18 Approval by the Governor and Council By: _____ On: _____			
2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("the State"), engages contractor identified in block 1.3 ("the Contractor") to perform, and the Contractor shall perform, that work or sale of goods, or both, identified and more particularly described in EXHIBIT A incorporated herein ("the Services").			
3. EFFECTIVE DATE: COMPLETION OF SERVICES. 3.1 This agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Council of the State of New Hampshire approve this agreement, ("the Effective Date"). 3.2 If the date for commencement in Exhibit A precedes the Effective Date all services performed by Contractor between the commencement date and the Effective Date shall be performed at the sole risk of the contractor and in the event that this Agreement does not become effective, the State shall be under no obligation to pay the contractor for any costs incurred or services performed; however that if this Agreement becomes effective all costs incurred prior to the effective date shall be paid under the terms of this Agreement. All services must be completed by the date specified in block 1.6.			
4. CONDITIONAL NATURE OF AGREEMENT. Notwithstanding anything in this agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and 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 those funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the account identified in block 1.5 in the event funds in that account are reduced or unavailable.			

It is unlawful to make any alteration to the text of this document.

A signature on this document signifies that no alterations have been made to the original text or format.

## 5. CONTRACT PRICE: LIMITATION ON PRICE: PAYMENT.

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in Exhibit B, incorporated herein.

5.2 The payment by the State of the contract price shall be the only, and the complete, reimbursement to the Contractor for all expenses, of whatever nature, incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by RSA 80:7 through 7-C or any other provision of law.

5.4 Notwithstanding anything in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made, hereunder exceed the price limitation set forth in block 1.8 of these general provisions.

## 6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS: EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to civil rights and equal opportunity laws. In addition, the vendor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap or national origin and will take affirmative action to prevent such discrimination.

6.3 If this agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States, access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants and conditions of this Agreement.

## 7. PERSONNEL

7.1 The performance of the Services shall be carried out by employees of the Contractor. The Contractor shall at its own expense, provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 The Contractor shall not hire, and shall permit no subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services, to hire any person who has a contractual relationship with the State, or who is a State officer or employee, elected or appointed.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final.

## 8. EVENT OF DEFAULT, REMEDIES.

8.1 Anyone or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Events of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule; or

8.1.2 failure to submit any report required hereunder; or

8.1.3 failure to perform any other covenant or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this agreement, effective two (2) days after giving the Contractor notice of termination; and

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the Contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor; and

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and

8.2.4 treat the agreement as breached and pursue any of its remedies at law or in equity, or both.

## 9. DATA: ACCESS; CONFIDENTIALITY; PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed

by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 On and after the Effective Date, all data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by RSA 91-A or other existing law. Disclosure pursuant to a right to know request shall require prior written approval of the State.

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion to the Services, the Contractor shall deliver

to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("the Termination Report") describing in detail all Services performed, and the Contract Price earned, to and including the date of termination. To the extent possible, the form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in EXHIBIT A.

11. **CONTRACTOR'S RELATION TO THE STATE.** In the performance of this agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, worker's compensation or other emoluments provided by the State to its employees.

12. **ASSIGNMENT, DELEGATION AND SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the State. None of the Services shall be delegated or subcontracted by the Contractor without the prior written consent of the State.

13. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or

on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

## 14. INSURANCE AND BOND.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, both for the benefit of the State, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per incident; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 of these general provisions, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 of this paragraph shall be the standard form employed in the State of New Hampshire, issued by underwriters acceptable to the State, and authorized to do business in the State of New Hampshire. Each policy shall contain a clause prohibiting cancellation or modifications of the policy earlier than 10 days after written notice thereof has been received by the State.

15. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that event, or any subsequent Event. No express failure of any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other default on the part of the Contractor.

16. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, above.

17. **AMENDMENT.** This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

18. **CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns.

19. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this agreement shall not be construed to confer any such benefit.

20. **SPECIAL PROVISIONS.** The additional provisions set forth in EXHIBIT C hereto are incorporated as part of this Agreement.

21. **ENTIRE AGREEMENT.** This agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior agreements and understanding.

It is unlawful to make any alteration to the text of this document.

A signature on this document signifies that no alterations have been made to the original text or format.

**State of New Hampshire  
 Department of Administrative Services  
 International Business Machines Inc. Contract 2009-050  
 Exhibit A  
 Statement of Work**

**1. INTRODUCTION**

The State of New Hampshire ("State") desires to contract with International Business Machines Corporation, a New York corporation ("IBM"), to procure 1.) Hardware, 2.) Software ("Programs") and 3.) Services described in this Statement of Work. IBM and the State will identify the Hardware, Programs, and Services that apply and the charges for these in Exhibit B: *Deliverable Payment and Price Schedule*. Eligible Machines will be described in Exhibit D: *Specifications and Transaction Documents*.

The schedule will also identify the Specified Locations at which the Services will be provided. A Specified Location may be the State's entire information processing environment, or a portion thereof, which may be resident at multiple sites or a single building. The specific terms regarding Hardware maintenance and Software maintenance and support Services contained in this Statement of Work apply only when the State has contracted for an associated Machine maintenance Service or Program support Service as specified in the Exhibit B: *Deliverable Payment and Price Schedule*.

These Services are available for Machines normally used for business, professional, or trade purposes, rather than personal, family, or household purposes.

The Effective Date of this Agreement shall be the date of execution by both parties and the Term shall extend through January 31, 2015.

**TERMS AND DEFINITIONS**

Capitalized terms used in the Contract will have the meanings given below.

Agreement	The State of NH form P 37, exhibits, and subsequent State purchase orders which governs transactions by which the State purchases Machines, licenses, ICA Programs, obtains Program licenses, and acquires Services from IBM.
Attachment	Any document included with Agreement, an IBM Transaction Document and/or a State purchase order.
Basic License	Original license available for some ICA Programs
Bureau of Purchase and Property	The State of New Hampshire, Department of Administrative Services, Purchasing Division
Confidential Information	Information, regardless of its form, that is exempt from public disclosure under applicable federal and state laws and regulations, including without limitation, RSA Chapter 91-A (see e.g. RSA 91-A:5 Exemptions).
Contract	A binding Agreement between the State of New Hampshire and IBM.
Contractor	International Business Machine Corporation (IBM)
Contract Documents	Documents that comprise this Contract (See Statement of Work Section 2.)
Contract Manager	The person(s) identified by the State and by IBM who shall be responsible for all contractual authorization and administration of

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	the Contract. These responsibilities shall include but not be limited to processing Contract documentation, obtaining executive approvals, tracking costs and payments, and representing the State or IBM in all Contract administration activities.
CRU	Customer Replaceable Units. Such units include, but are not limited to: keyboards, memory, or hard disk drives.
Cure Period	The time allowed whereby IBM may fix the cause of a default.
Customer-set-up Machine	An IBM Machine that is intended to be installed by the State. The State may request IBM service personnel to perform these activities for a charge
Date of Installation	The Date of Installation is the following: <ol style="list-style-type: none"> <li>1. for an IBM Machine that IBM is responsible for installing, the business day after the day IBM installs it or, if the State defers installation, the date IBM makes it available to the State for subsequent installation by IBM;</li> <li>2. for a Customer-set-up Machine and a non-IBM Machine, the second business day after the Machine's standard transit allowance period; and</li> <li>3. for a Program: <ol style="list-style-type: none"> <li>a. basic license, the later of the following: <ol style="list-style-type: none"> <li>(i) the day after its testing period ends; or</li> <li>(ii) the second business day after the Program's standard transit allowance period,</li> </ol> </li> <li>b. copy, the date (specified in a Transaction Document) on which IBM authorizes the State to make a copy of the Program, and</li> <li>c. chargeable component, the date the State distributes a copy of the chargeable component in support of the State's authorized use of the Program.</li> </ol> </li> </ol>
Deliverables	Any written, Software, or non-Software deliverable (letter, report, manual, book, other), provided by IBM to the State under the terms of the Contract.
Department of Administrative Services (DAS)	A State of New Hampshire agency
Department of Information Technology (DoIT)	A State of New Hampshire agency
Designated Machine	Either 1) the machine on which the State will use an ICA Program for processing and which IBM requires the State to identify to it by type/model and serial number, or 2) any machine on which the State uses the ICA Program if IBM does not require the State to provide this identification.
DSLO	Distributed System License Option
Effective Date	The date on which the Contract takes effect upon the date of execution by both parties.

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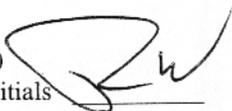
Eligible Machines	Hardware which includes both Eligible IBM Machines and Eligible non-IBM Machines; such Machines are identified by IBM and the State and IBM provides Services on such Machines.
Extended Term	A five (5) year period which commences on date the initial Contract expires.
Feature	A notable property of a device or software application which adds additional information and/or elements to extends or expands functionality.
Hardware	Items of equipment or their components used for a computer system.
IBM	International Business Machines Corporation
IBM Business Partners	Certain organizations that IBM has signed an agreement with to promote, market, and support certain Products and Services.
ICA	IBM Customer Agreement.
ICA Program(s)	Software licensing program(s) for mainframe or machine code which is often distributed directly from IBM to the State.
Information Management	A brand of IBM software products.
Invoking Party	The party believing itself aggrieved.
IPLA	International Program License Agreement
Licensed Internal Code (LIC)	Machine Code used by certain Machines IBM specifies (called "Specific Machines").
Lotus	A brand of IBM software products.
Machine	A machine, its Features, conversions, upgrades, elements, or accessories, or any combination of them. The term "Machine" includes an IBM Machine and any other non-IBM Machine (including other equipment) that IBM may provide to the State.
Machine Code	A Microcode, basic input/output system code (called "BIOS"), utility programs, device drivers, and diagnostics delivered with an IBM Machine.
Materials	Literary works or other works of authorship (such as programs, program listings, programming tools, documentation, reports, drawings and similar works) that IBM may deliver to the State as part of a Service. The term "Materials" does not include Programs, Machine Code, nor LIC.
Non-IBM Program	A Program licensed under a separate third party license agreement.
Other IBM Program	An IBM Program licensed under a separate IBM license agreement, i.e., IBM International Program License Agreement.
Notice of Default	A formal notice declaring that a failure to comply with the Contract has occurred.
Ordered Product(s)	Hardware, Programs, Software licenses and media, Software license renewals, and Software maintenance and technical support for personal computer and network Software, which IBM obtained for delivery to the State of New Hampshire.
Passport Advantage Software	Distributed software licensing program currently including but not limited to, the Tivoli, Rational, WebSphere, Lotus, FileNet and Information Management product families.
Proof of Entitlement"	Evidence of the State's authorization to use a Program at a

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("PoE")	specified level. That level may be measured, for example, by the number of processors or users. The PoE is also evidence of the State's eligibility for warranty, future upgrade prices, if any, and potential special or promotional opportunities. If IBM does not provide the State with a PoE, then IBM may accept the original paid sales receipt or other sales record from the party (either IBM or its reseller) from whom the State acquired the Program, provided that it specifies the name of the Program and the usage level acquired.
Procure / Procurement	The acquisition of IBM Hardware, Software, and Services
Product(s)	A Machine or a Program
Program	The following, including the original and all whole or partial copies: <ol style="list-style-type: none"> <li>1.) machine-readable instructions and data;</li> <li>2.) components;</li> <li>3.) audio-visual content (such as images, text, recordings, or pictures); and</li> <li>4.) related licensed materials.</li> </ol> <p>The term "Program" includes any ICA Program, other IBM Program, or Non-IBM Program that IBM may provide to the State. The term does not include Machine Code, LIC or Materials.</p>
Proprietary	Something that is used, produced, or marketed under exclusive right of IBM.
Purchasing Agency End User	Any State of New Hampshire agency that orders Products through the Department of Information Technology.
Rational	A brand of IBM software products.
Scope of Work	Details the Hardware, Software, and Services and the exact nature of the work to be done.
Service	The performance of a task, provision of advice and counsel, assistance, support, or access to a resource (such as access to an information database) IBM makes available to the State.
Software	A collection of computer programs, procedures, and documentation that performs some tasks on a computer system.
Specifications	A document that provides information specific to a Product. IBM provides an IBM Machine's Specifications in a document entitled "Official Published Specifications" and an ICA Program's Specifications in a document entitled "Licensed Program Specifications.
Specified Location	The State's entire information processing environment, or a portion thereof, which may be resident at multiple sites or a single building.
Specific Machine	A Machine, identified by IBM that uses LIC.
Specified Operating Environment	The Machines and programs with which an ICA Program is designed to operate, as described in the ICA Program's Specifications.
State	State of New Hampshire, Department of Information Technology (DoIT) and Purchasing Agency End User as applicable

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Statement of Work ("SOW")	A document describing the scope of work, period of performance, deliverables schedule, acceptance standards, and acceptance criteria. The Scope of Work details the Hardware, Software, and Services and the exact nature of the work required.
Successor	A party considered an assignee, delegate, Subcontractor, or other transferee.
Subcontractor	A person, partnership, or company contracted by IBM to perform under the Contract.
Technical Support Services	Support, management, and maintenance services for hardware and packaged software, as well as custom and legacy applications.
Term	The contract period of time.
Tivoli	A brand of IBM software products.
Transaction Document	A document issued by IBM or the State defining the terms of a procurement, such as an invoice, supplement, schedule, exhibit, Statement of Work, change authorization, or addendum.
Type I	A classification of Materials whereby the State owns the copyright to the Materials, exclusive of all title, right, and interest; and grants a license to IBM with provisions for use.
Type II	A classification of Materials whereby IBM owns all right, title, and interest, including copyright; and grants a license to the State for future use.
Type III	A classification of Materials whereby the State owns all right, title, and interest, including copyright; and grants a license to IBM for future use.
WebSphere	A brand of IBM software products.



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**2. CONTRACT DOCUMENTS**

This Contract consists of the following documents ("Contract Documents") in order of precedence:

- a. *State of New Hampshire Terms and Conditions, General Provisions* Form P-37
- b. Exhibit A Statement of Work
- c. Exhibit B Deliverable Payment and Price Schedule
- d. Exhibit C Special Provisions
- e. Exhibit D Specifications and Transaction Documents

**3. SCOPE OF SERVICES**

IBM shall provide the State the Services and Deliverables required under this Contract, as set forth in Exhibit B: *Deliverable Payment and Price Schedule*.

**4. TERM AND CONTRACT PRICE**

**4.1 PERIOD OF PERFORMANCE**

The Contract shall take effect after full execution by the parties, and receipt of required governmental approvals. The initial term will be from the Effective Date through January 31, 2015, with one (1) option to renew for five (5) years, at the discretion of the State, unless otherwise terminated in accordance with this Contract.

**4.2 CONTRACT PRICE**

The Contract price, method of payment, and terms of payment are identified in Contract Exhibit B: *Deliverable Payment and Price Schedule*.

**4.3 NON-EXCLUSIVE CONTRACT**

This is a Non-Exclusive Contract with price and term limitations as set forth in the Contract. The State may, at its discretion, retain other contractors to provide same or similar Services or Deliverables offered under this Contract. IBM shall not be responsible for any delay, act, or omission of such other contractors, except that IBM shall be responsible for any delay, act, or omission of the other contractors if such delay, act, or omission is caused by or due to the fault of IBM.

**5. CONTRACT ADMINISTRATION**

This Agreement will require the coordinated efforts consisting of both IBM and State personnel. IBM shall provide all necessary resources to perform its obligations under the Contract.

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**5.1 IBM CONTRACT MANAGER**

IBM shall designate a Contract Manager who shall be responsible for all contractual authorization and administration under the Contract. This person is:

Rob Willey  
Client Manager  
Government and Education New England  
IBM  
29 Orchard Street  
Scarborough, ME 04074  
Tel: 781-248-5202  
Email: [rwilley@us.ibm.com](mailto:rwilley@us.ibm.com)

**5.2 STATE CONTRACT MANAGER**

The State shall designate a Contract Manager who shall function as the State's representative with regard to Contract administration. This person is:

Robert D. Stowell  
Department of Administrative Services  
25 Capitol Street  
State House Annex  
Concord, NH 03301-6398  
Tel: 603-271-3606  
Fax: 603-271-2700  
Email: [robert.stowell@nh.gov](mailto:robert.stowell@nh.gov)

**6. STATEMENT OF WORK/DELIVERABLES/WORK PLAN**

IBM shall perform the Services and provide the Deliverables described in this Contract.

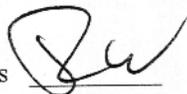
**6.1 HARDWARE PROCUREMENT**

The State may Procure IBM Hardware, as specified in Exhibit B: *Deliverable Payment and Price Schedule*, under this Agreement by issuing a purchase order to IBM. From time to time, an accredited IBM Business Partner may assist in the development of the proposal and execution of the order. In such cases, the State will issue a purchase order to IBM. IBM, and not the State, is responsible for compensating any IBM Business Partner(s).

Additional Hardware may be added from time to time as IBM enhances its product line by development or acquisition of new products. For new Hardware product line(s), announcement letters will state the product's offering category. The appropriate discount rate will be applied per Exhibit B: *Deliverable Payment and Price Schedule*.

**6.1.1 TITLE**

Title, right and interest in IBM Proprietary Hardware and Software shall remain with IBM.



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**6.1.2 MACHINES**

**6.1.2.1 PRODUCTION STATUS**

Each IBM Machine is manufactured from parts that may be new or used. In some cases, a Machine may not be new and may have been previously installed. Regardless, IBM's appropriate warranty terms apply.

**6.1.2.2 TITLE AND RISK OF LOSS**

When IBM accepts the State's Order, IBM agrees to sell the State the Machine described in a Transaction Document. IBM transfers title to the State or, if the State chooses, the State's lessor when IBM ships the Machine. However, IBM reserves a purchase money security interest in the Machine until IBM receives the amounts due. For a Feature, conversion, or upgrade involving the removal of parts, which become IBM's property, IBM reserves a security interest until IBM receives payment of all the amounts due and the removed parts. The State authorizes IBM to file appropriate documents to permit IBM to perfect its purchase money security interest.

For each Machine, IBM bears the risk of loss or damage up to the time it is delivered to the IBM-designated carrier for shipment to the State or the State's designated location. Thereafter, the State assumes the risk. Each Machine will be covered by insurance, arranged, and paid for by IBM for the State, covering the period until it is delivered to the State or to the State's designated location. For any loss or damage, the State must 1) report the loss or damage in writing to IBM within thirty (30) business days of delivery and 2) follow the applicable claim procedure.

**6.1.2.3 INSTALLATION**

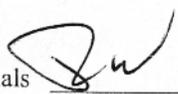
The State agrees to provide an environment meeting the specified requirements for the Machine.

IBM has standard installation procedures. IBM will successfully complete these procedures before it considers an IBM Machine (other than a Machine for which the State defers installation or a Customer-set-up Machine) installed.

The State is responsible for installing a Customer-set-up Machine and, unless IBM agrees otherwise, a non-IBM Machine.

**6.1.2.4 MACHINE FEATURES, CONVERSIONS, AND UPGRADES**

IBM sells Features, conversions and upgrades for installation on Machines, and, in certain instances, only for installation on a designated, serial-numbered Machine. Many of these transactions involve the removal of parts and their return to IBM. As applicable, the State represents that the State has the permission from the owner and any lien holders to 1) install Features, conversions, and upgrades and 2) transfer ownership and possession of removed parts (which become IBM's property) to IBM. The



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State further represents that all removed parts are genuine, unaltered, and in good working order. A part that replaces a removed part will assume the warranty or maintenance Service status of the replaced part. The State agrees to allow IBM to install the Feature, conversion, or upgrade within thirty (30) days of its delivery. Otherwise, IBM may terminate the transaction and the State must return the Feature, conversion, or upgrade to IBM at the State's expense.

**6.1.2.5 MACHINE CODE AND LIC**

Machine Code is licensed under the terms located at: Exhibit D: *Specifications and Transaction Documents*, Section 2: *Service Level Agreements*. Machine Code is licensed only for use to enable a Machine to function in accordance with its Specifications and only for the capacity and capability for which the State is authorized by IBM in writing and for which payment is received by IBM.

Certain Machines IBM specifies (called "Specific Machines") use LIC. IBM will identify Specific Machines in a Transaction Document. International Business Machines Corporation, one of its subsidiaries or a third party owns LIC including all copyrights in LIC and all copies of LIC (this includes the original LIC, copies of the original LIC, and copies made from copies). LIC is copyrighted and licensed (not sold). LIC is licensed under the terms of the agreement provided at Exhibit D: *Specifications and Transaction Documents*, Section 2: *Service Level Agreements*. LIC is licensed only for use to enable a Machine to function in accordance with its Specifications and only for the capacity and capability for which the State is authorized by IBM in writing and for which payment is received by IBM.

**6.2 SOFTWARE PROCUREMENT**

The State may Procure IBM Software, as specified in Exhibit B: *Deliverable and Price Schedule*, under this Agreement including, but not limited to, Software (see Section 6.2.1) and International Program License Agreement (See Section 6.2.2).

Additional Software may be added to this contract from time to time as IBM enhances its product line. Announcement letters will include the offering category for new Software product line(s). For example, the appropriate discount rate will be applied per Exhibit B: *Deliverable Payment and Price Schedule*, once IBM determines if the Software is within the Passport Advantage program or if the Software is for the International Program License Agreement.

**6.2.1 SOFTWARE**

**6.2.1.1 ICA PROGRAM LICENSE**

When IBM accepts the State's purchase order for Software, IBM grants the State a nonexclusive, nontransferable license to use the ICA Program in the United States. ICA Programs are owned by IBM, one of its subsidiaries, or a third party and are copyrighted and licensed (not sold).

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**6.2.1.2 AUTHORIZED USE**

Under each license, IBM authorizes the State:

1. to use the ICA Program's machine-readable portion on only the Designated Machine. If the Designated Machine is inoperable, the State may use another machine temporarily. If the Designated Machine cannot assemble or compile the ICA Program, the State may assemble or compile the ICA Program on another machine.
2. and the State agrees that if the State changes a Designated Machine previously identified to IBM, the State will notify IBM of the change and its effective date;
3. to use the ICA Program to the extent of authorizations the State has obtained;
4. to make and install copies of the ICA Program, to support the level of use authorized, provided the State reproduces the copyright notices and any other legends of ownership on each copy or partial copy, and
5. to use any portion of the ICA Program that IBM
  - 1.) provides in source form, or
  - 2.) marks restricted (for example, "Restricted Materials of IBM") only to
    - a. resolve problems related to the use of the ICA Program, and
    - b. modify the ICA Program so that it will work together with other products.

**6.2.1.3 THE STATES ADDITIONAL OBLIGATIONS**

For each ICA Program, the State agrees to:

1. comply with any additional terms in its Specifications or a Transaction Document (attached as Exhibit D, *Specifications and Transaction Documents*, as agreed to in writing by the State;
2. ensure that anyone who uses it (accessed either locally or remotely) does so only for the State's authorized use and complies with IBM's terms regarding ICA Programs; and
3. maintain a record of all copies and provide it to IBM at its request.

**6.2.1.4 ACTIONS THE STATE MAY NOT TAKE**

The State agrees not to: reverse assemble, reverse compile, or otherwise translate the ICA Program unless expressly permitted by applicable law without the possibility of contractual waiver; or sublicense, assign, rent, or lease the ICA Program.



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**6.2.1.5 PROGRAM COMPONENTS NOT USED ON THE  
DESIGNATED MACHINE**

Some ICA Programs have components that are designed for use on machines other than the Designated Machine on which the ICA Program is used. The State may make copies of a component and its documentation in support of the State's authorized use of the ICA Program. For a chargeable component, the State agrees to notify IBM of its Date of Installation.

**6.2.1.6 DISTRIBUTED SYSTEM LICENSE OPTION**

For some ICA Programs, the State may make a copy under a Distributed System License Option (called a "DSLO" copy). IBM charges less for a DSLO copy than for the original license (called the "Basic" license). In return for the lesser charge, the State agrees to do the following while licensed under a DSLO:

1. have a Basic license for the ICA Program;
2. provide problem documentation and receive Program Services (if any) only through the location of the Basic license; and
3. distribute to, and install on, the DSLO's Designated Machine, any release, correction, or bypass that IBM provides for the Basic license.

**6.2.1.7 ICA PROGRAM EVALUATION TESTING**

IBM provides a testing period for certain ICA Programs to help the State to evaluate if they meet the State's needs. If IBM offers a testing period, it will start 1) the second business day after the ICA Program's standard transit allowance period, or 2) on another date specified in a Transaction Document. IBM will inform the State of the duration of the ICA Program's testing period.

IBM does not provide testing periods for DSLO copies.

**6.2.1.8 PROGRAM SERVICES**

IBM provides Program Services for warranted ICA Programs, including, but not limited to maintenance and technical support as more specifically defined in Section 6.3: *Services* and Exhibit D: *Specifications and Transaction Documents*.

If IBM can reproduce the State's reported problem in the Specified Operating Environment, IBM will issue defect correction information, a restriction, or a bypass. IBM provides Program Services for only the unmodified portion of a current release of an ICA Program.

IBM provides Program Services 1) on an on-going basis (with at least six (6) months' written notice before IBM terminates Program Services), 2) until the date IBM specifies, or 3) for a period IBM specifies.

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**6.2.1.9 LICENSE TERMINATION**

The State may terminate the license for an ICA Program on one month's written notice, or at any time during the ICA Program's testing period.

Licenses for certain replacement ICA Programs may be obtained for an upgrade charge. When the State obtains licenses for these replacement ICA Programs, the State may agree to terminate the license of the replaced ICA Programs when charges become due, unless mutually agreed to by the State and IBM. The single version upgrade charge refers to running the old and new version of a Software product for one (1) year without an additional payment due from the State.

IBM may terminate the State's license if the State fails to comply with the license terms. If IBM does so, the State's authorization to use the ICA Program is also terminated.

**6.2.2 INTERNATIONAL PROGRAM LICENSE AGREEMENT (IPLA)**

**6.2.2.1 IPLA PROGRAM LICENSE**

The Program is owned by IBM or an IBM supplier, and is copyrighted and licensed, not sold.

IBM grants the State a nonexclusive license to use the Program, when the State lawfully acquires it.

The State may 1) use the Program up to the level of use specified in the PoE and 2) make and install copies, including a backup copy, to support such use. The terms of this license apply to each copy the State makes. The State will reproduce all copyright notices and all other legends of ownership on each copy, or partial copy, of the Program.

If the State acquires the Program as a program upgrade, after the State installs the upgrade the State may not use the Program from which the State upgraded or transfer it to another party.

The State will ensure that anyone who uses the Program (accessed either remotely or locally) does so only for the State's authorized use and complies with the terms of this Agreement.

The State may not 1) use, copy, modify, or distribute the Program except as provided in this Agreement; 2) reverse assemble, reverse compile, or otherwise translate the Program except as specifically permitted by law without the possibility of contractual waiver; or 3) sublicense, rent, or lease the Program.

IBM may terminate the State's license if the State fails to comply with the terms of this Agreement. If IBM does so, the State must destroy all copies of the Program and its PoE.



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**6.2.2.2 PROGRAM TRANSFER**

The State may transfer a Program and all of the State's license rights and obligations to another party only if that party agrees to the terms of this Agreement. When the State transfers a Program, the State must also transfer a copy of this Agreement, including the Program's PoE. After the transfer, the State may not use the Program.

**6.2.2.3 CHARGES**

The amount payable for a Program license is a one-time charge.

One-time charges are based on the level of use acquired which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in the Agreement.

If the State wishes to increase the level of use, the State shall notify IBM or the party from whom the State acquired the program and pay any applicable charges.

If any authority imposes a duty, tax, levy or fee, excluding those based on IBM's net income, upon the Program, then the State agrees to supply exemption documentation.

**6.3 SERVICES**

The State may Procure IBM Services under this Contract, which shall include, but not be limited to: warranty Services, Hardware support and maintenance, Software support and maintenance, and limited engagement Technical Support Services, as more specifically described in Exhibit D: *Specifications and Transaction Documents*.

**6.3.1 PERSONNEL**

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

**6.3.1.1** IBM shall assign staff who meet the requirements of the Contract, including but not limited to, the requirements set forth in individual State purchase orders. The State may conduct reference and background checks on IBM staff. The State reserves the right to require removal or reassignment of IBM staff who are found unacceptable to the State. Following consultation with IBM program management, appropriate adjustments will be made in staffing assignments, if necessary.

**6.3.1.2** IBM shall not change any IBM staff commitments without consultation and approval of the State. State approvals for replacement of IBM staff will not be unreasonably withheld. The replacement IBM staff shall have comparable or greater skills than the IBM staff being replaced; meet the requirements of the Contract, including but not limited to the requirements set forth in the State purchase order; and be subject to reference check(s).

**6.3.1.3** In the event of staff replacement, IBM shall promptly assign IBM replacement staff to the Contract, and until IBM staff replacement is assigned, continue providing IBM staff services with an interim suitable IBM staff member.

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6.3.1.4 Notwithstanding any other provision of the Contract, the State, following consultation with IBM project management, and adequate time to cure the problem, shall have the option, at its discretion, to terminate the Contract and declare IBM in default if IBM fails to assign IBM staff which meets the requirements and terms of the Contract.

6.3.1.5 The State may, at its sole expense, conduct background screening of IBM personnel, identified and assigned. Background screening shall be completed before such personnel begin providing services. The State shall maintain the confidence of such background screening results in accordance with Contract General Provisions. The background screening may include, without limitation, at the State's discretion, review of the proposed IBM project manager's resume, qualifications, references, and background checks, and an interview. The State may request removal or reassignment of IBM's project manager, following consultation with IBM upper management, if the project manager is found unacceptable to the State or is not performing to the State's satisfaction.

**6.3.2 SERVICE FOR MACHINES (DURING AND AFTER WARRANTY)**

IBM provides certain types of Service to keep Machines in, or restore them to, conformance with their Specifications. IBM will inform the State of the available types of Service for a Machine. In the event of a defect, IBM will 1) either repair or exchange the failing Machine.

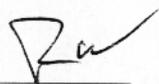
When the type of Service requires that the State delivers the failing Machine to IBM, the State agrees to ship it suitably packaged (prepaid unless IBM specifies otherwise) to a location IBM designates. After IBM has repaired or exchanged the Machine, IBM will return it to the State at IBM's expense unless IBM specifies otherwise. IBM is responsible for loss of, or damage to, the State's Machine while it is 1) in IBM's possession or 2) in transit in those cases where IBM is responsible for the transportation charges.

Any Feature, conversion, or upgrade that IBM services must be installed on a Machine which is 1) for certain Machines, the designated, serial-numbered Machine and 2) at an engineering-change level compatible with the Feature, conversion, or upgrade.

IBM manages and installs selected engineering changes that apply to IBM Machines and may also perform preventive maintenance.

The State agrees to:

1. obtain authorization from the owner to have IBM service a Machine that the State does not own; and
2. where applicable, before IBM provides Service:
  - a. follow the problem determination, problem analysis, and service request procedures that IBM provides,



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- b. secure all programs, data, and funds contained in a Machine, and
- c. inform IBM of changes in a Machine's location.

**6.3.3 REPLACEMENTS**

When Service involves the exchange of a Machine or part, the item IBM replaces becomes its property and the replacement becomes the States. The State represents that all removed items are genuine and unaltered. The replacement may not be new, but will be in good working order and at least functionally equivalent to the item replaced. The replacement assumes the warranty or maintenance Service status of the replaced item. Before IBM exchanges a Machine or part, the State agrees to remove all Features, parts, options, alterations, and attachments not under IBM's service. The State also agrees to ensure that the item is free of any legal obligations or restrictions that prevent its exchange.

Some parts of IBM Machines are designated as Customer Replaceable Units (called, "CRUs"), e.g., keyboards, memory, or hard disk drives. IBM provides CRUs to the State for replacement by the State. The State must return all defective CRUs to IBM within thirty (30) days of the State's receipt of the replacement CRU. The State is responsible for downloading designated Machine Code and LIC updates from an IBM internet web site or from other electronic media, and following the instructions that IBM provides.

**6.3.4 ITEMS NOT COVERED**

Repair and exchange Services do not cover:

1. accessories, supply items, and certain parts, such as batteries, frames, and covers;
2. Machines damaged by misuse, accident, modification, unsuitable physical or operating environment, or improper maintenance by the State;
3. Machines with removed or altered Machine or parts identification labels;
4. failures caused by a product for which IBM is not responsible;
5. Service of Machine alterations; or
6. Service of a Machine on which the State is using capacity or capability, other than that authorized by IBM in writing.

**6.3.5 WARRANTY SERVICE UPGRADE**

For certain Machines, the State may select a Service upgrade from the standard type of warranty Service for the Machine. IBM charges for the Service upgrade during the warranty period.

The State may not terminate the Service upgrade or transfer it to another Machine during the warranty period. When the warranty period ends, the Machine will convert to maintenance Service at the same type of Service the State selects for warranty Service upgrade.



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**6.3.6 MAINTENANCE COVERAGE**

IBM will provide Service for Machines, as described in our agreement, for those Eligible IBM Machines specified in the Exhibit B: *Deliverable Payment and Price Schedule*.

Whenever the State orders maintenance Service for Machines, IBM will inform the State of the date on which maintenance Service will begin. IBM may inspect the Machine within one (1) month following that date. If the Machine is not in an acceptable condition for service, the State may have IBM restore it for a charge. Alternatively, the State may withdraw its request for maintenance Service. However, the State will be charged for any maintenance Service which IBM has performed per a State purchase order.

**6.3.7 WARRANTY SERVICES**

IBM shall provide warranty services for Eligible Machines, ICA Programs, and Passport Advantage Services as more fully described in Section 7: *Warranty* and Exhibit D: *Specifications and Transaction Documents*.

**6.3.8 LIMITED ENGAGEMENT TECHNICAL SUPPORT SERVICES**

IBM shall provide ad hoc technical support services on a limited basis as requested by the State. 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.

Limited engagement technical support services may not exceed \$25,000 per engagement, and \$100,000 per year. Prior to commencement of these services, IBM and the State must agree in writing on a statement of work for the scope and deliverables of the engagement. The statement of work must be signed by IBM and the State's Chief Information Officer and attached to the State's purchase order.

**7. WARRANTY**

**7.1 WARRANTY FOR IBM MACHINES**

IBM warrants that each IBM Machine is free from defects in materials and workmanship and conforms to its Specifications.

The warranty period for a Machine is a specified, fixed period commencing on its Date of Installation. During the warranty period, IBM provides repair and exchange Service for the Machine, without charge, under the type of Service IBM designates for the Machine. If a Machine does not function as warranted during the warranty period and IBM is unable to either 1) make it do so or 2) replace it with one that is at least functionally equivalent, the State may return it to IBM and the State's money will be refunded within thirty (30) days.

Additional terms regarding Service for Machines during and after the warranty period are contained in Section 6.3: *Services*.

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**7.2 WARRANTY FOR ICA PROGRAMS**

IBM warrants that each warranted ICA Program, when used in the Specified Operating Environment, will conform to its Specifications.

The warranty period for an ICA Program expires when its Program Services are no longer available. During the warranty period, IBM provides defect-related Program Services without charge. Program Services are available for a warranted ICA Program for at least one (1) year following its general availability.

If an ICA Program does not function as warranted during the first year after the State has obtain a license and IBM is unable to make it do so, the State may return the ICA Program and the State's money will be refunded within thirty (30) days. To be eligible, the State must have obtained a license while Program Services (regardless of the remaining duration) were available for it. Additional terms regarding Program Services are contained in Section 6.2: *Software Procurement*.

**7.3 WARRANTY FOR IBM SERVICES**

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

**7.4 EXTENT OF WARRANTY**

If a Machine is subject to federal or state consumer warranty laws, IBM's statement of limited warranty included with the Machine applies in place of these Machine warranties.

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

**THESE WARRANTIES ARE THE STATE'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**7.5. ITEMS NOT COVERED BY WARRANTY**

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

IBM will identify IBM Machines and ICA Programs that it does not warrant.

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Unless IBM specifies otherwise, it provides Materials, non-IBM Products, and non-IBM Services WITHOUT WARRANTIES OF ANY KIND. However, non-IBM manufacturers, developers, suppliers, or publishers may provide their own warranties to the State. Warranties, if any, for Other IBM Programs and Non-IBM Programs may be found in their license agreements.

## **8.0 TERMINATION**

### **8.1 TERMINATION FOR CONVENIENCE**

Notwithstanding the foregoing, the State may terminate this Contract, at its sole discretion, for any reason upon thirty (30) days written notice to IBM. Upon termination for convenience, IBM shall refund any unused portion of the Contract to the State.

### **8.2 TERMINATION AND WITHDRAWAL OF A SERVICE**

Either IBM or the State may terminate a Service if the other does not meet its obligations concerning the Service.

The State may terminate a Service, on notice to IBM provided the State has met all minimum requirements and pays any adjustment charges specified in Exhibit B: *Deliverable Payment and Price Schedule*. For a maintenance Service, the State may terminate without adjustment charge provided any of the following circumstances occur:

1. the State permanently removes the Product, for which the Service is provided, from productive use within the State;
2. the eligible location, for which the Service is provided, is no longer controlled by the State (for example, because of sale or closing of the facility); or
3. the Machine has been under maintenance Service for at least six (6) months and the State gives IBM one (1) month's written notice prior to terminating the maintenance Service.

The State agrees to pay IBM for State purchase orders which include 1) all Services IBM provides and any Products and Materials IBM delivers through the Service termination, and 2) any charges IBM incurs in terminating the Service which are included in the State purchase order.

Any terms, which by their nature extend beyond termination or withdrawal remain in effect until fulfilled and apply to respective successors and assignees.

## **9. ADDITIONAL TERMS AND CONDITIONS**

### **9.1 INTELLECTUAL PROPERTY PROTECTION**

For purposes of this Intellectual Property Protection section, the term "Product" also includes Materials and Machine Code.

#### **9.1.1 THIRD PARTY CLAIMS**

If a third party claims that a Product IBM provides to the State infringes that party's patent or copyright, IBM will defend the State against that claim at IBM's expense and pay all costs, damages, and attorney's fees that a court finally awards or that are included in a settlement approved by IBM, provided that the State:

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- a. promptly notifies IBM in writing of the claim; and
- b. allows IBM to control, and cooperates with IBM in, the defense and any related settlement negotiations.

**9.1.2 REMEDIES**

If such a claim is made or appears likely to be made, the State agrees to permit IBM to enable the State to continue to use the Product, or to modify it, or replace it with one that is at least functionally equivalent. If IBM determines that none of these alternatives is reasonably available, the State agrees to return the Product to IBM on IBM's written request. IBM will then give the State a credit equal to:

- a. for a Machine, the State's net book value calculated according to generally-accepted accounting principles;
- b. for an ICA Program, the amount paid by the State or 12 months' charges (whichever is less); and
- c. for Materials, the amount the State paid IBM for the creation of the Materials.

**9.1.3 CLAIMS FOR WHICH IBM IS NOT RESPONSIBLE**

IBM has no obligation regarding any claim based on any of the following:

- a. anything provided by the State or a third party on the State's behalf that is incorporated into a Product or IBM's compliance with any designs, specifications, or instructions provided by the State or a third party on the State's behalf;
- b. modification of a Product by the State or a third party on the State's behalf, or an ICA Program's use other than in accordance with its applicable licenses and restrictions;
- c. the combination, operation, or use of a Product with any product, hardware device, program, data, apparatus, method, or process that IBM did not provide as a system, if the infringement would not have occurred were it not for such combination, operation or use;
- d. the distribution, operation or use of a Product outside the State's Enterprise; or
- e. infringement by a non-IBM Product or an Other IBM Program alone.

**9.1.4 LIMITATION OF LIABILITY**

Circumstances may arise where, because of a default on IBM's part or other liability, the State is entitled to recover damages from IBM. Regardless of the basis on which the State is entitled to claim damages from IBM (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), IBM's entire liability for all claims in the aggregate arising from or related to each Product or Service or otherwise arising under this Agreement will not exceed the amount of any actual direct damages up to the greater of \$100,000, or the charges (if recurring, twelve (12) months' charges apply) for the Product or Service that is the subject of the claim. For purposes of this Limitation of Liability section, the term "Product" also includes Materials and Machine Code.

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This limit also applies to any of IBM's Subcontractors and Program developers. It is the maximum for which IBM and its Subcontractors and Program developers are collectively responsible. The following amounts are not subject to a cap on the amount of damages:

- a. payments referred to in the Intellectual Property Protection section above; and
- b. damages for bodily injury (including death) and damage to real property and tangible personal property for which IBM is legally liable.

**9.1.5 ITEMS FOR WHICH IBM IS NOT LIABLE**

Except as expressly required by law without the possibility of contractual waiver, under no circumstances is IBM, its Subcontractors, or Program developers liable for any of the following even if informed of their possibility:

- a. loss of, or damage to, data;
- b. special, incidental, exemplary, or indirect damages or for any economic consequential damages; or
- c. lost profits, business, revenue, goodwill, or anticipated savings.

**9.2 GEOGRAPHIC SCOPE AND GOVERNING LAW**

The rights, duties, and obligations of both the State and IBM are valid only in the United States except that all licenses are valid as specifically granted.

Both the State and IBM consent to the application of the laws of the State of New Hampshire to govern, interpret, and enforce all of the State's and IBM's rights, duties, and obligations arising from, or relating in any manner to, the subject matter of this Agreement, without regard to conflict of law principles.

In the event that any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement remain in full force and effect.

Nothing in this agreement affects any statutory rights of consumers that cannot be waived or limited by contract.

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**9.3 IBM RESPONSIBILITIES**

When the State contracts for an applicable Service, IBM agrees to deliver the Service in accordance with the terms and responsibilities identified in the Service description set out in this Statement of Work or an associated purchase order. For basic maintenance of IBM Machines, the Service description is set out EXHIBIT D: *Specifications and Transaction Documents* Section 2: *Service Level Agreements*.

**9.4 STATE RESPONSIBILITIES**

The State shall:

1. provide IBM with an inventory in which the State identifies all Eligible Machines to be covered at each Specified Location and shall notify IBM whenever the State wishes to add Eligible Machine types to an existing Specified Location or set up new Specified Locations;
2. return to IBM all defective CRUs (from covered Eligible Machines) within thirty (30) days of receipt of the replacement CRU. A "CRU" is a Machine part which is designated as a Customer Replaceable Unit (e.g. keyboards, memory, or hard disk drives). IBM provides CRUs to the State for replacement by the State;
3. ensure that any access codes IBM provides are used only by those who are authorized to do so;
4. provide IBM with information IBM requests which is related to IBM's provision of these Services to the State and notify IBM of any changes;
5. use any electronic diagnostic and service delivery facilities IBM provides only in support of Eligible Machines identified in Exhibit B: *Deliverable Payment and Price Schedule*;
6. pay any communications charges associated with accessing these Services unless IBM specifies otherwise; and
7. use the information obtained under these Services only for the support of the information processing requirements within the State.

**9.5 MUTUAL RESPONSIBILITY**

If at any time either IBM or the State requests a review of the inventory count, both IBM and the State will cooperate in updating the last formal inventory.

**9.6 FORCE MAJEURE**

Neither IBM nor the State shall be responsible for delays or failures in performance resulting from events beyond the control of such party and without fault or negligence of such party. Such events shall include, but not be limited to, acts of God, strikes, block outs, riots, acts of War, epidemics, acts of Government, fire, power failures, nuclear accidents, earthquakes, and unusually severe weather.

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**9.7 INTERNAL ESCALATION PROCEDURE FOR DISPUTES**

Prior to the filing of any formal proceedings with respect to a dispute (other than an action seeking injunctive relief with respect to intellectual property rights), the party believing itself aggrieved (the "Invoking Party") shall call for progressive management involvement in the dispute negotiation by written notice to the other party. Such notice shall be without prejudice to the Invoking Party's right to any other remedy permitted by this Agreement.

The parties shall use all reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between negotiators for the parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

**Dispute Resolution Responsibility and Schedule Table**

<b>Level</b>	<b>IBM</b>	<b>The State</b>	<b>Cumulative allotted time</b>
First	Rob Willey	Robert B. Lawson	5 business days
Second	Wendi Monahan	Robert D. Stowell	10 business days
Third	Steve Corcoran	Michael P. Connor	15 business days

The allotted time for the first level negotiations shall begin on the date the Invoking Party's notice is received by the other party. Subsequent allotted time is days from the date that the original Invoking Party's notice is received by the other party.

**9.8 ASSIGNMENT, DELEGATION and SUBCONTRACTS and IBM BUSINESS PARTNERS**

**9.8.1 ASSIGNMENT**

IBM shall not assign, delegate or otherwise transfer any of its interest, rights, or duties under the Contract without the prior written consent of the State. Such consent will not be unreasonably withheld. Any attempted transfer, assignment, delegation, or other transfer made without the State's prior written consent shall be null and void.

**9.8.2 DELEGATION AND SUBCONTRACTS**

IBM, as a standard business practice, uses Subcontractors to provide help desk support, technical phone support, on-site repair services and other types of services. In the instances where Subcontractors are used to perform services, IBM shall remain wholly responsible for performance of the entire Contract regardless of whether assignees, delegates, Subcontractors or other transferees ("Successor") are used, unless otherwise agreed to in writing by the State and the Successor fully assumes in writing any and all obligations and liabilities under the Contract. In the absence of a written assumption of full obligations and liabilities of the Contract, any permitted assignment, delegation, subcontract or other transfer shall not relieve IBM of any of its obligations under the Contract; not affect any remedies available to the State against IBM that may arise from any event of default of the provisions of the Contract; and the State will

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consider IBM to be the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from the Contract.

**9.8.3 IBM BUSINESS PARTNERS**

IBM has signed agreements with certain organizations (called "IBM Business Partners") to promote, market, and support certain Products and Services. When the State orders IBM Products or Services (marketed to the State by IBM Business Partners) under this Agreement, IBM confirms that it is responsible for providing the Products or Services to the State under the warranties and other terms of this Agreement. IBM is not responsible for 1) the actions of IBM Business Partners, 2) any additional obligations they have to the State, or 3) any products or services that they supply to the State under their agreements.

**9.8.4 NOTICE**

Any notice by a party to the other party shall be deemed to have been duly delivered or given at the time of mailing by registered mail, postage prepaid, in a United States Post Office addressed to the parties at the following addresses.

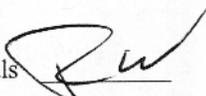
TO IBM:  
Rob Willey  
Client Manager  
Government and Education New England  
IBM  
29 Orchard Street  
Scarborough, ME 04074  
Tel: 781-248-5202  
Email: rwilley@us.ibm.com

TO STATE:  
Robert Stowell  
State of New Hampshire  
Department of Administrative  
Services  
25 Capital Street  
State House Annex  
Concord, NH 03301  
Tel: 603.271.3606

**9.8.5 MATERIALS OWNERSHIP AND LICENSE**

IBM will specify Materials to be delivered to the State. IBM will identify them as being "Type I Materials," "Type II Materials," "Type III Materials," or otherwise as agreed to by IBM and the State. If not specified, Materials will be considered Type II Materials.

Type I Materials are those, created during the Service performance period, in which the State will own the copyright in to the extent permissible under U.S. copyright law. If any such Materials are not works made for hire under applicable law, IBM assigns the ownership of copyrights in such Materials to Customer. The State grants IBM 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, sublicense, distribute (internally and externally) copies of, and prepare derivative works based on, Type I Materials and 2) the right to authorize others to do any of the former.



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Type II Materials are those, created during the Service performance period or otherwise (such as those that preexist the Service), in which IBM or third parties have all right, title, and interest (including ownership of copyright). IBM will deliver one copy of the specified Materials to the State. IBM grants the State an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, and distribute, only within the State or at any specific location whereby the State has contracted directly with IBM for Disaster Recovery or any other IBM services, copies of Type II Materials.

Type III Materials are those, created during the Service performance period in which the State will have all right, title, and interest (including ownership of copyright). IBM will retain one copy of the Materials. The State grants IBM 1) an irrevocable, nonexclusive, worldwide, paid-up license to use, execute, reproduce, display, perform, distribute (internally and externally) copies of, and prepare derivative works based on, Type III Materials and 2) the right to authorize others to do any of the former.

Each of us agrees to reproduce the copyright notice and any other legend of ownership on any copies made under the licenses granted in this section.



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**10. GENERAL PRINCIPLES OF OUR RELATIONSHIP**

1. Neither IBM nor the State grants the other the right to use its (or any of its Enterprise's) trademarks, trade names, or other designations in any promotion or publication without prior written consent.
2. All information exchanged is subject to Exhibit C: *Special Provisions*, Section 9.3. *Data: Access; Confidentiality; Preservation*.
3. Both IBM and the State are free to enter into similar agreements with others.
4. Both IBM and the State grant the other only the licenses and rights specified. No other licenses or rights (including licenses or rights under patents) are granted.
5. Neither IBM nor the State may assign this Agreement, in whole or in part, without the prior written consent of the other. Any attempt to do so is void. Neither IBM nor the State will unreasonably withhold such consent. The assignment of this Agreement, in whole or in part, within the Enterprise of which either IBM or the State is a part or to a successor organization by merger or acquisition does not require the consent of the other. The State however reserves the right to terminate this Contract within thirty (30) days written notice at its sole discretion. IBM is also permitted to assign its rights to payments under this Agreement without obtaining the State's consent. It is not considered an assignment for IBM to divest a portion of its business in a manner that similarly affects all of its customers.
6. The State agrees not to resell any IBM Service without IBM's prior written consent. Any attempt to do so is void.
7. The State agrees to acquire Machines with the intent to use them within the State and not for reselling, leasing, or transferring to a third party, unless either of the following applies:
  - a. The State is arranging lease-back financing for the Machines; or
  - b. The State purchases them without any discount or allowance, and do not remarket them in competition with IBM's authorized re-marketers.
8. The State agrees to allow IBM to install mandatory engineering changes (such as those required for safety) on a Machine. Any parts IBM removes become IBM's property. The State represents that permission from the owner and any lien holders to transfer ownership and possession of removed parts to IBM has been obtained. The State agrees they are responsible for the results obtained from the use of the Products and Services which were performed at the State's direction.
9. The State agrees to provide IBM with sufficient, free, and safe access to State facilities and systems for IBM to fulfill its obligations.
10. Subject to Section 9: *Data: Access; Confidentiality; Preservation* of the P-37, the State agrees to allow IBM and its subsidiaries to store and use State contact information, including names, phone numbers, and e-mail addresses, anywhere they do business. Such information will be processed and used in connection with our business relationship, and may be provided to Contractors, Business Partners, and assignees of IBM and its subsidiaries for uses consistent with their collective business activities, including communicating with the State (for example, for processing orders, for promotions, and for market research).
11. The State agrees to comply with all applicable export and import laws and regulations to the extent that they apply to the State of New Hampshire.

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 Deliverable Payment and Price Schedule

**1. DELIVERABLE PAYMENT AND PRICE SCHEDULE.**

All charges by IBM under this Contract shall be at a fixed price in accordance with the schedules set forth in Table 1: *Price Schedule* below

This is a Firm Fixed Price (FFP) Contract totaling \$15,000,000.00 for the period between the Effective Date through February 28, 2015.

**Table 1: Price Schedule**

Offering	Offering Description	Pricing Model
<b>Hardware</b>		
<b>System z</b>	Mainframe products including base server, memory, specialty engines, security, networking, and I/O features.	Custom priced based on configuration.
<b>System i</b>	Midrange (formerly AS/400) products including base server, memory, security, networking, and I/O features, and native operating system (OS/400).	18% discount from list with the following exceptions: 5639-3CM and 5639-MYS - 15%; 5771-3CM and 5773-3CM - 4%.
<b>System p</b>	Midrange (formerly RS/6000) products including base server, memory, security, networking, and I/O features, and native operating system (AIX).	Low End: 10% discount from list price (machine types 9115, 9110, 9113, 7988, 7998). Midrange: 13% discount from list price (machine types 9133 and 9116). High End: 15% discount from list price (machine types 9117, 9118, 9119). Peripherals: 7311 - 10%, 7314 - 10%, 7042 - 18%, 7316 - 18%.
<b>System x and BladeCenter</b>	Intel and AMD based products including base server, memory, and feature cards.	Remaining System p machine types priced at list price or better. 16% discount from list price.

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Offering	Offering Description	Pricing Model
<b>Storage</b>	IBM disk, tape, optical, Storage Area Network (SAN), Network Attached Storage (NAS), storage software, and storage media.	ESS 2105-750, 38% discount from list price.  Enterprise Class Disk Storage (DS8100/8300), 35% discount from list price.  Enterprise Class Disk Storage Software (Shark, DS8000), 30% discount from list price.  Mid Range Disk Storage (DS6000), 35% discount from list price.  Entry Level Disk Storage Controllers (DS4xxx), 35%  Entry Level Disk Storage Disk (DS4xxx), 41% discount from list price.  Network Attached Storage (Nxxx), 20% discount from list price.  Entry Level Tape (TS3310), 20% discount from list price.  Enterprise Level LTO Tape & Libraries (3584), 35% discount from list price.  Optical Jukebox 3995, 20% discount from list price.  SAN Volume Controller 2145-8F4, 27% discount from list price.  3592 Jaguar Drives, 26% discount from list price.  3588 LTO Drives, 33% discount from list price.  TS3500, 25% discount from list price.  Service Pac Warranty Upgrades, 15% discount from list price.

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Offering	Offering Description	Pricing Model
<b>Software</b>		
<b>Passport Advantage Software, including new FileNet licenses</b>	Distributed software licensing program currently including the Tivoli, Rational, WebSphere, Lotus, and Information Management product families, including new FileNet license acquisition. Acquired products may be migrated to the Passport Advantage licensing program.	License and maintenance: 15 - 20% discount from list price, except for FileNet software, which will be offered at Passport Advantage list price or better.
<b>Mainframe Software</b>	One-time charge and monthly license charge mainframe software products.	List Price or better.
<b>FileNet – upgrades to existing licenses, until migration to Passport Advantage is complete.</b>	FileNet software products manage images, graphics, video, web content, email, compliance documents, business records and document life-cycles.	License: 25% discount from legacy list price; maintenance: 25% of net price, annually.
<b>IBM Global Services</b>		
<b>Technical Support Services</b>	Support, management, and maintenance services for hardware and packaged software, as well as custom and legacy applications.	Hourly contract: rates dependent on skill and experience of resource, or fixed price contract: price dependent on scope and skills required.
<b>Offering</b>		
<b>Maintenance Services</b>	A number of support services from product maintenance through solution support to maintain and improve the availability of clients' IT infrastructure.	Product maintenance is offered at list price or better, and is priced based on configuration. Hourly and fixed price services are available for solution support requirements and are priced based on skill required and solution configuration.
<b>Software Services</b>	Consulting services with resources highly skilled in the planning, implementation and deployment of IBM software.	Hourly contract: rates dependent on skill and experience of resource, or fixed price contract: price dependent on scope and skills required.



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<b>Remarketing</b>	The sale and lease of used equipment (primarily sourced from the conclusion of lease transactions).	Price, rate and terms provided on a transactional basis.
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Deliverable Payment and Price Schedule

**1. ORDERING PROCEDURE**

The Bureau of Purchase and Property will issue purchase orders on behalf of the State Agencies for all orders.

**2. PAYMENTS**

The State shall pay IBM within thirty (30) calendar days of the State's receipt of a correct and undisputed invoice.

**3. Money Back Guarantee for IPLA**

If for any reason the State is dissatisfied with the IPLA Program and the State is the original licensee, the State may obtain a refund of the amount the State paid for it, if within 30 days of the State's invoice date the State returns the IPLA Program and its PoE to the party from whom the State obtained it. If the State downloaded the Program, the State may contact the party from whom the State acquired it for instructions on how to obtain the refund.

**4. IPLA FEES**

The amount payable for a Program license is a one-time charge.

One-time charges are based on the level of use acquired which is specified in the PoE. IBM does not give credits or refunds for charges already due or paid, except as specified elsewhere in the Agreement.

If the State wishes to increase the level of use, the State shall notify IBM or the party from whom the State acquired it and pay any applicable charges.

If any authority imposes a duty, tax levy or fee, excluding those based on IBM's net income, upon the Program, then the State agrees to pay the amount specified or supply exemption documentation. The State is responsible for any personal property taxes for the Program from the date the State acquires it.

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**1. Section 3.1 of the General Provisions Form P-37 relating to the Effective Date: Completion of Services reads:**

3.1 This agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Council of the State of New Hampshire approve this agreement, ("the Effective Date").

**is hereby amended to read:**

This agreement, and all obligations of the parties hereunder, shall become effective on the date of execution by both parties ("the Effective Date"). The Agreement shall expire on 02/28/2015 Section 4.1: *Period of Performance*, unless extended in writing by mutual agreement of the Parties and subject to the amendment process as described in Section 17 Amendment.

**2. Section 3.2 of the General Provisions Form P-37 relating to the Effective Date: Completion of Services reads:**

3.2 If the date for commencement in Exhibit A precedes the Effective Date all services performed by the Contractor between the commencement date and the Effective Date shall be performed at the sole risk of the Contractor and in the event that this Agreement does not become effective, the State shall be under no obligation to pay the Contractor for any costs incurred or services performed; however that if this Agreement becomes effective all costs incurred prior to the effective date shall be paid under the terms of this Agreement. All services must be completed by the date specified in block 1.6.

**is hereby amended to read:**

3.2 For new Products or Services being purchased from Contractor by State of New Hampshire Participating Agencies (see attached list Exhibit D) no purchase order shall be issued until the Effective Date and any services performed by Contractor between the commencement date and the Effective Date shall be performed at the sole risk of the Contractor and in the event that this Agreement does not become effective, the State shall be under no obligation to pay the Contractor for an costs incurred or services performed; however that if this Agreement becomes effective all costs incurred prior to the Effective Date shall be paid under the terms of the Agreement. All services must be completed by the date specified in the Scope of Work, purchase order or other order vehicle (note that this provision does not apply to any Products or Services provided by Contractor prior to the Effective Date of this Agreement).

**3. Add Section 3.3 to the General Provisions Form P-37 to include:**

3.3 This Statewide procurement Agreement with the Contractor is intended to cover the purchase of Products and Services listed on Exhibit B: *Deliverable Payment and Price Schedule* directly from the Contractor.

**4. Section 5.1 of the General Provisions Form P-37 relating to the Contract Price: Limitation on Price: Payment reads:**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in Exhibit B, incorporated herein.



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is hereby amended to read:

5.1 The Contract prices, method of payment, and terms of payment are identified and more particularly described in Exhibit B: *Deliverable Payment and Price Schedule*, incorporated herein. Further specifics of price and payment may be included in a Scope of Work that may be associated with particular purchases under this Agreement that reflects the price and payment schedule in Exhibit B: *Deliverable Payment and Price Schedule*.

**5. Section 5.2 of the General Provisions Form P-37 relating to the Contract Price:**

**Limitation on Price: Payment reads:**

5.2 The payment by the State of the contract price shall be the only, and the complete, reimbursement to the Contractor for all expenses, of whatever nature, incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

is hereby amended to read:

5.2 The payment by the State of the Contract price, as specified in a SOW or other form or order shall be the only, and the complete, reimbursement to the Contractor for all expenses, of whatever nature, incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services, The State shall have no liability to the Contractor other than the Contract price.

**6. Section 6.1 of the General Provisions Form P-37 relating to the Compliance by Contractor with laws and regulations: Equal Employment Opportunity reads:**

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county, or municipal authorities, which impose any obligation or duty upon the Contractor, including, but not limited to civil rights and equal opportunity laws. In addition, the vendor shall comply with all applicable copyright laws.

is hereby amended to read:

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal and state, authorities which impose any obligation or duty upon IBM, including, but not limited to civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.

**7. Section 6.3 of the General Provisions Form P-37 relating to the Compliance by Contractor with laws and regulations: Equal Employment Opportunity reads:**

6.3 If this agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States, access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants and conditions of this Agreement



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**is hereby amended to read:**

6.3 If this agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No.; 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United State Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States, access to any of the Contractor's books, records and accounts specifically applicable to an order under the Agreement for the purpose of ascertaining compliance with all rules, regulations, and orders, and the covenants and conditions of this Agreement.

**8. Section 7.1 of the General Provisions Form P-37 relating to Personnel reads:**

7.1 The performance of the Services shall be carried out by employees of the Contractor. The Contractor shall at its own expense, provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

**is hereby amended to read:**

7.1 The performance of the Services as described in Exhibit A: *Statement of Work*, shall be carried out by employees of the Contractor or Subcontractors. The Contractor shall at its own expense, provide all personnel necessary to perform the Services. The Contractor will insure that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

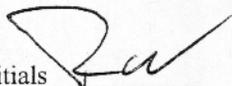
**9. Add Section 8.25 to the General Provisions Form P-37 relating to the Event of Default, Remedies:**

The Contractor's and the State's liability, each to one another (because of a default or other liability, regardless of the basis of the claim, including fundamental breach, negligence, misrepresentation, or other contract or tort claim) shall not exceed one times the total Contract price, (the "Contract price shall be defined as the amount of any actual direct damages up to the greater of (x) \$100,000 (for small transactions defined as the amount of any actual direct damages up to the greater of (x) \$100,000 (for small transactions \$100,000 and under) or (y) one times the charges (if recurring, 12 months' charges apply) for the Product or Service that is the subject of the claim).

In no event shall the Contractor (or its affiliated, Subcontractors, employees, officers or directors) be liable to the State or to any other party for any consequential, special, incidental or indirect damages or for any economic consequential damages; or lost profits, business, revenue, goodwill, or anticipated savings, or loss of or damage to data, even if informed of their possibility.

This limitation shall not apply to the Contractor's indemnification obligations under Paragraph 13 of the General Provisions (Form P-37) or the following:

- a. death or bodily injury and physical damage to real or tangible personal property;



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- b. misappropriation or infringement of any intellectual property as described in Appendix A: *Statement of Work*, Section 9.1.3: *Claims for which Contractor is not responsible* attached hereto, or
- c. personal injury;
- d. disclosure of confidential information.

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

**10. Section 9.1 of the General Provisions Form P-37 relating to the Data: Access; Confidentiality; Preservation reads:**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

**is hereby amended to read:**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished. Each order issued pursuant to this Agreement shall specify whether the data is Type I, Type II, or Type III Material, as further defined in Exhibit A: *Statement of Work*, Section 9.9.5: *Materials Ownership and Licenses*.

**11. Section 9.2 of the General Provisions Form P-37 relating to the Data: Access; Confidentiality; Preservation reads:**

9.2 On and after the Effective Date, all data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

**is hereby amended to read:**

9.2 On and after the Effective Date, all Type I Material and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

**12. Section 9.3 of the General Provisions Form P-37 relating to the Data: Access; Confidentiality; Preservation reads:**

9.3 Confidentiality of data shall be governed by RSA 91-A or other existing law. Disclosure pursuant to a right to know request shall require prior written approval of the State.

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is hereby amended to read:

9.3 Confidentiality

9.3.1 Confidentiality of State's Information

State Confidential Information shall mean information, regardless of its form, that is exempt from public disclosure under applicable federal and state laws and regulations, including without limitation, RSA Chapter 91-A (see e.g. RSA 91-A:5 Exemptions). Contractor agrees to maintain the confidentiality of and protect from unauthorized use, disclosure, publication, and reproduction, all State Confidential Information that becomes available to Contractor in connection with its performance under the Contract, regardless of its form. Subject to applicable federal or state laws and regulations, Confidential Information shall not include information which: (i) was disclosed to the receiving party on a non-confidential basis from a source other than the disclosing party, which the receiving party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing party; (ii) is developed by the receiving party independently of, or was known by the receiving party prior to, any disclosure of such information made by the disclosing party; (iii) is disclosed with the written consent of the disclosing party. Any disclosure of the State's information shall require prior written approval of the State. Contractor shall immediately notify the State if any request, subpoena or other legal process is served upon Contractor regarding the State's Confidential Information, and Contractor shall cooperate with the State in any effort it undertakes to contest the subpoena or other legal process. In the event of unauthorized use or disclosure of the State's information, Contractor shall immediately notify the State, and the State may immediately pursue any remedy at law and in equity, including, but not limited to, injunctive relief.

9.3.2 Use of State's Information

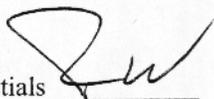
In performing its obligations under the Contract, the Contractor may gain access to information of the State, including State Confidential Information. Contractor shall not use the State's Confidential Information except as directly connected to and necessary for the Contractor's performance under the Contract, unless otherwise permitted under the Contract.

9.3.3 Contractor's Confidential Information

Contractor acknowledges that the State is subject to the Right to Know law, RSA Chapter 91-A. Insofar as Contractor seeks to maintain the confidentiality of its confidential information identified as confidential, the State shall maintain the confidentiality of the identified confidential information insofar as it is consistent with applicable state and federal laws or regulations, including but not limited to, RSA Chapter 91-A. In the event the State receives a request for the information identified by Contractor as confidential, the State shall notify Contractor and specify the date the State will be releasing the requested information. At the request of the State, Contractor shall cooperate and assist the State with collection and review of the Contractor's information at no additional expense to the State. Any effort to prohibit or enjoin the release of the information shall be the Contractor's sole responsibility and at the Contractor's sole expense. If Contractor fails to obtain a court order enjoining the disclosure, the State shall release the information on the date specified in the State's notice to the Contractor without any State liability to the Contractor.

9.3.4 Survival

This Section 9 shall survive termination of the Contract.



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**13. Section 10 of the General Provisions Form P-37 relating to the Termination reads:**

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion to the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("the Termination Report") describing in detail all Services performed, and the Contract Price earned, to and including the date of termination. To the extent possible, the form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in EXHIBIT A.

**is hereby amended to read:**

10. **TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion to the Services, the Contractor shall deliver to the Contract Manager, not later than thirty (30) days after the date of termination, a report ("the Termination Report") describing in detail all Services performed, and the Contract price earned, to and including the date of termination. To the extent possible, the form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in EXHIBIT D: *Specifications and Transaction Documents*.

**14. Section 13 of the General Provisions Form P-37 relating to the Indemnification reads:**

13. **INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant shall survive the termination of this Agreement.

**is hereby amended to read:**

13. **INDEMNIFICATION.** Contractor shall defend, indemnify and hold harmless the State, its officers and employees (sometimes, individually and /or collectively, "Indemnified Party") from and against a third party claim against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) any Contractor Product that Contractor provides to the State under this Agreement infringes that party's patent or copyright. Contractor will defend the State against that claim at the Contractor's expense and pay all costs, damages and attorney's fees that a court finally awards against the State or that are included in a settlement approved in advance by the Contractor, provided that the State: (i) promptly notifies Contractor in writing of the claim and (ii) allows Contractor to control, and cooperates with Contractor in the defense against the claim and any related settlement negotiations.

For all other claims, each party shall be individually responsible for any and all claims raised against it: The State shall be responsible for all claims, liabilities or penalties asserted against the State, its officers or employees, that are alleged to have resulted from the acts or omissions of the State, its officers or employees; Contractor shall be responsible for all claims, liabilities or penalties asserted against the Contractor, its officers or employees, that

**State of New Hampshire**  
**Department of Administrative Services**  
**International Business Machines Inc. Contract 2009-050**  
**Exhibit C**  
**Special Provisions**

are alleged to have resulted from the acts or omissions of the Contractor, its officers or employees.

Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State.

The Contractor shall not be required to defend and indemnify the State for losses resulting from the State's own acts or omissions.

This covenant shall survive the termination of this Agreement.

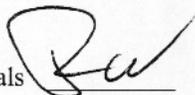
**15. Section 14.1.2 of the General Provisions Form P-37 relating to the Insurance and Bond is deleted.**

**16. Section 17 of the General Provisions Form P-37 relating to the Amendment reads:**

17. AMENDMENT. This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Council of the State of New Hampshire.

**is hereby amended to read:**

17. AMENDMENT. This agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the State of New Hampshire, Department of Administrative Services, Bureau of Purchase and Property. Notwithstanding any other provisions of the Contract to the contrary, the P-37 as modified by this Exhibit C shall apply and govern the parties obligations under the contract.



## HARDWARE AND SOFTWARE PROGRAMS

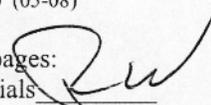
As of September 30, 2008, Hardware, and Software ("Programs") maintenance services include:

Type	Model	Serial	Description	Platform	Service Plan	Name	Address
7025	'6F1	'002057F	RS/6000 DESKSID	PSER	IOR 7X24 (C)	AGYS/STATE OF N	10 HAZEN DR
7025	'6F1	'00292FF	RS/6000 DESKSID	PSER	IOR 7X24 (C)	AGYS/STATE OF N	10 HAZEN DR
'2104	'TU3	'00F0043	SCSI DASD	SSD	IOR 7X24 (C)	AGYS/STATE OF N	10 HAZEN DR
3590	'E11	'00D5647	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	STNH DATA PROC	27 HAZEN DR
3590	'E11	'00D5650	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	STNH DATA PROC	27 HAZEN DR
3590	'E11	'00D5680	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	STNH DATA PROC	27 HAZEN DR
3590	'E11	'00D5699	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	STNH DATA PROC	27 HAZEN DR
3590	'A60	'0050004	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	STNH DATA PROC	27 HAZEN DR
3590	'A14	'0061566	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	STNH DATA PROC	27 HAZEN DR
3490	'C22	'00Y1069	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	ASDC	27 HAZEN DR
3490	'C22	'00Y1070	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	ASDC	27 HAZEN DR
3490	'C22	'00Y1071	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	ASDC	27 HAZEN DR
2086	'A04	'004EC5B	PROCESSOR ZSER.	ZSER	IOR 7X24 (C)	GLASSH/ST NH	27 HAZEN DR
9309	'002	'0022972	RACK ENCLOSURE	ISER	IOR 7X24 (C)	DES	32 S MAIN ST
9309	'002	'0089250	RACK ENCLOSURE	ISER	IOR 7X24 (C)	DES	32 S MAIN ST
7060	'H30	'001172F	MULTIPRISE 3000	ZSER	IOR 7X24 (C)	DES	32 S MAIN ST
3590	'A50	'0044475	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	DES	32 S MAIN ST
3590	'B1A	'0051028	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	DES	32 S MAIN ST
3590	'E1A	'0051127	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	DES	32 S MAIN ST
3590	'B1A	'0052114	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	DES	32 S MAIN ST
3590	'B1A	'0052255	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	DES	32 S MAIN ST
3590	'A14	'0060336	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	DES	32 S MAIN ST
3490	'C22	'00X2538	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	DES	32 S MAIN ST
3490	'C22	'00X2561	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	DES	32 S MAIN ST
2790	'001	'0010205	CUTSHEET 90 IPM	PSC	IOR 7X24 (C)	STNH DES S/36	32 S MAIN ST
2761	'001	'0010037	CUTSHEET 60 IPM	PSC	IOR 7X24 (C)	COMPU/NEW HAMPS	32 S MAIN ST
9309	'002	'00C0716	RACK ENCLOSURE	ISER	IOR 7X24 (C)	PUBLIC SAFETY	33 HAZEN DR
9309	'002	'0092035	RACK ENCLOSURE	ISER	IOR 7X24 (C)	PUBLIC SAFETY	33 HAZEN DR
6500	'V20	'00PK262	SHUTTLE MAT PT	PSC	IOR 7X24 (C)	COMPU/STATE OF	33 HAZEN DR
3590	'E11	'00AB849	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	GLASSH/STATE NE	33 HAZEN DR
3590	'E11	'00AD931	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	GLASSH/STATE NE	33 HAZEN DR
3590	'A60	'0049859	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	GLASSH/STATE NE	33 HAZEN DR
3590	'A14	'0061471	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	GLASSH/STATE NE	33 HAZEN DR
3490	'C22	'00N3795	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	PUBLIC SAFETY	33 HAZEN DR
3490	'C22	'00Y1200	TAPE SUBSYSTEM	SSD	IOR 7X24 (C)	PUBLIC SAFETY	33 HAZEN DR
3174	'11L	'00AR771	EOS USE ONLY	NET	IOR 7X24 (C)	PUBLIC SAFETY	33 HAZEN DR
2706	'001	'0040250	CUTSHEET 105IPM	PSC	IOR 7X24 (C)	PUBLIC SAFETY	33 HAZEN DR
2706	'001	'0040252	CUTSHEET 105IPM	PSC	IOR 7X24 (C)	PUBLIC SAFETY	33 HAZEN DR
2104	'TU3	'00FQ005	SCSI DASD	SSD	IOR 7X24 (C)	PUBLIC SAFETY	33 HAZEN DR
6500	'V10	'00PG455	SHUTTLE MAT PT	PSC	IOR 7X24 (C)	COMPU/NEW HAMPS	4 HAZEN DR

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2009-050

Initial all pages:

IBM's Initials 

7/26/2010

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Type	Model	Serial	Description	Platform	Service Plan	Name	Address
2790	'001	'0010175	CUTSHEET 90 IPM	PSC	IOR 7X24 (C)	ASDC	4 HAZEN DR
2790	'001	'0010176	CUTSHEET 90 IPM	PSC	IOR 7X24 (C)	ASDC	4 HAZEN DR
2790	'001	'0010181	CUTSHEET 90 IPM	PSC	IOR 7X24 (C)	ASDC	4 HAZEN DR
9406	'520	'001B49E	ISERIES I5 CPU	ISER	IOR 7X24 (C)	AVT/STATE OF NE	45 CHENELL DR
9406	'520	'001B71E	ISERIES I5 CPU	ISER	IOR 7X24 (C)	AVT/STATE OF NE	45 CHENELL DR
6500	'V10	'00PG882	SHUTTLE MAT PT	PSC	IOR 24X7 (M)	INGRAM/STATE OF	45 CHENELL DR
6400	'008	'00A9730	SHUTTLE MAT PT	PSC	IOR 7X24 (C)	ARROW/BAYSTATE	6 HAZEN DR

## SERVICE LEVEL AGREEMENTS

The service level agreements are located at the following specified reference addresses:

Description	Web Address
Hardware	<a href="http://www.ibm.com/systems">www.ibm.com/systems</a> <a href="http://www.ibm.com/systems/support/machine_warranties/machine_code.html">www.ibm.com/systems/support/machine_warranties/machine_code.html</a>
Software	<a href="http://www.ibm.com/software">www.ibm.com/software</a>
Global Technology Services	<a href="http://www.ibm.com/services">www.ibm.com/services</a>
Maintenance	<a href="http://www.ibm.com/services/maintenance">www.ibm.com/services/maintenance</a>
Software Services	<a href="http://www.ibm.com/software/sw-services">www.ibm.com/software/sw-services</a>

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November 18, 2010

Ms. Leslie Mason  
Information Technology Manager  
Department of Information Technology  
State of New Hampshire  
29 Hazen Drive  
Concord, NH 03310

Reference: State of New Hampshire-IBM Master IT Contract

Dear Leslie,

Please accept this letter as notification that Rob Willey, Public Sector Client Manager, is authorized to sign contracts on behalf of IBM Corporation as evidenced in the attached Delegation of Authority Letter signed by Robert Putnam on June 9, 2010.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Kim', written over a horizontal line.

Roger Kim  
IBM Sales & Distribution Legal Counsel

CC: Rob Willey  
Monica Davis

## DELEGATION OF AUTHORITY

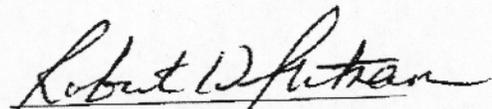
I, Robert W. Putnam, Associate General Counsel, IBM North America Sales & Distribution, do hereby certify that said Associate General Counsel, in accordance with and pursuant to resolutions of the Board of Directors of International Business Machines Corporation ("IBM") duly adopted at a meeting duly held and called on April 25, 1994, and that certain Letter of Authority dated November 15, 1995, has been duly authorized to execute and deliver in the name of and on behalf of IBM any contract or other document or instrument necessary or appropriate in the ordinary course of IBM's business, including but not limited to bid documents for the sale of IBM products and services to federal, state and local governments and agencies, purchase orders and sales agreements, and the like, and to delegate this authorization within the IBM organization in the United States, including Puerto Rico; and that said authorization has not been modified, amended or rescinded and continues in full force and effect. So authorized, I hereby delegate said authority to execute and deliver in the name of and on behalf of IBM any such contract or other document or instrument reasonably related to, or performed in accordance with, the job duties, and/or responsibilities of the persons holding the below listed positions in the IBM organization in the United States, including Puerto Rico:

President  
Treasurer  
Vice President  
General Manager  
Partner  
Associate Partner

Position titles that include the words:

Counsel  
Attorney  
Director  
Executive  
Sales Manager  
Program Manager  
Sales Representative  
Sales Specialist  
Contracts & Negotiations  
Client Manager  
Project Manager  
Business Operations Manager  
Client Relationship Representative  
Client Unit Executive  
Customer Fulfillment Professional  
Service Delivery Manager  
Service Delivery Executive  
Software Engineer  
System Service Representative

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of  
said International Business Machines Corporation on this 9<sup>th</sup> day of June  
20 10.



Robert W. Putnam  
Associate General Counsel  
IBM North America Sales & Distribution

# State of New Hampshire Department of State

## CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that INTERNATIONAL BUSINESS MACHINES CORPORATION, a(n) New York corporation, is authorized to transact business in New Hampshire and qualified on August 17, 1934. I further certify that all fees and annual reports required by the Secretary of State's office have been received.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 18<sup>th</sup> day of November, A.D. 2010

A handwritten signature in cursive script, appearing to read "Wm Gardner".

William M. Gardner  
Secretary of State



# ADDITIONAL INFORMATION

CERTIFICATE NUMBER  
134114

**PRODUCER**

Aon Risk Services Northeast, Inc.  
199 Water Street  
New York, NY 10038  
Phone: 866.266.7475  
Fax: 866.467.7847

**COMPANIES AFFORDING COVERAGE**

**INSURED**

International Business Machines Corp.  
& Any Other Subsidiary Corp. Owned or Controlled by the Insured  
1 New Orchard Road  
Armonk, NY 10504  
United States

**TEXT**

State of New Hampshire Department of Administrative Services Attn: Commissioner is hereby named as an additional insured on General Liability policies but only to the extent that their interest may appear.

Project: NH-IBM Master IT Contract

If there is a question regarding this certificate please contact Monica Davis  
(Email: davisma@us.ibm.com Phone: 520-219-3271)

All operations incidental to the conduct of insured's business in the United States of America.

**CERTIFICATE HOLDER**

State of New Hampshire  
Department of Administrative Services  
Attn: Commissioner  
25 Capitol Street  
Concord, NH 03301  
United States



# ADDITIONAL INFORMATION

CERTIFICATE NUMBER  
134113

**PRODUCER**

Aon Risk Services Northeast, Inc.  
199 Water Street  
New York, NY 10038  
Phone: 866.266.7475  
Fax: 866.467.7847

**COMPANIES AFFORDING COVERAGE**

**INSURED**

International Business Machines Corp.  
1 New Orchard Road  
Armonk, NY 10504  
United States

**TEXT**

Project: NH-IBM Master IT Contract

If there is a question regarding this certificate please contact Monica Davis  
(Email: davisma@us.ibm.com Phone: 520-219-3271)

All operations incidental to the conduct of insured's business in the United States of America.

**CERTIFICATE HOLDER**

State of New Hampshire  
Department of Administrative Services  
Attn: Commissioner  
25 Capitol Street  
Concord, NH 03301  
United States

# STATE OF NEW HAMPSHIRE

DEPT. OF ADMINISTRATIVE SERVICES  
BUREAU OF PURCHASE AND PROPERTY

INTER-DEPARTMENT COMMUNICATION

DATE: NOVEMBER 24, 2010

FROM: Robert B. Lawson, Purchasing Agent  
Bureau of Purchase & Property

TO: Robert D. Stowell  
Michael P. Connor  
Linda M. Hodgdon

SUBJECT: STATEWIDE CONTRACT WITH IBM

Attached for your approval are the contract documents for a Statewide Contract with IBM for software, hardware and services. This contract shall remain in effect through January 31, 2015.

Commissioner's signature is requested on the attached document as indicated by signature arrows.

PROPOSED BY:

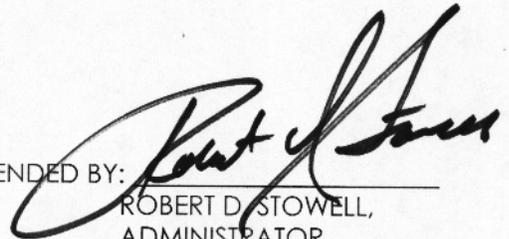


ROBERT B. LAWSON  
PURCHASING AGENT,  
PURCHASE & PROPERTY

DATE PROPOSED:

11/24/10

RECOMMENDED BY:



ROBERT D. STOWELL,  
ADMINISTRATOR  
PURCHASE & PROPERTY

DATE RECOMMENDED:

11/24/10

ENDORSED BY:

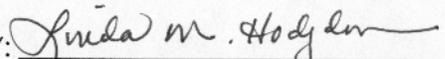


MICHAEL P. CONNOR  
DIRECTOR,  
PLANT & PROPERTY MGT.

DATE ENDORSED:

11/29/10

APPROVED BY:



LINDA M. HODGDON  
COMMISSIONER,  
DEPT. OF ADM. SERV.

DATE APPROVED:

11/29/10

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

DECEMBER 3, 2010

NOTICE OF AGREEMENT

COMMODITY: IBM HARDWARE, SOFTWARE AND SERVICES

CONTRACT #: 8000865

CONTRACTOR: IBM CORPORATION #174837  
29 ORCHARD ST.  
SCARBOROUGH, ME 04074

CONTACT PERSON: ROB WILLEY, CLIENT MANAGER GOVT. AND  
EDUCATION NEW ENGLAND  
TEL: 781 248-5202  
E-MAIL ADDRESS: [rwilley@us.ibm.com](mailto:rwilley@us.ibm.com)

CONTRACT PERIOD: DECEMBER 3, 2010 THROUGH JANUARY 31, 2015

COMMODITY CODE: 204 & 208

TERMS: NET 30 DAYS

DELIVERY TIME: SEE CONTRACT FOR COMPLETE ORDERING  
AND DELIVERY INFORMATION

ORDERING: SEE CONTRACT FOR COMPLETE ORDERING  
AND DELIVERY INFORMATION